



Whitehorse City Council

AGENDA

Council Meeting

on

Monday 28 February 2022

at 7:00pm

Members: Cr Liu (Mayor), Cr Massoud (Deputy Mayor), Cr Barker, Cr Carr, Cr Cutts, Cr Davenport, Cr Lane, Cr McNeill, Cr Munroe, Cr Skilbeck, Cr Stennett

Mr Simon McMillan, Chief Executive Officer

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TABLE OF CONTENTS

1	PRAYER	2
2	WELCOME.....	2
3	APOLOGIES	2
4	DISCLOSURE OF CONFLICT OF INTERESTS.....	2
5	CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS	2
6	PUBLIC PRESENTATIONS.....	2
7	PETITIONS AND JOINT LETTERS.....	3
8	PUBLIC QUESTION TIME.....	3
9	NOTICES OF MOTION	3
	9.1 NOTICE OF MOTION NO 162 - CR DAVENPORT	3
10	URGENT BUSINESS.....	3
11	COUNCIL REPORTS.....	4
	11.1 RESPONSE TO COMMUNITY CONCERN ABOUT PROTECTION OF TREES	4
	11.2 HEALESVILLE FREEWAY RESERVE 2022 PROJECT UPDATE	17
	11.3 QUARTERLY PERFORMANCE REPORT OCTOBER TO DECEMBER 2021	25
	11.4 LOCAL GOVERNMENT CULTURAL REVIEW SUBMISSION	27
	11.5 RECORDS OF INFORMAL MEETINGS OF COUNCILLORS	32
12	COUNCILLOR DELEGATE AND CONFERENCE/SEMINAR REPORTS	33
	12.1 REPORTS BY DELEGATES	33
	12.2 REPORTS ON CONFERENCES/SEMINARS ATTENDANCE	33
13	CONFIDENTIAL REPORTS	33
	13.1. COUNCIL BUSINESS INFORMATION, BEING INFORMATION THAT WOULD PREJUDICE THE COUNCIL'S POSITION IN COMMERCIAL NEGOTIATIONS IF PREMATURELY RELEASED	
14	CLOSE MEETING.....	33

AGENDA

1 PRAYER

1a 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.

1b 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 WELCOME

3 APOLOGIES

4 DISCLOSURE OF CONFLICT OF INTERESTS

5 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Minutes of the Council Meeting 14 February 2022.

RECOMMENDATION

That the minutes of the Council Meeting 14 February 2022 having been circulated now be confirmed.

6 PUBLIC PRESENTATIONS

7 PETITIONS AND JOINT LETTERS

8 PUBLIC QUESTION TIME

9 NOTICES OF MOTION

9.1 Notice of Motion No 162 - Cr Davenport

That:

1. Council notes that:
 - a) The Whitehorse Council Post War Heritage Study dated June 2016 which identified 1-3 and 2-6 Pin Oak Court and 15, 17 Weeden Drive Vermont South as potential heritage significance as it is the location of 'Ramsay Street'.
 - b) In the same Study, 'Ramsay Street' is noted to be of historical and social significance at the state level, and arguably at an international level. For around three decades, it has served as the keynote location for the filming of a popular television series with an international audience.
 - c) Whilst redevelopment of 'Ramsay Street' is already protected private contracts between property owners and the TV production company, that protection may not apply after production ceases.
 - d) There has been an announcement to cease production of 'Neighbours'.
2. A report be presented to Council on the preparation of a heritage citation for 'Ramsay Street' and the report to include whether a heritage overlay should be considered for the precinct.

10 URGENT BUSINESS

11 COUNCIL REPORTS

11.1 Response to Community Concern about Protection of Trees

City Planning and Development

SUMMARY

Council has recently received numerous emails and letters from residents expressing concern with the administration of the Whitehorse Planning Scheme in relation to the protection of trees. This criticism has particularly focussed on the Significant Landscape Overlays in the Blackburn area.

This report outlines the current tree controls and their implementation, including the management of exemptions to the need for planning permits.

RECOMMENDATION

That Council:

1. Receive and endorse this report.
2. Develop and implement an advocacy campaign, which may include the support of other Councils, to achieve Council's previous decisions in relation to strengthening tree controls which seek the Minister for Planning to:
 - Implement permanent Significant Landscape Overlay, schedule 9 into the Whitehorse Planning Scheme as soon as possible;
 - Amend the VicSmart planning provisions to prohibit the application of more than 1 VicSmart application for tree removal per property per calendar year.
 - Increase the fines available for illegal tree removal, and align these mechanisms with those available in NSW.
 - Introduce a buildings and works trigger into the Vegetation Protection Overlay
 - Amend all planning scheme provisions relation to vegetation protection to require that where there is a planning permit exemption to removal a dead, dying or dangerous tree that this be subject to the planting of a suitable replacement tree/s within a specified timeframe and suitable location to the satisfaction of the responsible authority.
3. Include additional advocacy to the Minister for Planning seeking commitment that genuine and transparent community engagement occurs with councils and local communities on any new controls being developed by the 'Greening and Cooling' work which is being undertaken by the Department of Environment, Land, Water and Planning.

11.1

(cont)

Key Matters Council has recently received numerous emails and letters from residents expressing concern with the administration of the Whitehorse Planning Scheme in relation to the protection of trees. This communication was in the form of a letter endorsed by numerous individual residents, letters from 3 local community groups, and letters/emails from nine other residents.

Issues raised include:

- Quality of arborist advice for planning applications
- Specific concern about illegal tree removal in the Significant Landscape Overlay (SLO) schedule 1 and 2 areas of Blackburn
- Lack of replacement canopy trees and declining tree canopy in Whitehorse

Broadly, the outcomes sought are:

- Improvements to Council's management of the Whitehorse Planning Scheme relating to vegetation protection, particularly in the Blackburn area
- A community forum for interested residents and Council to discuss concerns

In recent years there has also been ongoing concern raised by residents about 'moonscaping' of sites, misuse of VicSmart provisions with multiple VicSmart applications being lodged for the same site, inappropriate use of planning scheme exemptions for tree removal, and non-compliant landscaping plans.

Whilst this communication has primarily been received from residents and community groups in the Blackburn vicinity, officers understand that their sentiment is municipally focussed, with some direct concern about the specific SLO1 and SLO2 areas of Blackburn.

