



WHITEHORSE
CITY COUNCIL

Whitehorse City Council

MINUTES

Council Meeting

on

Monday 12 August 2024 at 7.00pm

**Held in the
Council Chamber
Nunawading Civic Centre**

Meeting opened at 7.00pm

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

Officers: Simon McMillan Chief Executive Officer
Stuart Cann Director Corporate Services
Jeff Green Director City Development
Lisa Letic Director Community Services
Siobhan Sullivan Executive Manager Transformation
Steven White Director Infrastructure
Vivien Ferlaino Manager Governance and Integrity
Kerryn Woods Coordinator Governance

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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.

Acknowledgement of Country

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 Ben Stennett was an apology at the meeting

COUNCIL RESOLUTION

Moved by Cr Lane, Seconded by Cr Liu

CARRIED UNANIMOUSLY

3 Disclosure of Conflicts of Interest

Nil

4 Confirmation of Minutes of Previous Meeting

Minutes of the Council Meeting 22 July 2024

COUNCIL RESOLUTION

Moved by Cr Skilbeck, Seconded by Cr McNeill

That the minutes of the Council Meeting 22 July 2024 be confirmed.

CARRIED UNANIMOUSLY

5 Urgent Business

Nil

6 Requests to Speak

6.1 B Poston, Menzies for Palestine

6.2 N Leereveld, Blackburn South

7 Public Question Time

Nil

8 Petitions

Nil

9 Notices of Motion

Nil

10 Council Reports

10.1 Migrant Adult Swimming Programs

Department Leisure and Recreation Services
Director Community Services

SUMMARY

In response to a Notice of Motion raised at a Council's Meeting on 29 April 2024, this report identifies how Council might better lead water safety initiatives to reduce risk within our adult migrant community.

Specifically, the Notice of Motion sought:

That Council:

1. *Notes that there is increasing evidence that people from migrant communities are at an elevated risk of drowning.*
2. *Calls on a report from officers detailing how Council might lead water safety initiatives to help save lives, giving consideration to:*
 - a) *The use of off-peak hours at our pools for adult migrant swimming and water safety lessons*
 - b) *Working in partnership with other not for profit organisations, private providers, swim clubs and volunteers to directly provide cost effective and attractive education/training, and*
 - c) *Ways Council could promote water safety within migrant communities.*

COUNCIL RESOLUTION

Moved by Cr Barker, Seconded by Cr McNeill

That Council:

1. Notes the review and actions resulting from the 29 April 2024 Notice of Motion.
2. Endorses the proposed Welcome Around Water program, as outlined within this report.

CARRIED UNANIMOUSLY

Spoke to the item: Cr Barker, Cr McNeill, Cr Lane, Cr Cutts

STRATEGIC ALIGNMENT

The following Council Strategies are relevant to this report:

- Strategic Direction 3: A culturally rich, diverse, creative, and inclusive community

10.1 (cont)

BACKGROUND

Whitehorse City Council, Nunawading Swimming Club and Surrey Park Swimming Club support close to 6,000 children and adults enrolled in weekly learn to swim programs at our Aqualink facilities, with a strong established pathway through to Swimming Clubs, who produce national and international standard athletes.

With a diverse community, including many from culturally and linguistically diverse (CALD) communities, a challenge has been identified to ensure that all members of our community are safe around water, and have an opportunity to enjoy the abundant local aquatic environments.

According to the Royal Life Saving Australia, CALD Victorians are at a higher risk in relation to water safety, with the cohort overrepresented at 36% of all drownings, highlighting the risk within our community and the need for proactive strategies to reduce such a risk. With recent tragic examples front of mind, it has been identified that Council can play a stronger role in reducing the risk of drownings, leveraging partnerships, facilities, and local resources to increase water safety education.

This report has been prepared to respond to the Notice of Motion, providing clarity on programs and initiatives delivered to date, as well as an overview of a plan to broaden our strategic approach to water safety on behalf of our migrant communities.

Current State Programming

Currently swimming lessons are delivered by both Surrey Park Swimming Club and Nunawading Swimming Club at Aqualink Box Hill and Nunawading respectively.

During the preparation of this report, it was confirmed that both Clubs have run swimming programs targeted at supporting vulnerable migrant residents, both in partnership with the Migrant Information Centre (MIC). Both Club programs are term based, focused on adults, and were funded by the Clubs to ensure the programs are accessible by those referred by the MIC. Those most at risk were prioritised in these programs, including asylum seekers and refugees.

Currently, however, the programs are not centrally administered, with multiple contacts at the MIC and are not consistently delivered across both Aqualinks. The programs focus on initial water safety, without a structured program to further develop swimming ability and without the aim of integrating participants and their families longer term within the mainstream programs.

PROPOSED WHITEHORSE MIGRANT SWIMMING PROGRAMS

Welcome to Water

Following is a phased proposal to establish the Welcome Around Water program. The program objective is to ensure all Whitehorse migrant adults, initially asylum seekers and refugees, are safe around water, and have the opportunity to enjoy our aquatic environments.

10.1 (cont)

1. Collaboration and Alignment of Existing Partnerships and Program

Initially it is critical that existing programs, resources, and partnerships are aligned to limit duplication and maximise promotion and partnership opportunities. Central reviews and insights from a variety of industry and community experts will ultimately benefit the collective program and its outcomes over time.

The Program, as outlined, has been created with the input and approval of both Surrey Park Swimming Club and Nunawading Swimming Club, in partnership with the Migrant Information Centre. Further consideration of volunteer involvement will be considered as the program and partnerships evolve.

2. Establishment of Regular Targeted Introductory/Water Safety Programs for Vulnerable Migrants

The program will be focused initially on the most vulnerable migrant community members, both asylum seekers and refugees, as referred by the Migrant Information Centre. The program will build on the work completed by the Swimming Clubs to date and be delivered on a term-by-term basis and consisting of the following.

- 8-week program (term based)
- 6-8 per class
- Lane space/leisure pool made available in off peak times
- Adults of mixed gender

The programs will be held at both Aqualink Nunawading and Box Hill and offer two classes initially at each venue.

Budget/Resource: The Swimming Clubs will cover the cost of the introductory programs, with Council contributing through support and lane space availability. The Migrant Information Centre will promote and refer participants

3. Establishment of a Development Pathway with an Aim to Integrate into Mainstream Programs.

Following the completion of the Term 4 water safety program, the Welcome Around Water pathway will be established. The pathway will provide progression-based recognition, allowing for individuals to progress from a water safety focus to an increased focus on swimming ability. This allows for ongoing skills development, with an aim of longer-term integration into the mainstream learn to swim adult program.

The pathway will initially accommodate referrals from the Migrant Information Centre, with the longer-term aim to also partner directly with local migrant community groups (see point 4 below).

Budget/Resource: Officers propose that Council consider subsidising the pathways program beyond the introductory program, currently funded by the clubs, sharing teacher costs with swimming clubs.

10.1 (cont)

At the conclusion of each successful program, it is proposed that individuals that have completed the program be provided with a Aqualink multi-visit pass so they can access the facility beyond lesson times to consolidate their learning and increase water safety and familiarisation. This is also likely to encourage attendance with other family members and friends increasing the breadth of impact from this initiative.

The cost to Council of each additional program/class is estimated to be \$625 (50% of the cost shared with swimming clubs), with a maximum investment of \$5,000 per annum once the program is fully subscribed.