STRATEGIC ALIGNMENT

This report sits under Theme 5 of the Whitehorse Community Vision and Council Plan Strategic Direction 5: *Sustainable Climate and Environmental Care*.

Under the Council Plan, it also takes guidance from both objectives 5.1 and 5.2:

Objective 5.1: Take a leadership role in tackling climate change.

Strategy 5.1.2: Advocate to State Government to lead state-wide vegetation strategies and reform regulation to more strongly discourage tree removal and increase canopy cover to create more shade and reduce urban heat island effect.

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Objective 5.2: Consider our natural environment when making decisions including creeks, wetlands, lakes, bushlands, flora and fauna.

Theme 6 of the Whitehorse Community Vision is also applicable: *Whitehorse is an Empowered Collaborative Community*

Of particular importance is Key priority 6: *Engage with the community collaboratively to hear their views on what needs to be done.*

Council has also adopted a 'Community Engagement Policy', which sets out minimum levels of engagement for key decisions. 'Making amendments to the Planning Scheme or deliberating on planning applications under the Planning and Environment Act 1987' are considered 'participatory engagement' (Consult) unless within exemptions under the *Planning and Environment Act 1987 ('the Act')*. The Act both sets minimum requirements for consultation and in some circumstances legislates there is no consultation and removes third party appeal rights in decision making.

Policy

The Act and the Whitehorse Planning Scheme ('the scheme') are the critical policy and guiding documents pertaining to this report. They are discussed in detail under '*Legislative and Risk Implications*' below.

The Whitehorse Planning Scheme includes the 'Local Planning Policy Framework' which incorporates the Municipal Strategic Statement and other Local Policies (such as the clause 22.04 - Tree Conservation Policy). These documents are approved by Council and implement the 'local content' of the scheme. Local Policy is considered in the assessment of planning applications.

Council's *Urban Forest Strategy* for 2021-2031 was adopted by Council at its 20th September 2021 meeting. The *Urban Forest Strategy Action Plan* was also endorsed by Council at the same meeting.

Objective 1 of the strategy is to 'protect the urban forest' including maximising the health, vigour and condition of Council vegetation and protecting trees on private property.

Objective 2 is to 'expand the urban forest and adapt to climate change' including the need to grow more trees and vegetation across both public and private realms.

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The Urban Forest Strategy is neither a 'Reference/Background Document' nor an 'Incorporated Document' in the scheme. As such, this strategy has no bearing in making planning decisions. A planning scheme amendment would be required to implement adopted strategies/policies into the scheme and to list them as either a Reference/Background Document or as an Incorporated Document.

BACKGROUND

History of Tree Controls in Whitehorse

Whitehorse has broad ranging tree controls implemented via the planning scheme. Whitehorse has a reputation for having some of the most far-reaching tree controls of any municipality in Victoria. These controls have come about through significant work by the community, elected Councillors and Officers over an extensive time period, stretching back to the 1970s, with controls first being implemented into the planning scheme of the time in the 1980's. The National Trust listed Blackburn Lake and several streets as 'classified landscapes' in the 1970s, which has now been converted into SLO1. SLO2 applies to a broader area originally considered a 'buffer zone' around the original SLO1, which was incorporated in the scheme in the late 1980's after extensive lobbying of the Minister for Planning.

Significant Landscape Overlay schedules 3-8 were variously implemented into the 'new format' planning scheme between 2004-2007. These cover additional small areas of Blackburn, Mitcham and Vermont.

Significant Landscape Overlay, schedule 9 (SLO9) - a 'municipal wide' tree control, was approved by the Minister for Planning on an interim basis in February 2018. This overlay remains 'interim' on the basis that the Minister has sought the Department of Environment, Land, Water and Planning (DELWP) to undertake further work on 'greening and cooling' on the basis of direction in Plan Melbourne. DELWP has indicated to councils that consultation will take place on this work imminently, however it is unclear in what format or when this will occur. Any such, consultation should be genuine and transparent for both councils and local communities.

The background work for SLO9 commenced in 2014 after Council passed a motion seeking investigation into further options to protect tree canopy in Whitehorse. Significant work was undertaken by Council between 2014-2018 to obtain the interim tree controls.

The Vegetation Protection Overlay has also been applied to individual and precinct areas of significant trees in Whitehorse. These controls were variously implemented between 2005-2016.

There are also two sites where the Environmental Significance Overlay has been implemented on the basis of remnant endangered Ecological Vegetation Classes, large hollow bearing trees, plant species of bioregional conservation significance, and habitat for woodland flora and fauna species.

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Previous Council Reports

Council has consistently and proactively reviewed and considered its approach to tree controls. This is shown by the number of previous Council reports, extent of advocacy and number of controls in place.

A few of the pivotal Council reports are as follows:

March 2011 – ‘Preventing Developers Removing Vegetation’

December 2014 – ‘Tree Options Report’

July 2016 – ‘Consideration of Final Options Report’

It is also worth noting that in February 2014, Council resolved:

That Council rite to the Minister for Planning seeking an amendment to all Planning Scheme provisions relating to vegetation protection to require that, where there is a planning permit exemption to remove a dead, dying or dangerous tree that this be subject to the planting of a suitable replacement tree/s within a specified timeframe and location to the satisfaction of the Responsible Authority.

Council has consistently advocated for a number of improvements around tree controls to occur. These previous matters which have not yet been implemented form the basis of the recommendation of this report.

VicSmart

The Minister for Planning introduced the VicSmart planning permit application process in September 2014 through Amendment VC114. The VicSmart process was expanded in March 2017 by Amendment VC135, in July 2017 by Amendment VC137 and further minor modifications were made in January 2018. The VicSmart provisions were restructured in July 2018.

VicSmart is intended to be a streamlined planning permit assessment process for straightforward applications which are determined within 10 business days, with no public notice period. Classes of applications which are identified in the planning scheme as being VicSmart have specific requirements for information, assessment processes and decision guidelines. Zones, overlays, particular provisions, clause 59 and clause 71.06 in the Planning Scheme set out the VicSmart application process.

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At the meeting of 24 August 2020, a Councillor Motion was passed that sought a report on *“recent VicSmart planning applications for tree removal, and outlines the process for assessing this type of VicSmart application, particularly investigating:*

- Examples where multiple VicSmart applications have occurred for the same property.
- Any issues and concerns arising from this analysis.
- Recommendations for Council to address any issues which are identified”

The above report was considered by Council on the 28th June 2021, recommending:

That Council:

1. *Note this report providing examples of multiple VicSmart applications for tree removal on individual properties.*
2. *Write to the Minister for Planning, copying in all local members of State Parliament, seeking an amendment to the VicSmart planning provisions to prohibit the application of more than 1 VicSmart application for tree removal per property per calendar year.*

In August 2021, the Minister for Planning responded to Council advising that he has asked DELWP to consider the extent of this issue across Victoria to determine whether an amendment to the VicSmart provisions is required.

Data

Council receives approximately 1500 planning applications per year. In 2021, 529 of these were VicSmart applications, with 50% of these relating to tree removal. There will also be tree removal requests included in ‘standard’ applications. These are the trees that are assessed via a planning permit application process.

Council’s City Planning and Development team also receives approximately 3000 telephone calls per month, of which a significant number will relate to trees.

The Statutory Planning Enforcement team received 2300 requests for service in 2021, with at least 2/3 relating to trees. 58 planning infringement notices were issued in 2021, with 2/3 relating to illegal tree removal. Of these enforcement matters, 33 have become prosecutions before the Magistrate’s Court. Twenty-four of these relate to trees.

Unfortunately Council has not recorded specific details of the number of trees being sought for removal nor approved for removal (as this is not a legislative requirement).

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SUPPORTING REPORT DETAILS

Legislative and Risk Implications Council's role in considering planning matters is legislated by the Act which mandates planning schemes for each municipality in Victoria. Council has obligations under both the Act and the scheme which require us to operate fairly in the interests of all Whitehorse communities whilst balancing objectives of protecting the natural environment, facilitating development and enforcing the scheme.

The scheme protects vegetation primarily via the Significant Landscape Overlay (SLO) and the Vegetation Protection Overlay (VPO), which require an application to be made for tree removal. However, other clauses in the scheme also contain exemptions from requiring a planning permit prior to removal.

For example, there are specific exemptions within the Significant Landscape Overlay, schedule 2 (SLO2) that allow property owners to manage dead, dying or dangerous trees without planning approval, which land owners are legally entitled to exercise. All the tree protection overlays have similar exemptions for dead, dying or dangerous trees or pruning.

Specifically, SLO2 does not require a planning permit in the following circumstances:

- A tree having a single trunk circumference of 0.5 metre or less at a height of one metre above ground level.
- The pruning of a tree for regeneration or ornamental shaping.
- A tree which is dead or dying to the satisfaction of the responsible authority.

Nor is a permit required under the Significant Landscape Overlay where the vegetation "presents an immediate risk of personal injury or damage to property." The Statutory Planning team has a process of issuing 'authorisation' for tree removal that does not require a permit to the satisfaction of the responsible authority.

Planning permit applications for protected trees are assessed against the specific decision guidelines for each applicable overlay. Each state level clause (ie the SLO or VPO) provide for 'VicSmart' applications which apply to 'remove, destroy or lop one tree'. These application types cannot be advertised, cannot be determined by Council (delegation is via CEO) and have limited decision guidelines. Clause 59.06 of the scheme outlines both information requirements and decision guidelines for VicSmart applications.

All applications for tree removal include assessment by Council's consultant arborist which is then utilised to help assess the application against the applicable clauses of the scheme.

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It is also worth noting that there are 'tree controls' for native vegetation under Clause 52.17. Various other clauses of the planning scheme may also include tree controls or exemptions (for example the Bushfire Management Overlay, Heritage Overlay, various particular provisions pertaining to bushfire and defendable space)

Exemptions

All the tree protection controls have similar, albeit slightly varied controls to exempt tree removal in certain circumstances to allow for residents to manage their land and deal with issues such as dangerous trees in a safe and risk averse manner. The planning scheme operates in a specific manner; that is matters that are sought to be controlled either require a permit or are prohibited. Matters which are acceptable may require a permit or be exempted.

Across the municipality, under the various tree protection overlays, there are requirements for dead or dying trees to be allowed to be removed, destroyed or lopped "to the satisfaction of the responsible authority". This is not via a planning permit application, rather a letter of 'authorisation' which is normally issued by Council's statutory planning enforcement team.

An exemption for immediately dangerous trees is within the overarching overlay (clause 42.03) for SLOs 1-8, which states:

The requirement to obtain a permit does not apply to:

Emergency works	Vegetation that is to be removed, destroyed or lopped: <ul style="list-style-type: none">▪ in an emergency by, or on behalf of, a public authority or municipal council to create an emergency access or to enable emergency works; or▪ where it presents an immediate risk of personal injury or damage to property. Only that part of the vegetation that presents the immediate risk may be removed, destroyed or lopped under this exemption.
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There is no requirement for this work to be to the satisfaction of the responsible authority. Nonetheless, it is common practice for officers to include dangerous trees in these Overlays in authorisation letters.

There is however an ability to consider dangerous trees under the schedule to SLO9. This was deemed suitable for SLO9 given the much wider application of this control.

The sizing and species of the trees that are dead, dying or dangerous is unrelated to the decision making process of ascertaining if the specific tree/s fall within those three categories. Once the tree has been assessed as dead, dying and/or dangerous and authorisation given for their removal, Council still cannot force the land owner to remove the dead, dying and/or dangerous tree. Nor is there an ability for Council to require replanting as part of this 'authorisation' process. Nonetheless, Council's authorisation letter includes advice to replant canopy trees.

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For matters falling into the exemption categories Council has no legal ability to notify external parties of this authorised removal.

Allowing the removal of trees which are dead, dying or dangerous, without the need to obtain a planning permit, reflects the safety hazards of large trees in an urban landscape. This provision has been discussed during several planning scheme amendments, and most recently by the Planning Panel for Amendment C219, as being appropriate.

Council also puts significant resources into ensuring that the SLO controls (Schedules 1 – 9) are consistently applied, including undertaking extensive enforcement work. Council enforcement officers regularly attend properties throughout the municipality to determine if enforcement action is necessary.

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.