4. Targeted Community Partnerships to Provide Additional Opportunities to Migrant Adults

Once the pathway is established to support the most vulnerable migrant communities, it is proposed that additional targeted migrant community groups are identified, with the aim of expanding the programs reach. Determinations will be made after consulting with migrant community groups as to the structure of the program, cost/subsidy, and timing to ensure it meets their community's specific needs.

Budget/Resource: Nil. It is expected that these programs would generate an income from participants that would at least cover the costs of any additional programs, therefore not requiring Council or Swimming Club funding, albeit pricing is expected to be subsidised in some cases based on community need.

5. Identification of Future Teachers

As the Program develops it will be used as an opportunity for the identification of future swim teachers from the participants. Through increased diversity of the teaching workforce, we will enhance the welcoming environment and build on the diverse community connection to the Aqualinks.

Budget/Resource: Propose to part of fully subsidise the cost of teacher training to further incentivise. Auswim accreditation is currently \$450 per person.

6. Supporting Migrant Children

Whilst the initial focus will be on migrant adults, it is expected that as relationships strengthen and attitudes shift towards water safety, there will be an opportunity to create programs for children and ensure both adults and children have an opportunity to be safe around water, shifting local cultural attitudes towards aquatic environments.

10.1 (cont)

SUMMARY OF TIMELINE AND PROGRAM DELIVERABLES

Timing	Action	Participation (total)	Budget
31 Aug 24	Collaboration and alignment of existing partnerships and program.		Nil
7 Oct 24	Establishment of regular targeted introductory/water safety programs for vulnerable migrants.	Max. 24-32 adults per term (assumes two classes for one level only at both venues)	Nil (costs covered by swimming clubs)
13 Dec 24	Initial program review and evaluation		Nil
29 Jan 25	Establishment of a development pathway with an aim to integrate into mainstream programs.	Max. 72-96 adults per term (assumes two classes per level, for three streams at both venues)	\$625 per class, up to a max. of \$5,000 per annum
July 25	Targeted community partnerships to provide additional opportunities to migrant adults.	Additional 12 – 14 participants per additional programs	Nil. Aims to break even.
Jan 25 - ongoing	Identification and funding of future teachers.	Aim to train 4 teachers per annum	\$900 per annum (assumes 50% subsidy)

Ongoing Review

The program will be reviewed and evaluated every 6 months in conjunction with partners to guide future operating considerations.

Impacts of EOI Outcome

The program is expected to evolve and be delivered regardless of the EOI outcome, with the successful learn to swim party/s responsible to deliver the programs, with Council supporting through a partnership approach to the program. Please note that phases 1-3 will be established prior to the new contract commencing.

10.1 (cont)

SUPPORTING REPORT DETAILS

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

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

There has been limited community engagement, with consultation limited to swimming clubs, industry bodies, recreation and leisure managers and the Migrant Information Centre.

Financial and Resource Implications

There are no additional financial or resource implications for Council arising from the recommendations contained in this report, with outlined investment (max. \$5,900 per annum) to deliver the program through reallocation of current Aqualink operating budget.

Innovation and Continuous Improvement

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

Collaboration

Council officers have strong collaboration with internal and external stakeholders, such as the swimming clubs and Migrant Information Centre.

Conflict of Interest

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

Conclusion

The proposed Welcome Around Water program builds a strategically directed framework to support the safety and wellbeing of our migrant communities, leveraging existing partnerships and resources, whilst utilising the available lane space at the Aqualink facilities.

10.2 Bushfire Prone Areas Update

Department City Planning and Development
Director City Development

SUMMARY

Victoria is one of the most bushfire prone environments in the world. The planning controls in Victoria play an integral role in ensuring that risk to life and property can be mitigated to an acceptable level. In addition to the Bushfire Management Overlay (BMO), Clause 52.12 – Bushfire Protection Exemptions facilitates the removal of vegetation to support the protection of life and property under certain circumstances.

Planning Scheme Amendment VC176 was gazetted on 5th August 2020 and sought to make changes to Clause 52.12 of the Planning Scheme. The amendment sought to align the application of tree removal exemptions with bushfire prone areas designated under the *Building Act 1993* across all Victorian councils, whereas previously 21 metropolitan councils (including Whitehorse) were excluded.

The implications of these exemptions have raised concerns within the community. Specifically, the long-term impacts this may have on canopy cover within the bushfire prone areas across the municipality.

At the Council meeting on 24 July 2023, a Notice of Motion was carried unanimously by Council, seeking a report from officers outlining the following (Part 1):

- *The history behind and the rationale for the Bushfire Prone Areas in the Whitehorse Planning Scheme (introduced via state-wide Planning Scheme Amendment VC176 on 5 August 2020)*
- *How many properties are affected and, where known, how many trees have been removed under the Bushfire Protection Exemptions*
- *A discussion on advocacy options to address community concerns over these exemptions and whether there are more appropriate, alternative planning mechanisms available.*

Part 2 of the Motion sought that Council write to the Minister for Planning to:

- Express concern about the lack of consideration given to the impacts of state-wide Planning Scheme Amendment VC176 on land protected by tree and landscape protection overlays.
- Request review of Clause 52.12 to ensure the relative risk level of different types of vegetation can be considered, as per the exclusions of Australian Standard AS 3959 (Construction of buildings in bushfire-prone areas).

10.2 (cont)

This report seeks to address Part 1 of the above Motion. The report will also provide an update on Part 2.

COUNCIL RESOLUTION

Moved by Cr Munroe, Seconded by Cr Cutts

That Council:

1. Acknowledges ongoing advocacy by Council officers to implement localised controls for bushfire prone areas within the municipality.
2. Advocates for a bespoke and localised approach to bushfire mitigation in the Bushfire Prone Areas of Whitehorse in the submission to Plan for Victoria.

CARRIED UNANIMOUSLY

Spoke to the item: Cr Munroe, Cr Cutts, Cr Barker

BACKGROUND

Victoria is one of the most bushfire prone environments in the world. It is widely acknowledged that the leading contributors to the intensity of a bushfire event are topography, weather and fuel. Of these leading contributors, fuel is the only factor that can be controlled. The planning and building controls in Victoria play an integral role in ensuring that risk to life and property can be mitigated to an acceptable level.

There are two levels of bushfire hazard mapping in Victoria, one primarily relating to the building system (Bushfire Prone Areas – BPA) and the Bushfire Management Overlay (BMO) in the planning system. A bushfire prone area is subject to or likely to be subject to bushfires. The BMO applies to bushfire prone areas with very high and extreme bushfire hazards.

Bushfire prone areas (BPA) are where the bushfire hazard has been identified and mapped under the building system. The Minister for Planning makes a formal determination to designate BPAs under section 192A of the *Building Act 1993*. This determination is based on a detailed review process.

An area is designated as a bushfire prone area based on its bushfire hazard Level. This is an indicator of how extreme a bushfire can be, based on landscape conditions. Bushfire hazard Levels can be different across areas.

The BMO is a planning control that applies to bushfire prone areas with very high and extreme bushfire hazards. This triggers planning permit requirements including mandatory bushfire protection measures such as:

- Defendable space
- Water supply
- Access
- Ongoing vegetation management requirements.

10.2 (cont)

Areas where the BMO applies are also by default Bushfire Prone Areas. There are approximately 270 properties in Whitehorse (Mitcham) that are affected by the BMO (Figure 1). The BMO was applied to these properties as part of a mapping update via Amendment GC13 in October 2017.