Community Engagement

No community engagement was required for this report, however future community engagement is one of the report recommendations. It is also worth discussing the extensive community engagement undertaken for new planning scheme controls.

For example in the initial work that underpinned SLO9, Council first sought interested residents to participate in a workshop, then undertook the workshop which resulted in a 'Draft Options Report'. Further community engagement occurred for this draft report prior to a report to Council. The formal amendment documents were then placed on exhibition, and received 308 submissions. A Planning Panel was appointed, which heard submissions over a 4 day hearing.

The community have clearly outlined their desire for further community engagement on the topic of tree controls. Officers have already offered to meet with a smaller number of community members to flesh out the critical matters for discussion.

It is also critical to note that Council's statutory planning team interacts with a huge number of residents, community members and developers on the topic of tree controls on a daily basis. These may be single transactions or numerous transactions over a single topic. The needs and desires of this group of our customers has not been overtly considered in the correspondence being sent to Council.

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Officers consider that the best time to hold a forum to discuss tree controls would be when the widest range of community members are critically interested, such as when the SLO9 controls are implemented permanently or when DELWP provides more guidance (or approval of a control) on their 'greening and cooling' work. Nevertheless, officers will seek to understand community interest further and, subject to Covid restrictions, will plan an information session for interested community members which may cover critical topics such as planning schemes, planning permit processes, strategic planning, VCAT and planning enforcement.

Financial and Resource Implications

To successfully implement the mapping project outlined below, it would be ideal to dedicate an officer to this process to ensure the best outcomes for the community and Council. This could be achieved by increasing the Tree Education Officer role by one day per week for six months. The total cost of this would be just under \$7K. This could be achieved through redistribution of other salaries in statutory planning due to flexibility arrangements or similar.

Innovation and Continuous Improvement

Officers have identified two continuous improvement projects. One is currently being underway and one is a future project.

Mapping

Officers from City Planning and Development are working with a project being initiated through the Parks and Natural Environment Department on the development of a mapping tool to capture data about trees.

As has been highlighted in recent community correspondence there is a feeling that canopy loss is occurring and that replanting of canopy trees is not occurring. Unfortunately Council has a lack of data to back this up (either positively or negatively) at a local level. There is some high level data by both DELWP and RMIT, however it is difficult to utilise this on a daily or ongoing basis.

Furthermore, the statutory planning unit experiences significant numbers of phone calls and other forms of communication seeking to understand whether trees have been approved for removal. It is hoped this type of tool could be public facing and provide a transparent approach to tree removal and replanting.

Officers are currently exploring how mapping could be utilised to map both removed and replanted trees on private land. This would help with the longer term question of whether our tree canopy is being depleted, but also whether new canopy is coming through new trees.

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(cont)

If this mapping project is successful it would be ideal to resource the establishment of the product to ensure it occurs efficiently and to the best benefit of the community and Council. This could be achieved by increasing the Tree Education Officer role by one day per week for six months.

Online register

Officers are keen to help the general public understand when authorisation has been provided for the removal of dead/dying/dangerous trees, in a similar way to current registers of planning applications. Unfortunately the current systems/processes used make this difficult to achieve without a significant amount of administration.

The Statutory Planning team is, however, currently working on a continuous improvement project to better manage the team's planning enforcement work. An outcome of this project could include an online register of tree removal authorisations.

Collaboration

In response to recent communication by residents and community groups, Council officers have responded to the majority of correspondence. In response to the request for a 'town hall' style meeting or forum, Officers have sought to meet with 6 community members in the first instance to distil issues and the best approach.

Discussion and Options

Council's adoption of the new schedule 9 to the SLO is testament to the value that Council places on trees and landscape within the Whitehorse municipality. Council is committed to tree protection measures, such as are in place via the SLO1 and SLO2, and puts significant resources into supporting these measures and defending them at VCAT and Planning Panels.

Council has also consistently and regularly reviewed and adopted additional tree controls for Whitehorse. This process has included numerous calls for advocacy – around increased and improved penalties, additional VicSmart controls, and increased buildings and works provisions. It is recommended that Council increase its advocacy to call on the Minister for Planning to permanently adopt the SLO9 and further reiterate previous advocacy items.

Furthermore, there are a number of other aspects to this which Council supports through various programs including education, promotion and incentives to plant trees. Council is also very grateful for the advocacy for tree protection through our local community and local residents groups.

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There has been significant critique of both applicant and Council's arborist assessment of trees. It is worth noting that all applications are required to submit a report by a qualified arborist and that Council's consultant arborists are well respected, qualified professionals who assess these reports and provide independent advice. Individuals in the arboricultural industry can choose to offer both the provision of advice and subsequent removal/remedial works to trees. This is potentially a conflict. The arborists appointed by Council operate by providing advice only.

Council's enforcement team are trained by our Consultant Arborists in necessary attributes of assessing trees under the 'dead/dying/dangerous' exemptions of the scheme. Consultant arborists are called in to assess trees which are more difficult to assess.

As mentioned earlier, any authorisation which is issued allowing for tree removal cannot require (or enforce) replanting of trees, but recommends that this occurs.

Enforcement of illegal tree removal is often long and can be quite arduous in gathering evidence, submitting legal documentation and the like. Council may choose to fine or prosecute illegal tree removal dependent on the level of offence and evidence available. There is the opportunity to impose Section 173 Agreements for replanting of canopy trees. The use of VCAT's enforcement processes is more limited due to timeframes, cost and outcomes.

It is critical to understand that officers are regularly critiqued for doing their normal work. This is both by residents who are seeking for a tree to be determined as appropriate for removal or residents who support retention of the tree(s). This level of critique, especially in light of recent deaths in Victoria from falling trees, has both a significant impact on Council employees and residents. It is also unacceptable to be in fear of workplace violence or harassment on a daily basis.

Both the assessment of planning applications and the determination of whether trees are exempt from the controls of the scheme are operational matters for the Statutory Planning Unit, and are a very regular interaction with our residents. Council also resources an officer after hours to help deal with illegal tree removal. Residents can access this afterhours by calling Council's normal customer service telephone number.

It is noted that the recent communication from residents has highlighted specific instances of concern with both illegal tree removal (that is under investigation), the issue of planning permits, or the issue of authorisation for tree removal. It is anticipated that the continuous improvement work discussed in this report will help provide transparency on Council's approval and authorisations for residents.

11.1
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Council employs a Tree Education officer, who is a qualified horticulturalist. It is a rare opportunity for a statutory planning team at councils to have direct access to these type of skills, and they are utilised by the team in assessment of appropriate trees species for both applications under assessment and illegal tree removal replacement species. The Tree Education Officer also plays a critical role in the education of the Whitehorse Community on trees across many different forums such as workshops, school visits, English as a Second Language courses, attendance at markets and festivals and online videos. She also oversees the Whitehorse Gardens for Wildlife Program and the Tree Assistance Fund.

Officers will seek to understand community interest further on this topic, and will plan an information session for interested community members which may cover critical topics such as planning schemes, planning permit processes, strategic planning, VCAT and planning enforcement.

Conflict of Interest

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

Conclusion

Whitehorse has extensive tree controls implemented via the planning scheme. Council also provides significant resourcing via the provision of advice, assessment of applications and enforcement of the planning scheme controls.

Given community interest and concern on this topic it is recommended that officers both continue existing avenues of communication with residents and, subject to Covid restrictions, undertake a broader information forum for interested residents.

Officers recommend that Council reinvigorates its advocacy to permanently implement the SLO9, improve VicSmart provisions and adopt better buildings and works provisions in the VPO. Council should also seek commitment from the Minister for a transparent and thorough community engagement process on any new controls arising from DELWP's 'Cooling and Greening' work.

11.2 Healesville Freeway Reserve 2022 Project Update

Leisure and Recreation Services
ATTACHMENT

SUMMARY

The former Healesville Freeway Reserve (Reserve) consists of 35 hectares of undeveloped land that runs for 3.5 kilometres from Springvale Road in Forest Hill to Boronia Road in Vermont. The land is reserved for conservation, recreation and leisure and sits solely within the City of Whitehorse.

A number of key Council sites intersect with the Reserve including the Strathdon House and Orchard Precinct, Bellbird Dell and Morack Golf Course.

The Reserve also includes the land commonly known as Davy Lane. Davy Lane is highly utilised for dog walking activities (gazetted off-lead site) and Council also allocates seasonal sports (Cricket and pre-season AFL) at this site.

In September 2021 the Victorian Government announced that Parks Victoria had been appointed as the Crown Land Committee of Management and they would oversee the planning, construction and future maintenance of the new Reserve.

This report explores the considerations and opportunities that will present should Council become Committee of Management for Davy Lane and Bellbird Dell.

RECOMMENDATION

That Council:

1. Considers the Parks Victoria proposal (1 February 2022) to become Committee of Management of Davy Lane, the section of Bellbird Dell bisected by the Reserve and a section of the Morack Public Golf Course (18th Tee) and provides in principle agreement in accordance with the parameters outlined in this report.
2. Authorises the Chief Executive Officer or delegate to commence negotiations with the Department of Environment, Land, Water and Planning (DELWP) advising of Council's willingness to remain as the Committee of Management for 18th tee of the Morack Public Golf Course and its willingness become the Committee of Management for Davy Lane and Bellbird Dell and to sign any such Agreement.

11.2
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Key Matters

Partnerships

Following the appointment of Parks Victoria as land manager for the Reserve Council wrote to DELWP expressing our interest in establishing a collegial working group with Parks Victoria. A copy of the letter can be found in attachment 1.

Council and Parks Victoria have now established an officer working group and are meeting regularly, ensuring our interests in the Reserve are raised and opportunities to collaborate are pursued.

As part of this working group Council has been advised that the active sporting component of Davy Lane will not be funded or developed as part of the Reserve project.

In consideration of this officers tabled Council interest in becoming the Committee of Management for two key sites, Davy Lane and Bellbird Dell.

The Parks Victoria Board has now considered this matter and agreed to support the proposal to transfer the management of these sites to Council should Council support the transfer. A copy of the communication received from Parks Victoria can be found in attachment 2.

Activation of Davy Lane for Active Sport

Outdoor sport facilities in City of Whitehorse are at or over capacity and demand will only increase as our population grows. Areas in the City where we are oversubscribed and unable to meet existing sporting demand include Mitcham, Blackburn, Nunawading, Vermont and Vermont South.

To address our outdoor capacity constraints Council has identified the development of Davy Lane into an active sporting precinct as a priority project. The Reserve is ideally located in close geographic proximity to service the suburbs where we are oversubscribed.

The existing conditions of Davy Lane and the lack of associated supporting infrastructure restrict Council ability to maximise allocation and utilisation of this site. A sports field was constructed on the Reserve in the area abutting the southern boundary of Parkmore Primary School, at 34-58 Jolimont Road, Forest Hill, in 1975. The sports field has a poor standard of turf and there is no sub-surface drainage or irrigation. The topography of the sports field is undulating and there are no associated support amenities (pavilion, public toilets, sports field lighting or formalised car parking). Due to these existing conditions Council is limited in the sporting disciplines and utilisation that can be allocated to this site.

11.2
(cont)

A concept plan that outlines what could be provided at Davy Lane has been prepared and can be seen in Attachment 3. The concept plan features a junior and senior sports field and associated supporting infrastructure including pavilion, sports field lighting, cricket training facility and car parking. The concept plan also compliments the strategic direction of the broader Reserve which is to deliver a continuous East West active transport corridor with the shared use path located at the South of the sporting fields. Please note that the plan is conceptual only, has not been circulated widely and has not been tested with the community.

The early order of probable development cost for this concept plan is in the order of \$10.3 million. There is no Council funding identified to undertake this project. As such we are seeking funds for this development with the project featured in our 2022 advocacy booklet. It is worth noting that the cost estimate does not capture the construction of the East West shared use path. This component of the project may be funded and delivered by Parks Victoria.

Significant financial investment will be needed to activate Davy Lane. Council will need to prepare a comprehensive advocacy piece to secure Government investment into this site. Officers consider that a key element to advancing this project is ensuring that Council can confidently scope, plan and secure investment for this site which is achieved should Council agree to become COM.