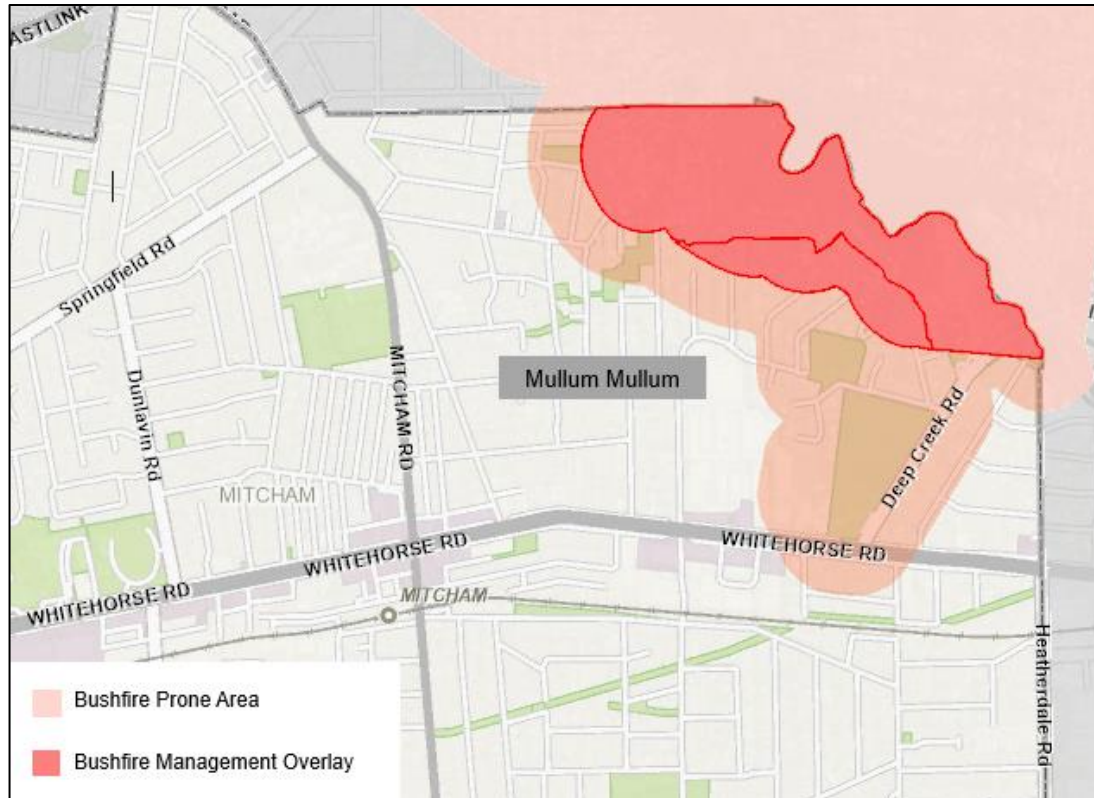


Figure 1 - BMO properties in Mitcham

In response to the 2009 Victorian Bushfire Royal Commission (VBRC), several amendments were made to the planning scheme through VC083. The amendment introduced a new State policy, replacement of the Wildfire Management Overlay (WMO) with the Bushfire Management Overlay (BMO), a new particular provision and updated planning permit exemptions. These changes were required to ensure that the planning system could respond more effectively to the protection of human life and to make communities safer.

Amendment VC083

Amendment VC083 amended all Victorian Planning Schemes by introducing (amongst other bushfire related provisions), a new particular provision at Clause 52.48 (Bushfire Protection: Exemptions). The amendment was gazetted and came into effect on Friday 18 November 2011.

The exemptions allowed for the removal, destruction or lopping of vegetation within 10 metres of an existing building used for accommodation that was:

10.2 (cont)

- constructed before 10 September 2009
- approved by a permit issued under this scheme before 10 September 2009; or
- approved by a building permit issued under the Building Act 1993 before 10 September 2009.
- The removal, destruction or lopping of vegetation for a combined maximum width of 4 metres was also permitted along a fenceline between properties in different ownership if the fence was constructed before 10 September 2009.

Importantly, the exemptions listed 21 metropolitan Councils, including Whitehorse, where the exemptions would not apply (unless land was affected by the BMO).

When did the exemptions change?

Amendment VC176 was gazetted on 5 August 2020, amending and replacing the exemptions (previously known as Clause 52.48 – Bushfire Protection: Exemptions) with a new particular provision at Clause 52.12 – Bushfire Protection Exemptions.

The amendment sought to make a number of changes, with the following being the most significant:

- Aligning application of the existing 10/30* and fence line vegetation exemptions with bushfire prone areas designated under the Building Act 1993 across all Victorian councils;

*Removal of vegetation within 10 metres of an existing building and removal of vegetation (other than trees) within 30 metres of an existing building.

The alignment of the exemptions with designated bushfire prone areas across all Victorian Councils was a significant change, and particularly impactful for Whitehorse. Previously, landowners could not utilise these exemptions unless their land was within the BMO. Now, exemptions can be utilised (subject to the use and construction date of the building) for land within designated bushfire-prone areas.

Bushfire Prone Areas in Whitehorse

There are five main areas within Whitehorse that are designated bushfire prone: Wattle Park, Blackburn Lake, Bellbird Dell, Mullum Mullum and Dandenong Valley Parklands (Figure 2). There are approximately 1300 residential properties that are designated bushfire prone areas. However, there are 197 properties within Mitcham (Figure 1) also affected by the BMO. However, the date of construction (pre/post 2009) and the extent of vegetation on a site cannot be determined.

10.



Impacts of Amendment VC176

Figure 2 - Bushfire Prone Areas in Whitehorse

Council has raised concerns regarding the use of these exemptions within the above five areas. Specifically, the areas surrounding Blackburn Lake which is recognised for its outstanding landscape significance with a high proportion of significant native vegetation and contribution as a valuable bird and wildlife habitat. These attributes are protected through the Significant Landscape Park Overlay, schedules 1 and 2.

The purpose of the exemptions in clause 52.12 is to “*facilitate the removal of vegetation in specified circumstances to support the protection of human life and property from bushfire*” to create defensible space for buildings used for accommodation. There is concern however, that the exemptions may be used to gain greater opportunity to develop land to a further extent than might otherwise be possible. This outcome is not the intention behind the exemptions but is rather, an unfortunate and concerning consequence of applying consistent statewide provisions.

Council officers have reached out to the Eastern Region Group of Councils to discuss the impact of these changes. Due to the intersection of various overlays and exemptions, Maroondah is the only other council with similar circumstances to Whitehorse. The BPA does not occur in Boroondara.

Impacts on tree canopy

The residential lots sizes within the five BPA areas are generally in the order of 700-800 square metres, based on standard lot widths. As such, there is potential for the exemption to facilitate the removal of a significant amount of the vegetation on a site.

The extent of vegetation removal under the exemptions cannot be quantified as it does not require permission from Council. Officers must rely on anecdotal information or residents informing Council that tree removal is occurring. There is no obligation for a landowner to inform Council.

10.2 (cont)

Council officers have some awareness of sites where the exemptions of clause 52.12 have been utilised by land-owners. Anecdotally, officers have been advised that the removal is occurring for the creation of defensible space. In several examples, there has been subsequent new development sought on these properties.

Bushfire Prone Area mapping reviews

The State Government has committed to working with local councils, emergency services and other key stakeholders to ensure that the mapping is accurate and kept as up to date as possible. This involves reviewing the mapping twice a year. The last review was undertaken late last year and updated on 15 December 2023.