Protection of Bellbird Dell

Bellbird Dell is an area of urban bushland open space located just east of Terrara Road between Barnesdale Drive and George Road, Vermont South. It has substantial environmental value and is very well used by the local community. The Reserve crosses the centre of Bellbird Dell and Council has for many years maintained approximately 4 hectares of the Reserve to provide the contiguous north south pedestrian and environmental link. Officers note that the boundary title of Bellbird Dell may need to be extended and rationalised to better reflect the existing ground and vegetation conditions. There are examples of existing vegetation which is currently maintained by Council that should be formally recognised as Bellbird Dell. This land is currently captured in the Reserve boundary.

11.2

(cont)

Committee of Management Morack Public Golf Course (18th Tee)

The Parks Victoria letter dated 1 February 2022 makes reference of Council becoming Committee of Management for part of Morack Public Golf Course. Officers can advise that on 29 June 2019 Council was appointed the Committee of Management – Part of Crown Allotment 2155 which forms part of Morack Public Golf Course – 18th tee. It appears that when Committee of Management of the Reserve was transferred to Parks Victoria it was incorrectly assumed that 18th tee at Morack Public Golf Course would form part of the Parks Victoria Committee of Management function. DELWP has confirmed that Council is the Committee of Management for this parcel. Other than reaffirming Council's willingness to remain as the Committee of Management for the 18th tee land, no further action or response is required from Council regarding this matter.

STRATEGIC ALIGNMENT

The Whitehorse Open Space Strategy 2007 contains a number of references and recommendations with regards to the future development and use of the Reserve.

“The freeway reservation offers opportunities to provide an east-west shared trail link connecting the Dandenong Creek shared trail with the Gardiners Creek shared trail along with Regional and Municipal open space reserves. This includes the Dandenong Creek linear reserves, Bellbird Dell and Old Strathdon Orchard in Vermont. There is potential to protect and improve the existing environmental values associated with the reservation.”

NO.	RECOMMENDATION	PRIORITY & AGENCY
5.4.8.1	Work with VicRoads to secure an open space link between Bellbird Dell North and South providing both recreation and environmental links.	H1 C (pl, os), VR
5.4.8.2	Work with VicRoads to provide an east-west shared trail link between Dandenong Creek and Old Strathdon Orchard.	H1 C, (pl, os), VR
5.4.8.3	Retain Davey Lane Oval as open space given its close proximity to the school who use it as an oval, its use by community sporting clubs and proximity to Old Strathdon Orchard. Its proximity to the Orchard contributes to the future adaptability of the Orchard as part of the Municipal open space system.	H1 C, VR
5.4.8.4	In reviewing any future development layout, ensure good connectivity between the established and new residential areas and to existing reserves.	H1 C, VR

11.2
(cont)

Policy

Floodlighting Policy – Outdoor Sports and Recreation

BACKGROUND

In June 2021 Council considered a proposal from Department Environment Land Water Planning (DELWP) to become the future land manager of the Reserve. Council determined not to accept the DELWP proposal but rather present a counter land management offer. No response was received from DELWP regarding Council counter offer. Further information on these matters can be found in Attachment 4 (DELWP Reserve Committee of Management Letter of Offer) and Attachment 5 (June 2021 Council Report Healesville Freeway Reserve Update)

In September 2021 the Victorian Government announced that Parks Victoria had been appointed as land manager for the Reserve and is overseeing the planning, construction and future maintenance of the new site.

Since this time Parks Victoria have established a Community Reference Group (CRG) of approximately 30 members representing a diverse mix of community and stakeholder groups. The focus of this group is to develop the Reserve layout plan. Council's role in the CRG is an advisory and observatory function. CRG virtual workshops have been hosted in January and February with four further workshops planned for the coming months.

Parks Victoria are also currently in consultation with the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation in relation to renaming the Reserve.

A copy of the Parks Victoria Reserve January 2022 Project Update can be found in Attachment 6.

Parks Victoria advise that construction activity is expected to begin in early 2023 and will primarily focus on creating new passive recreation opportunities such as the cycling corridor, and explore how biodiversity within the Reserve can be introduced or enhanced. Works are expected to be completed by 2024.

11.2
(cont)

Committee of Management Opportunities

Council currently services and maintains Davy Lane and Bellbird Dell. Whilst both sites are different in form, function and topography there is a common thread that is appreciated by the community and that is that the level of service that is provided by Council at these sites. Officers consider that becoming Committee of Management (COM) for Bellbird Dell and Davy Lane provides a number of benefits to Council and the broader community

The following information outlines what functions Council control if it becomes Committee of Management (COM) of Crown Land (as proposed in the letter):

- Council will be the COM in accordance with the Crown Land (Reserves) Act 1978
- Council will administer the land in accordance with the abovementioned act and any future use/s must comply with the “Conservation, Recreation, Leisure and Tourism” reservation set by DELWP
- DELWP will continue to have an oversight role and ultimately a controlling interest. For example DELWP will approve any building permits under the Building Act 1993
- Council will have leasing restrictions including Council being relieved of the COM obligations if the lease term (including options) is greater than 21 years
- Crown Land is heavily restricted land and the asset value attributable to Crown Land is less than 20% of the full land value. This is because DELWP retain the controlling interest.
- The COM is responsible for all infrastructure costs and ongoing maintenance costs
- There are a number of vegetation off-set areas in the Reserve land which relate to vegetation removal associated with Level Crossing Removal Authority projects. Officers are seeking clarification on whether these off-sets run with the land and whether the COM is responsible for the maintenance of the vegetation off-set areas.
- Officers are seeking clarification on whether Crown Land in Victoria is covered by the Crown’s public liability insurance. If this is the case Council will not have a public liability insurance cost

11.2
(cont)

SUPPORTING REPORT DETAILS

Legislative and Risk Implications Infrastructure that supports the broader functions of the reserve will need to transfer through Bellbird Dell and Davy Lane. There is no intention for Council to become the asset owner for any Parks Victoria infrastructure such as shared use path, bridges, pathway lighting, park bench seating etc. Parks Victoria will be the sole agency responsible for planning, engagement, funding, construction, maintenance, renewal and risk of these assets. For Council protection these matters will be captured in legal documentation.

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.

Community Engagement

At this point in time no community engagement was required for this report. Should Council support the transfer of management for Davy Lane and Bellbird Dell to Council community engagement in alignment with Local Government Act 2020 would be required if future activation plans were to progress.

Financial and Resource Implications

As Council is able to continue with the current level of service provided at Davy Lane and Bellbird Dell within existing recurring Council OpEx there are no financial or resource implications arising from the recommendation contained in this report.

Innovation and Continuous Improvement

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

Collaboration

Officers have facilitated regular connections with Parks Victoria and the Department of Environment, Water, Land and Planning to progress the development of the Reserve. Should Council support the proposal to become COM for Davy Lane and Bellbird Dell new collaborations with sporting stakeholders and the broader community will be established.

11.2
(cont)

Discussion and Options

If Council elects not to become COM for Bellbird Dell and Davy Lane officers will need to discuss maintenance, access and allocation arrangements with Parks Victoria to understand how these will be managed and facilitated.

Conflict of Interest

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

Conclusion

Opportunities to create sporting precincts in established suburbs are extremely rare. Dave Lane is a site that presents a unique opportunity to establish a new legacy sporting precinct in the City of Whitehorse. The opportunity to act as COM for these sites provide Council with the ability to plan for activation of Davy Lane strengthening Council's ability to service the active recreation needs of the existing and future population and facilitate strong participation and health outcomes

ATTACHMENTS

- 1 16.09.21 - WCC CEO Letter to DELWP
- 2 01.02.22 - Parks Victoria letter to WCC
- 3 2021 Davy Lane Concept Plan
- 4 22.09.21 - DELWP Letter to WCC
- 5 28.06.21 - Healesville Freeway Reserve Update
- 6 January 2022 - Healesville Freeway Reserve Parks Victoria Project Update

11.3 Quarterly Performance Report October to December 2021

Finance and Corporate Performance
ATTACHMENT

SUMMARY

The purpose of this report is to brief Council on the performance against the Council Plan 2021-2025 and the Annual Budget 2021/2022 for the quarter ended 31 December 2021.

RECOMMENDATION

That Council notes the Quarterly Performance Report for the quarter ended 31 December 2021, as attached.

BACKGROUND

Pursuant to section 97 of the Local Government Act 2020, the Quarterly Performance Report provides a quarterly budget report including details and commentary on Council's year to date performance compared to budget, year-end projection, cash and other key balance sheet items for the year to date ended 31 December 2021.

The Quarterly Performance Report also includes a high level summary of Council's performance against major initiatives, initiatives, and services identified in the Annual Plan, which is part of the Adopted Budget 2021/2022. These are significant projects that will directly contribute to the achievement of the Council Plan 2021-2025 and have a major focus on the budget. They may include actions that are once-off in nature and/or lead to improvements in services.

DISCUSSION

Performance against Council Plan

Using a combination of the Council Plan 2021-25, and the Adopted Budget 2021/2022, 74 significant initiatives have been identified that contribute to the achievement of the strategic directions and goals of Council. Of the 74 initiatives being reported on this quarter, 1 is complete, 58 are on track, 7 are behind schedule, 6 are yet to be started and 2 have been deferred.

Performance against Annual Budget

The year to date financial result at 31 December was a surplus of \$76.91m, \$0.59m favourable to budget. Income was \$7.01m unfavourable to budget and expenditure was \$7.60m favourable to budget and these variances are primarily due to service closures and reduced demand as a result of the ongoing COVID-19 pandemic restrictions, as well as some impact from timing differences and vacant positions, and additional government funding. The year to date impact of the pandemic on Council's net result at 31 December was \$3.94m which brings the inception to date impact to \$17.31m.

11.3
(cont)

Council has reviewed its full year projection to take into account the impact of COVID-19 and other changes that have arisen since the Budget was adopted. The full year forecast is now showing a surplus of \$8.22m, \$8.39m unfavourable to budget. This is made up of a reduction in income of \$8.50m and a reduction in expenditure of \$0.11m. This forecast will be used as the new baseline for variance reporting for future reports presented during this financial year.

ATTACHMENT

- 1 Quarterly Performance Report Q2 2021-22

11.4 Local Government Cultural Review Submission

Governance and Integrity
ATTACHMENT

SUMMARY

The State government has released a Discussion Paper on Local Government Culture. The Project is being led by PricewaterhouseCoopers (PwC).

The project aims to better understand the factors influencing conduct and culture within local government and identify opportunities and initiatives the sector can implement to improve conduct and culture.

The Discussion Paper has been developed following a review of academic literature, recent reports, and interviews with key stakeholders from across the sector. It presents the outcomes of this research and consultation and is designed to generate a broad sector conversation about ideas to improve local government culture and conduct.

The Discussion Paper poses twelve questions grouped in line with three key themes:

- Leadership experience and capability
- Councillor journey and
- Early intervention and effective dispute resolution.

Written submissions addressing the questions in the Discussion Paper are due by 5pm, 28 February 2022. A request to Local Government Victoria was made to lodge the submission after the Council meeting on the 1 March 2022, this was agreed to.

Councillors met and discussed the twelve questions on Monday 7 February 2022. The attachment outlines the discussion and feedback from Councillors to form Council's submission.

RECOMMENDATION

That Council lodge its submission on the Local Government Culture review as provided in Attachment 1.

11.4
(cont)

Key Matters

The paper states that:

- Poor Councillor behaviour in the previous Council term across the sector led to significant state intervention, including four anti-corruption investigations and the dismissal of five Councils.
- The current system has a range of mechanisms in place to address unacceptable behaviour, but these mechanisms are not sufficient.
- The Local Government Act 2020 and other regulations and practice guides outline the minimum compliance and conduct requirements that Councillors need to meet.

Whilst Whitehorse has not experienced such poor culture, addressing and responding to the discussion paper will contribute to improvements being made for the future.

STRATEGIC ALIGNMENT

This report aligns with the Whitehorse Council Plan, Strategic Direction, 'Governance and Leadership', Strategy 8.1.1: Purposeful, empowered and engaged leadership with a values based culture (that works in partnership with the community).

Policy

The Whitehorse Councillor Code of Conduct includes the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification and ensuring adherence to good governance measures.

BACKGROUND

The review has found that there is a clear and growing problem of unacceptable behaviour in certain sections of the local government sector. Such issues are adversely impacting relationships and operations of Councils. This negative conduct is preventing Council staff and other elected members from effectively discharging their responsibilities and operating in the best interests of their respective communities.