The State Government website provides guidance around the BPA mapping review process. The website states that the Department of Transport and Planning (DTP) will review sites as requested by developers and councils where development is about to occur. The review of BPA areas will only consider instances where the hazard itself has either changed or been removed. The following is an extract from the State Government website:

“Only sites where the bushfire hazard has been removed or where civil works have commenced should be nominated because the BPA will only be removed if the bushfire hazard has been removed enough to meet the criteria agreed with fire service agencies”.

Council officers have discussed the possibility of a review of the BPA with DTP. However, given that there has been no change to the identified hazards, Council would not be eligible for a review.

Advocacy

Living Melbourne

Living Melbourne was established prior to the gazettal of Amendment VC176. The working group, which was led by Frankston City Council included the following Councils and agencies:

- City of Whittlesea
- City of Casey
- City of Manningham
- Mornington Peninsula Shire
- Cardinia Shire Council
- Municipal Association of Victoria
- Country Fire Authority (CFA)

Prior to Amendment VC176, the exemptions applied municipal wide. The group's aim was to advocate for the realignment of the exemptions in urban

10.2 (cont)

areas to areas with a recognised bushfire risk to minimise unnecessary vegetation clearance. Amendment VC176 was perceived as advantageous by several councils because it significantly reduced the land area previously affected by municipal-wide exemptions. However, it was recognised that other councils would now face exemptions that had not applied to them before the amendment. Since the amendment, no further advocacy efforts have been undertaken by the group.

Correspondence to the Minister for Planning

Following the Motion, Council wrote to the Minister for Planning in August 2023, expressing concern over the lack of consideration for the significant landscapes within Whitehorse, the impact on overall tree canopy cover and the unintended consequences of the Amendment VC176. Council requested consideration of the local context and bespoke measures within urban areas that recognise the importance of areas covered by the Significant Landscape Overlay.

The Minister for Planning provided a response to Council in November 2023, which can be summarised into the following key points:

- DTP has assessed the vegetation in Council's municipal reserves mapped under the BPA and 90 percent of the vegetation is in a native bushland state.
- The BPA mapping criteria captures vegetation of a type and size that can carry fire of sufficient intensity to impact property.
- For new dwellings in a BMO, a bespoke approach to vegetation management is applied under Clause 53.02 – Bushfire Planning. Technical bushfire assessments consider the land slope under the vegetation, class of vegetation and the dwellings construction standard (Bushfire Attack Level (BAL)). These variables are interdependent, complex and vary from property to property.
- Given the above considerations, DTP advised that they do not support the approach suggested by Council, noting it cannot be assumed that the vegetation management requirements at Clause 53.02 – Bushfire Planning will afford similar protection for dwellings that have not been built to current BAL standards.

Discussions with the Department of Transport and Planning (DTP)

In June 2024, Council officers met with DTP to express ongoing concerns regarding the utilisation of the exemptions (for non-bushfire risk reasons) in the BPA areas across Whitehorse and a one-size-fits-all approach to bushfire mitigation in Victoria. Although no definitive resolution was reached, DTP welcomed a continued dialogue with Council on any updates or new information regarding bushfire risk in our BPA areas.

10.2 (cont)

Next Steps

Council officers will continue to engage with DTP, advocating for bespoke measures that address the local context. Council officers appreciate the intent and purpose of the bushfire provisions however, there should be an acknowledgment of the impact this exemption will have on canopy cover within the bushfire prone areas and the misuse of these provisions for developmental gain. Council will also advocate for a more localised approach to bushfire risk and mitigation in the upcoming submission to Plan for Victoria.

SUPPORTING REPORT DETAILS**Legislative and Risk Implications**

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

Equity, Inclusion, and Human Rights Considerations

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

Community Engagement

No community engagement was required for this report.

Financial and Resource Implications

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

Council officers engaged with internal teams, surrounding Councils and the Department of Transport and Planning.

Conflict of Interest

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

Conclusion

The intent and purpose of the bushfire provisions within the planning scheme are crucial for minimising risks to life and property. However, a statewide provision, particularly a statewide exemption, fails to account for the diverse contexts across the state (and specifically within Whitehorse). A 'one size fits all' approach will only perpetuate misuse of the exemptions for developmental gain. Council will continue to advocate for a localised approach to bushfire risk and mitigation within the City of Whitehorse.

10.3 Tree Removal and Enforcement Action

Department City Planning and Development
Director City Development

SUMMARY

At the Council meeting of 14 August 2023, a Notice of Motion was carried unanimously by Council seeking a report on enforcement action related to illegal tree removal.

Specifically, the Notice of Motion sought:

That Council seeks a report from officers providing an overview of enforcement action from 1 July 2020 to 30 June 2023 that Council has taken regarding illegal tree removal, including court action, fines, tree management plans and Section 173 Agreements. Where possible, the report is to include details of the offences, court decisions, and other sanctions. Where information is unable to be provided, the report is to provide reasons for this, for example privacy and confidentiality.

This report provides details, where it can, of the tree related matters that have had active enforcement action undertaken, and the nature of this action.

COUNCIL RESOLUTION

Moved by Cr Cutts, Seconded by Cr Liu

That Council:

1. Notes the report detailing enforcement action undertaken over the time period between mid-2022 until June 2023.
2. Advocates to the Minister for Planning, through the upcoming review of the *Planning and Environment Act 1987*, to increase the fines available for illegal tree removal, and align these mechanisms with those available in NSW.

CARRIED UNANIMOUSLY

Spoke to the item: Cr Cutts and Cr Liu

KEY MATTERS

Enforcement of the Whitehorse Planning Scheme is a legislated function of Council, as the Responsible Authority under the *Planning and Environment Act 1987* ('the Act'). The Statutory Planning unit in the City Planning and Development Department undertakes these functions. The Responsible Authority is required under the Act to efficiently administer and enforce the planning scheme.

10.3 (cont)

Council has requested details of enforcement action undertaken where it relates to unlawful tree removal and/or damage to trees that has resulted in tree decline and/or death.

Officers are able to provide information on enforcement matters related to trees from mid-2022 until June 2023. Data prior to this time is available for planning enforcement matters, but is not able to be easily sourced specifically for tree related matters due to the restriction of data in the system used (at that time) to capture enforcement cases.

New systems have since been implemented that can more readily track and report on enforcement matters and any subsequent prosecution cases.

For the purpose of this report, the data relied upon is from mid-2022 until June 2023.

STRATEGIC ALIGNMENT

The Council Plan identifies seven strategic directions, aligned with the Community Vision.

The delivery of enforcement functions are legislated services and ensure that land use and development outcomes align with the following strategic directions:

- A Thriving Local Economy: Business, Employment, Education & Skill Development
- Our Diverse and Inclusive Community
- Our Built Environment; Movement, and Public Places.
- Sustainable Climate & Environmental Care
- Health and Wellbeing

Policy

Enforcement of the Whitehorse Planning Scheme is a legislated function of Council.

BACKGROUND

Enforcement functions of Council are given their power through the *Planning and Environment Act 1987* (enforcement of the Planning Scheme and permits issued under the Planning Scheme), the *Local Government Act 2020* (officers are authorised to undertake the functions required as an enforcement officer), the *Infringements Act 2006* (framework for the issuing and serving of infringement notices) and the *Fines Reform Act 2024* (enforcement of court and infringement fines).

Enforcement is used to ensure compliance with the Whitehorse Planning Scheme, planning permits and agreements made under Section 173 of the *Planning and Environment Act 1987*, and to:

- Avert or prevent threatened breaches
- Stop existing breaches
- Punish for breaches

10.3 (cont)

Enforcement action can be undertaken and subsequently penalised through the issue of Planning Infringement Notices, enforcement orders sought through the Victorian Civil and Administrative Tribunal (VCAT) and/or through prosecution of a breach of the planning scheme or a planning permit through the Magistrates' Court. Each of these actions has a different process and can result in different outcomes from a penalty perspective.

This report discusses the prosecution cases that have been pursued, as they relate to unlawful tree removal and/or tree damage.

Discussion and Options

Key Issues

Officers are able to provide information on enforcement matters related to trees from mid-2022 until June 2023. Data prior to this time is not able to be sourced due to the inadequacy of systems used to capture enforcement cases.

New systems have since been implemented that can more readily track and report on enforcement matters and any subsequent prosecution cases.

For the purpose of this report, the data relied upon is from mid-2022 until June 2023.

Discussion

During the period of Mid-2022 and June 2023, Council's Enforcement team investigated over 6300 complaints, of which 2225 related to trees. These complaints were for all matters relating to trees regardless of whether they resulted in identification of a breach of the Planning Scheme. Due to the limitations in data availability, the number of PINs issued from the 2225 cases cannot be extracted, however of these cases that did identify a breach, 24 matters proceeded to a formal prosecution through the Magistrates' Court.

These matters were for breaches of the Whitehorse Planning Scheme as they related to illegal tree removal, illegal tree lopping, and damage to trees as a result of works undertaken on a site, and breaches of planning permits where works contravened permit conditions or were undertaken outside of the scope of the permit issued.

The breaches were across the suburbs of Surrey Hills, Blackburn, Blackburn South, Box Hill North, Mont Albert North, Nunawading, Vermont and Burwood.

The approach taken by enforcement officers differs depending on the severity of the breach. Where there is a breach that is considered minor, and rectifiable, in most cases a Planning Infringement Notice (PIN) would be issued. A PIN can be issued to an individual, or a company, and in many cases issued to owners and the company who undertook the buildings/works/tree removal that lead to the breach.

The cost of a PIN for an individual in 2022-23 was \$1849.20 for a company and \$924.60 for an individual. These fines are set by the State Government

10.3 (cont)

and are subject to annual review and increase. Depending on the severity of the breach and the ability to rectify or ameliorate, fines issued to multiple owners and companies can be considered a suitable level of enforcement action.

Where a breach is considered to be severe and irreconcilable, such as is the case where illegal tree removal is undertaken, damage to trees has resulted in tree decline and death, or where illegal tree removal has been a deliberate act to avoid a planning process, prosecution through the Magistrates' Court is the course of action taken. That said, the limitations on Council's ability to pursue this course of action is based on the extent and quality of evidence able to be collected. Such limitations can include being able to identify and prove the species and size of trees that have been removed (and thus that they were of a size/species that triggered a planning permit), and being able to identify who undertook the works. This is particularly difficult where a tree has been poisoned.

Prosecution through the Magistrates' Court, whilst time consuming and requiring of a higher standard of evidentiary proof for Council, has led to improved outcomes through tree replanting, Tree Management Plans, including imposition of Section 173 Agreements registered on title, and more significant fines than would otherwise be the case if PINs alone were issued. Importantly, the risk of a criminal conviction through a Magistrates' Court hearing is a more persuasive course of action than the issue of PINs, the cost of which are often rationalised as a development cost, against the perceived financial impact of keeping trees, or complying with permit conditions.

Over the time period reported on, and as indicated earlier, officers have commenced prosecutions on 24 sites, as follows:

- All involved tree removal without planning permission, or resulted in damage that caused decline of the tree to the extent it had to be removed.
- 7 of the cases are on-going, with the proponent having sought for the matters be adjourned.
- 10 of the cases have resulted in Section 173 Agreements being prepared and registered to the land in perpetuity on the certificate of title. These Agreements have included Tree Management Plans (TMPs) which have required replanting, often in the same location from where trees were removed (and thereby affording no development advantage), additional replanting, and conditions upon which trees are to be maintained and protected over time.
- Fines issued through court orders have ranged from just over \$2,000 (which has included a fine and payment of legal costs), through to \$20,000 which included legal costs and fines for the owner and the tree lopper.

10.3 (cont)

- The majority of monetary outcomes through the Magistrates' Court have been in the order of \$2,500 - \$4,000, and have included payment of Council's legal costs.
- Many of the sites where fines have been imposed have also had requirements for Section 173 Agreements, and Tree Management Plans.
- The income generated through Magistrates' Court proceedings is approximately \$40,000 over the reporting time period. This includes fines issued by the Court and payment of legal fees.

The exception to this approach was a site in Vermont where nearly 60 trees were removed without planning permission. Initial action undertaken saw a PIN issued for each tree, with fines totalling nearly \$64,000. Subsequent discussion with the landowner revealed a level of contrition and willingness to accept not only the total amount of the fines, but also a Section 173 Agreement on the site for replanting and management of new trees planted. As such, upon payment of a total of \$63,595 in fines, further prosecution action was not taken.

Enforcement Outcomes

The 24 cases pursued through prosecution has lead to some cases proceeding through to a full Magistrates' Court hearing and outcome, whilst others have settled either through the Magistrates' Court process, or just prior to the formal hearing. There have also been 4 cases where advice sought from Council's solicitors have resulted in prosecution not being commenced due to insufficient evidence.

As indicated above, the outcomes of a Magistrates' Court hearing can vary, these are based on a higher level of evidentiary proof, but can also have significantly higher fines imposed, should a Magistrate be favourable to Council's case. Unfortunately, the opposite can also result, with an unfavourable Magistrate issuing nothing more than an order for a small monetary incursion, with no order for costs or remedial action. Whilst this has only occurred on one occasion, it is a risk with pursuing action through a Magistrates' Court rather than through the issue of a PIN or seeking an Enforcement Order through VCAT.

In reporting on the outcomes of enforcement proceedings, Council is bound by laws of privacy and can only disclose details where they have been made on the public record through either VCAT or the courts.

For the purpose of reporting on prosecution cases, officers are able to provide details of the breach, the action taken, the outcomes achieved, however are only able to provide address details for those matters that are a matter of public record.

10.3 (cont)

These details are provided in the table below:

Site/Suburb	Breach	Outcome
Surrey Hills	Tree removal	Good behaviour bond \$3,734.40 (legal costs)
Blackburn	Tree removal	\$3,761.34 (legal costs)
Blackburn Sth	Tree removal	Section 173 Agreement & \$2,504.8 (legal costs)
Mont Albert Nth	Tree removal	\$3,146.50 (fine and legal costs)
Nunawading	Tree removal	\$800 (court fund) & \$2356.70 (legal costs)
Box Hill Nth	Tree removal	Section 173 Agreement – \$10,000 including costs (owner) / \$10,000 including costs (tree lopper)
Vermont	Multiple tree removal	Section 173 Agreement \$63,595
Burwood	Tree damage – to the extent tree required removal	Enforcement order & TMP
Blackburn	Tree removal	Section 173 Agreement - \$1,000 (to Smith Family charity) & no order to costs
Blackburn	Multiple tree removal	Section 173 Agreement
Nunawading	Tree removal	Section 173 Agreement - \$600 (charity) & \$1280.90 (legal costs)
Blackburn	Tree removal	Section 173 Agreement
Blackburn	Tree removal	Section 173 Agreement

10.3 (cont)

Role of Section 173 Agreements

Section 173 Agreements have formed an important restorative and long term maintenance function in the enforcement outcomes achieved. When a PIN is issued, there is no power to require replacement planting, so whilst a fine may ultimately be paid, the loss of a tree or trees is permanent. Section 173 Agreements have been successfully used to impose specific replacement planting outcomes. Agreements prepared as part of some of the above outcomes have required replanting to occur in the same location as trees that were removed (and thereby diluting any advantage otherwise sought by removal of the trees), maintenance requirements for planting, mulching, watering and protection over periods of up to 10 years, and strict requirements for any trees lost to be replaced. Section 173 agreements are registered on title, and are therefore transferred to any subsequent owner should land be sold.