There have been recent instances of Councillor misconduct and other forms of poor conduct, which lead to the dismissal of five Councils in the last Council term (2016 – 2020). Other significant interventions, including investigations into Councillor corruption and harassment of other elected representatives and/or Council staff, were also required during this period. This reflects poorly on the sector and the important work and decisions that are made by the majority of the sector in the best interests of their communities.

11.4
(cont)

SUPPORTING REPORT DETAILS

Legislative and Risk Implications Section 139(3) of the *Local Government Act 2020* and Regulation 12 of the *Local Government (Governance and Integrity) Regulations 2020*, detail the prerequisites for Councillor Codes of Conduct, including the five prescribed standards of Conduct together with any prevailing regulatory requirements and other matters which Council considers appropriate.

The Councillor Code of Conduct outlines the dispute resolution process should it be required.

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*.

The *Local Government (Governance and Integrity) Regulations 2020* outline the Standards of Conduct, standard number one, 'Treatment of Others' supports equity, inclusion and human rights. This is incorporated in the Councillor Code of Conduct.

Community Engagement

No community engagement was required for this report.

Financial and Resource Implications

Ongoing training including mandatory training for Councillors is incorporated in operating budget.

There are no financial or resource implications arising from the recommendation contained in this report.

Innovation and Continuous Improvement

The Councillor feedback has provided opportunities to improve the Councillor induction and overall training framework.

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

Collaboration

A Councillor workshop was conducted on Monday 7 February 2022, Councillors worked in small groups to respond to the discussion paper. A summary of the discussion is contained in the attachment and forms the basis of Council's submission.

11.4
(cont)

Discussion and Options

The Councillors met and discussed the twelve questions as outlined in the discussion paper. During the discussion it was felt that the Councillors, the CEO and Executive leadership team were working well together and outlined some good practices that contributed to developing trust and good relationships.

The feedback from Councillors across the three themes based on the 12 questions is outlined below:

Leadership experience and capability

Councillors generally felt that the candidate and Councillor Mandatory training associated with the 2020 Council Elections was a good improvement. However it was felt that more could be done to enhance the training for both candidates and Councillors.

Overall the theme of professional development and training opportunities for Councillors needs to be enhanced. Some of these matters can be addressed by Council, others such as developing continuing professional development linked to qualifying for credit or points or leading to an accreditation need to be considered as part of any legislative changes.

Another key theme centered on relationships, understanding each other and how to work with each other, developing a skills and capability matrix.

Training for Councillors is provided on subjects such as planning, ethical decision making, conflict of interest. Councillors across each working group suggested training on teamwork, communicating with one another, leadership and emotional intelligence. These form part of the building blocks for effective relationships.

Councillor journey

The theme on capability/skills matrix was raised in this section to support a structured professional development pathway. A consideration may be a mandatory requirement that Councillors attend a minimum of four professional development sessions per term.

There is no ability to compel a Councillor to attend training such as team building, (other than mandatory training as outlined in the regulations), this is seen as an issue if the Councillor group are trying to improve relationships and work on team development.

Early intervention and effective dispute resolution

Overall it was considered that there are sufficient mechanisms in the Councillor Code of Conduct. To further improve the process, it was deemed that instant intervention is required on any workplace safety matter and increased accessibility to independent external support for dispute resolution and/or mediation is required.

11.4
(cont)

Conflict of Interest

The *Local Government Act 2020* requires members of Council staff, and persons engaged under contract to provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates.

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

Conclusion

The submission to the Local Government review responds to the questions outlined in the discussion paper as workshopped with Councillors. Improved candidate and Councillor Induction and training was a strong theme, it was considered that the Councillor Code of Conduct provides the necessary controls to address conduct matters. In addition, that consideration be given to the introduction of accreditation for Councillors and the development of a professional development training program.

ATTACHMENT

- 1 Council Draft Submission - Cultural Review

11.5 Records of Informal Meetings of Councillors

RECOMMENDATION

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

Councillor Informal Briefing 14.02.22 6:30-6.36pm		
Matter/s Discussed <ul style="list-style-type: none">Item 6, Public PresentationsItem 8, Public Question Time	Councillors Present	Officers Present
	Cr Liu (Mayor & Chair) Cr Massoud (Deputy Mayor) Cr Carr Cr Barker Cr Cutts Cr Davenport Cr Lane Cr McNeill Cr Munroe Cr Skilbeck Cr Stennett	S McMillan J Green L Letic S Cann S White S Sullivan V Ferlaino J Samy P Moore
Disclosures of Conflict of Interest	None disclosed	
Councillor /Officer attendance following disclosure	None disclosed	
Councillor Briefing 21.02.22 6:30-10.15pm		
Matter/s Discussed <ul style="list-style-type: none">Budget Update: Fees, Charges and Nominations Attendance: Councillor Barker left at 8.54pm and did not return Councillor Davenport left at 9.58pm and did not return	Councillors Present	Officers Present
	Cr Liu (Mayor & Chair) Cr Massoud (Deputy Mayor) Cr Carr Cr Barker Cr Cutts Cr Davenport Cr Lane Cr McNeill Cr Munroe Cr Skilbeck Cr Stennett	S McMillan J Green L Letic S Cann S White S Sullivan V Ferlaino N Jones C Clarke C Atlan C Bolitho N Brown
Disclosures of Conflict of Interest	None disclosed	
Councillor /Officer attendance following disclosure	None disclosed	

12 COUNCILLOR DELEGATE AND CONFERENCE/SEMINAR REPORTS

12.1 Reports by Delegates

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

RECOMMENDATION

That the reports from delegates be received and noted.

12.2 Reports on Conferences/Seminars Attendance

RECOMMENDATION

That the record of reports on conferences/seminars attendance be received and noted.

13 CONFIDENTIAL REPORTS

RECOMMENDATION

That in accordance with Section 61 (1) and 66 (2) (a) of the Local Government Act 2020 the Council should resolve to go into camera and close the meeting for the consideration of this item, as the matter to be discussed is confidential information for the purposes of section 3 (1) of the Local Government Act 2020, because it is Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released (Section 3(1)(a)).

14 CLOSE MEETING