Tree Management Plans

Tree Management Plans (TMP) have formed the specific outcomes sought through the Section 173 Agreement mechanism.

TMPs have been used to specific details of tree location; replanting in the same location as trees unlawfully removed, outside of setbacks that may create future tree removal exemptions, soil preparation, watering requirements, species selection and tree protection fencing if part of a development site.

The development and formalisation of TMPs have been used successfully in setting expectations for longer term tree protection and regeneration. The TMPs ultimately form part of the Section 173 Agreements and therefore are also registered on title and imposed on owners in perpetuity.

Opportunities

Opportunity to influence or effect change in the enforcement space is limited. Fines are set by the State Government and are thereby unable to be increased by Council to a level that would provide a deterrent to removal and/or damage to trees. Whilst Council does undertake prosecution through the Magistrates' Court, as detailed above, this process is lengthy, requires significant evidence, and outcomes are still dependent upon a favourable Magistrate. An opportunity does, however, currently exist for Council to advocate to the State Government for changes to the value of fines through an upcoming review of the *Planning and Environment Act 1987*. Advocacy for more meaningful and preventative valued fines could be undertaken as a submission to this review, which could provide greater disincentives for unlawful tree removal. This action is recommended as part of this report.

10.3 (cont)

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

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

Equity, Inclusion, and Human Rights Considerations

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.

Financial and Resource Implications

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

No collaboration was required for this report.

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

This report provides details of the action taken in enforcing the requirements of the *Planning and Environment Act 1987*, the Whitehorse Planning Scheme and planning permits issued, and highlights the fines issued, as well as outcomes sought in requiring long term replanting and restitution of tree canopy outcomes.

10.4 Part Road Discontinuance 5 Beresford Street, Mont Albert

Department Property and Leasing
Director City Development

SUMMARY

Council Officers recommended that Council commence the road discontinuance in accordance with the *Local Government Act 1989* for part of 5 Beresford Street, Mont Albert.

At the Council meeting of 24 June 2024 Council resolved to commence the discontinuance process.

Council published a public notice on its website in accordance with Section 223 of the *Local Government Act 1989* for twenty-eight days.

Council received no submissions in response to the public notice process.

Additionally, the Minister for Transport Infrastructure via Section 193 of the *Major Transport Projects Facilitation Act 2009* declared, via a Victorian Government Gazette Notice on 25 July 2024, the land shown by cross-hatching in the Location Plan below be declared a road, effective from 15 July 2024.

In the opinion of Council Officers, the section of Road known as 5 Beresford Street, Mont Albert is no longer required for public use.

Council Officers recommend that having published a public notice in accordance with Section 223 of the *Local Government Act 1989* and having received no submissions relating to that public notice and noting that the Minister for Transport Infrastructure has declared the section of rail corridor a road; that Council discontinue the Road known as 5 Beresford Street, Mont Albert.

It is important to note that the recommended road discontinuance contained within this report will **not** close Beresford Street, Mont Albert to vehicle and/or pedestrian traffic.

10.4 (cont)

COUNCIL RESOLUTION

Moved by Cr McNeill, Seconded by Cr Lane

That Council:

1. Acknowledges that the part of the rail corridor shown cross hatched on the Location Plan below, being part of the land in certificate of title Volume 12075 Folio 830, identified as Parcel B in the 24 June 2024 Council Report, has been declared a road under the Major Transport *Project Facilitation Act 2009 (Vic)*; and in accordance with Section 14 of *Road Management Act 2004* is declared a road for municipal purpose.
2. Being of the opinion that the parcels of road shown as single-hatched, identified as Parcel A in the 24 June 2024 Council Report, and cross-hatched, identified as Parcel B in the 24 June 2024 Council Report, on the Location Plan below are no longer reasonably required as a road for public use resolves to discontinue the sections of road in accordance with Section 206, clause 3 of schedule 10 of the *Local Government Act 1989*.
3. Authorises that a notice be published in the Victoria Government Gazette.
4. Acknowledges that Section 207C of the *Local Government Act 1989* protects and/or saves the assets of public authorities held in the road proposed for discontinuance.
5. Authorises that the land derived from the road discontinuance be retained for municipal purposes.
6. Authorises the Chief Executive Officer or delegate to sign all documents relating to the road proposed for discontinuance and authorises the affixing of the Council seal, if required, to any documents relating to the road discontinuance.

CARRIED UNANIMOUSLY

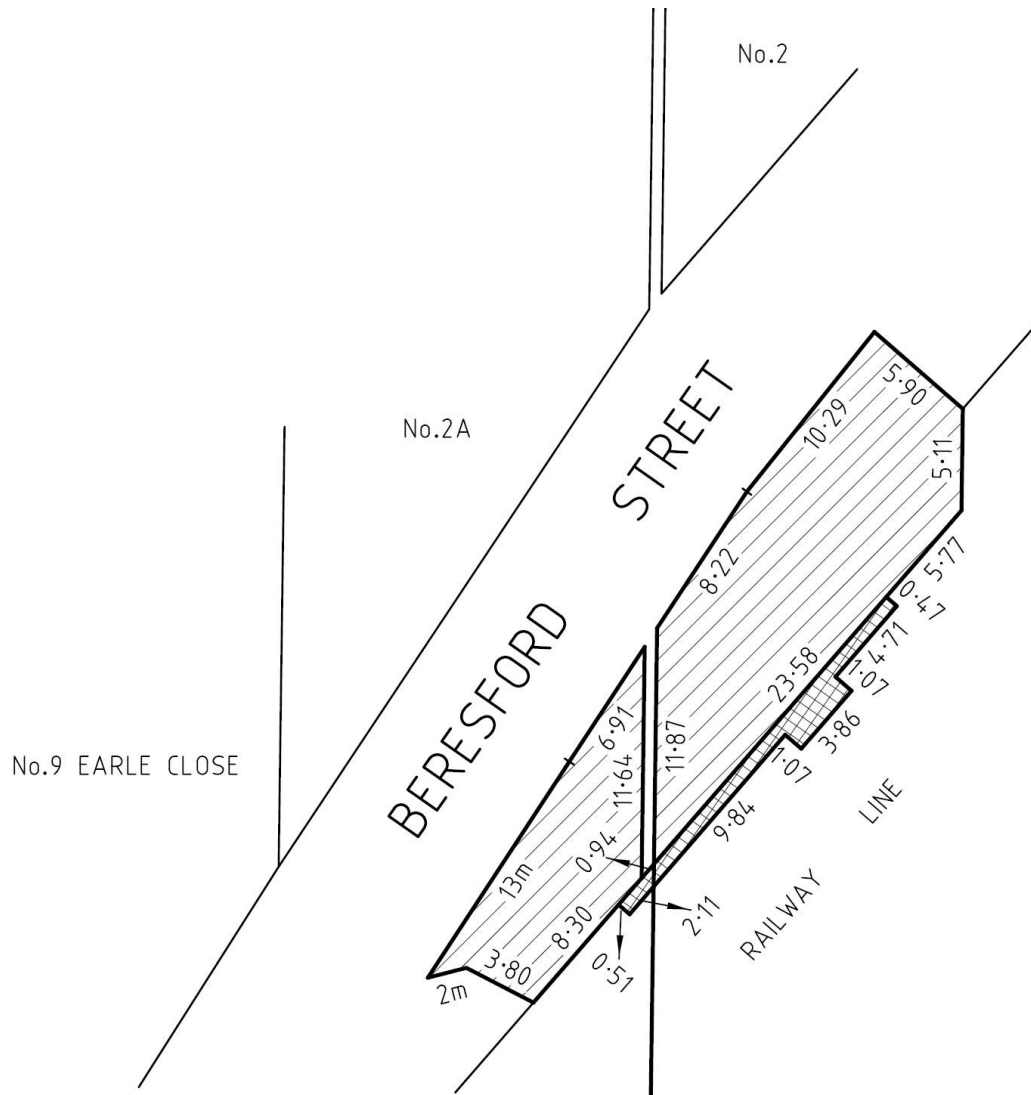
Spoke to the item: Cr McNeill and Cr Lane

10.4 (cont)

KEY MATTERS

At its meeting held on Monday 24 June 2024 Council acknowledged that the section of Road known as 5 Beresford Street, Mont Albert; shown by single-hatching and by cross-hatching on the Location Plan below are no longer reasonably required for public use.

Location Plan:



Council resolved to commence statutory procedures under Section 206, schedule 10, clause 3 of the *Local Government Act 1989* (the Act) to discontinue the Road.

In accordance with Sections 207A and 223 of the Act Council gave public notice of the proposed discontinuance in The Age newspaper and on Council’s website with a link to Council’s ‘Your Say’ portal.

The Manager Property & Leasing was also authorised to write to select nearby property owners advising that they could make a written submission relating to the proposed discontinuance.

10.4 (cont)

Council received no submissions.

In parallel to Council's processes the Minister for Transport Infrastructure published a Victorian Government Gazette notice (gazette notice) on 25 July 2024.

The gazette notice declared the rail corridor shown as cross hatched on the Location Plan below, being part of the land in certificate of title Volume 12075 Folio 830, has been declared a road under the *Major Transport Project Facilitation Act 2009 (Vic)* and in accordance with Section 14 of *Road Management Act 2004* is declared a road for municipal purpose; effective 15 July 2024.

As Council has completed all statutory obligations in accordance with Section 223 of the Act, it means that Council can resolve to discontinue the road and publish its own notice in the Victorian Government Gazette.

STRATEGIC ALIGNMENT

The proposed road discontinuance aligns with the following strategic directions:

Strategic Directions 2: A thriving local economy with high quality accessible education opportunities.

Objective: Council will support and advocate for a diverse range of businesses, to facilitate local investment, education, and employment opportunities.

Strategic Direction 4: A built environment that encourages movement with high quality public places.

Objective: Council will plan, build, renew and maintain community assets and public spaces to meet community needs. We will plan for and facilitate appropriate land use and high-quality development outcomes.

Policy

The Road Discontinuance Policy adopted by Council on 27 May 2024 applies to the road discontinuance components of this matter.

BACKGROUND

In the Council Report adopted by Council on 24 June 2024, Council Officers recommended that Council commence the road discontinuance in accordance with the Act for the Road known as 5 Beresford Street, Mont Albert.

Council published a public notice on its website in accordance with Section 223 of the Act for twenty-eight days, with a link to Council's 'Your Say' portal.

Additionally, a copy of the abovementioned public notice was published on Friday 28 June 2024 in The Age newspaper and a select number of nearby residents received formal notification from Council's Manager Property and Leasing.

10.4 (cont)

Council received no submissions in response to the public notice process mentioned above.

Additionally, the Minister for Transport Infrastructure via Section 193 of the *Major Transport Projects Facilitation Act 2009* declared the land shown by cross-hatching in the Location Plan above a road on 15 July 2024, via a Victorian Government Gazette Notice published on 25 July 2024.

In the opinion of Council Officers, part of the road known as 5 Beresford Street, Mont Albert is no longer required for public use based on the following assessment criteria:

- The nature and extent of the present and past use of the Road;
- The likelihood of the Road being required for ongoing and future use; and;
- Section 9 of the Road Management Act 2004.

Discussion and Options

This Council report is the final report relating to the road discontinuance process and is seeking a resolution from Council to:

- Acknowledge that the rail corridor land has been declared a Road under the Major Transport Project Facilitation Act 2009 (Vic) and in accordance with Road Management Act 2004 is declared a road for municipal purpose.
- Discontinue the Road known as 5 Beresford Street, Mont Albert in accordance with Section 206 and clause 3 of schedule 10 of the Act.
- Authorise the publication of a notice in the Victoria Government Gazette.
- Acknowledge that Section 207C of the Act protects and/or saves the assets of public authorities held in the Road proposed for discontinuance.
- Authorises that the land derived from the Road discontinuance be retained for municipal purposes.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

The discontinuance of roads by Council is undertaken in accordance with the *Local Government Act 1989* and not the *Local Government Act 2020*.

Council published the required Public Notice and Council received no submissions.

Please note that Council ultimately has the right not to discontinue the Road; however, Council Officers recommend that Council resolve to discontinue the Road known as 5 Beresford Street, Mont Albert.

10.4 (cont)

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 its meeting held on Monday 24 June 2024, Council resolved to commence statutory procedures under Section 206, schedule 10, clause 3 of the Act to discontinue the Road known as 5 Beresford Street, Mont Albert.

The statutory procedures under the Act requires Council to give public notice of its intention to discontinue the Road, and to invite submissions from affected persons and the public under Section 223 of the Act.

The Public Notice of the proposed discontinuance was given in The Age newspaper and was published on Council's website for twenty-eight days with a link to Council's 'Your Say' portal.

In addition, a select number of nearby property owners were informed of their right to make a submission under Section 223 of the Act.

Council has completed its community engagement obligations in accordance with Section 223 of the Act.

Financial and Resource Implications

All expenses associated with the statutory process will be borne by the Property and Leasing Department's 2023-2024 recurrent budget and these expenses are estimated to be approximately \$35,000+GST.

Innovation and Continuous Improvement

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

Collaboration

No collaboration was required for this report.

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.

10.4 (cont)

Conclusion

The Road known as 5 Beresford Street, Mont Albert is deemed by Council Officers to be no longer required for public use, and as Council has completed its statutory obligations in accordance with Section 223 of the *Local Government Act 1989*; Council Officers recommend that Council resolves to discontinue the Road and retain the land derived from the discontinuance for municipal purposes.

The recommended road discontinuance contained within this report will **not** close Beresford Street, Mont Albert to vehicle and/or pedestrian traffic.

If Council resolves to discontinue the Road, Council Officers will publish a notice in the Victorian Government Gazette and commence the process to have the freehold land transferred into Council's ownership for municipal purposes.

The recommended road discontinuance will also enable Council to lawfully execute a lease with a third-party tenant for the refurbished and reassembled Mont Albert Station building.

10.5 2024-2025 Council Meeting Dates

Department Governance and Integrity
Director Corporate Services

SUMMARY

In accordance with the *Local Government Act 2020* and Council's Governance Rules, Council is required to fix the date, time and place of Council Meetings. Changes may be made to fixed Council meetings dates and Council must provide reasonable notice of the change to the public. Council meeting dates for 2024 were adopted on 14 August 2023.

A Local Government Election will be held on 26 October 2024. The *Local Government Amendment (Governance and Integrity) Act 2024* came into force on 24 June 2024, which impacts planned Council meeting dates for 2024 by bringing forward the date of the commencement of the Election Period to 17 September 2024. The Election Period will conclude at 6.00 pm on Election Day, 26 October 2024.

The Victorian Electoral Commission (VEC) has advised that election results for Whitehorse City Council will be declared on 12 November 2024. This along with the adoption of the *Local Government Amendment (Governance and Integrity) Act 2024* impacts meeting dates currently scheduled between November to December 2024.

Section 69 of the *Local Government Act 2020* (the Act) prohibits significant decisions being made during the Election Period and Ordinary Council Meetings will not be held during this time. It is therefore necessary to schedule two Special Council Meetings during the Election Period for the consideration of Principal Approval of the 2023/24 Annual Financial Statements and the 2023/24 Annual Report.

As Council Meeting dates are determined during the previous calendar year to assist with forward planning, this report also includes a proposed schedule of Council Meeting dates for 2025.

The proposed Council Meeting dates for 2025 include 20 Ordinary Meetings and one Meeting to elect the Mayor and Deputy Mayor. Two Ordinary Council meetings will be scheduled each month, with the following exceptions:

- No meetings to be held in January, to accommodate the traditional holiday period;
- One meeting to be held in April, due to a public holiday on the third Monday of that month; and
- One meeting to be held in December, to accommodate the traditional holiday period.

The purpose of this report is to consider and approve:

- Amendments to the November and December 2024 Council Meeting schedule;
- The scheduling of two Special Council Meetings to be held during the Election Period to consider Principal Approval of the 2023/24 Annual Financial Statements and the 2023/24 Annual Report; and
- The Council Meeting schedule for 2025.

10.5 (cont)

COUNCIL RESOLUTION

Moved by Cr Skilbeck, Seconded by Cr Lane

That Council:

1. Approves the change of date of the Council meeting scheduled for Monday 23 September 2024 to Monday 30 September 2024 as a Special Council Meeting be held during the Election Period for the consideration of the Principal Approval of the 2023/24 Annual Financial Statements, commencing at 6.30pm.
2. Approves a Special Council Meeting be held during the Election Period on 21 October 2024 commencing at 6.00pm, to consider the 2023/24 Annual Report.
3. Approves the change of date of the Council Meeting to elect the Mayor and Deputy Mayor from Monday 11 November to Monday 18 November 2024
4. Approves changes to Ordinary Council Meeting dates scheduled for November and December 2024 as follows:
 - Monday 25 November changed to Monday 2 December 2024
 - Monday 9 December changed to Monday 16 December 2024
5. Adopts the following Council Meeting dates for the 2025 calendar year for Whitehorse City Council, with meetings commencing at 7.00 pm:

Month	Day/Date
February	Monday 3 Monday 17
March	Monday 3 Monday 24
April	Monday 14
May	Monday 12 Monday 26
June	Monday 16 Monday 30
July	Monday 14 Monday 28
August	Monday 11 Monday 25
September	Monday 8 Monday 22
October	Monday 13 Monday 27
November	Monday 10 Wednesday 12* Monday 24 <i>*Meeting to elect Mayor and Deputy Mayor</i>
December	Monday 8

10.5 (cont)

6. Notes that all Council meetings in the table above will be held at the Whitehorse Civic Centre, 379-399 Whitehorse Road, Nunawading.

CARRIED UNANIMOUSLY

Spoke to the item: Cr Skilbeck, Cr Lane

KEY MATTERS

Requirement for changes to the 2024 Council meeting schedule

The adoption of the *Local Government Amendment (Governance and Integrity) Act 2024* in June 2024 and the advised date of the Local Government Election results prompt changes to the Council meeting schedule from September to December 2024.

Clause 14 of the *Whitehorse City Council Governance Rules* allows Council to change the date of scheduled Council meetings provided that the public is given reasonable notice of the change.

Requirement for Special Council Meetings during the Election Period

The Election Period will commence at 12.00 noon on Tuesday 17 September 2024 and conclude at 6.00 pm on Saturday 26 October 2024.

Section 69 of the Act states that a Council's Election Period Policy must prohibit certain Council decisions during the Election Period.

A Council Meeting is required to consider the Principal Approval of the 2023/24 Annual Financial Statements. The scheduling of a Special Council Meeting during the Election Period for this purpose complies with the conditions of s69 of the Act.

Section 100 of the Act stipulates that Council must consider the Annual Report at a meeting of Council open to the public on a day not later than the day before Election Day and in any other year, within 4 months of the end of the financial year.

Proposed changes to the 2024 Council Meeting schedule

- The Council Meeting of 23 September 2024 is no longer required with the addition of two Special Council Meetings on 30 September 2024 and 21 October 2024 to allow consideration of the Principal Approval of the 2023/24 Annual Financial Statements and the 2023/24 Annual Report.
- Changing the date of the Meeting to elect the Mayor and Deputy Mayor from 11 November 2024 to 18 November 2024 due to VEC advice regarding the date of declaration of election results; and
- Changing the dates of subsequent Council Meetings to 2 December and 16 December 2024 (currently scheduled for 25 November and 9 December) to accommodate the later date of the election of the Mayor and Deputy Mayor.

Proposed Council Meeting dates for 2025

10.5 (cont)

As Council Meeting dates are determined during the previous calendar year to assist with forward planning, this report also includes a proposed schedule of Council Meeting dates for 2025.

A total of 20 Ordinary Council Meetings and one Statutory Council Meeting (for the election of the Mayor and Deputy Mayor) are proposed to be scheduled for the 2025 calendar year.

The proposed Council Meeting dates have been scheduled taking into consideration the Victorian Public Holidays for 2025 and the anticipated dates for the Australian Local Government Association (ALGA) National General Assembly, which Whitehorse Councillors may attend.

It is proposed to schedule Ordinary Council Meetings twice per month during 2025. The exceptions to this cycle and reasons for these are outlined below:

Month	Day/Date	Notes
January	No meetings due to traditional holiday period	
February	Monday 3 Monday 17	
March	Monday 3 Monday 24	
April	Monday 14	No Council Meeting on Monday 28 April due to Monday 21 April (Easter Monday) public holiday clash with Councillor Briefing
May	Monday 12 Monday 26	
June	Monday 16 Monday 30	
July	Monday 14 Monday 28	
August	Monday 11 Monday 25	
September	Monday 8 Monday 22	
October	Monday 13 Monday 27	
November	Monday 10 Wednesday 12* Monday 24	* Election of Mayor and Deputy Mayor
December	Monday 8	One meeting due to traditional holiday period

STRATEGIC ALIGNMENT

Council Plan

The setting of the Council meeting dates is aligned with Strategic Direction 1 of the Council Plan 2021-2025 (Year Three).

- 'An Innovative Council that is well led and governed'

10.5 (cont)

The objective of this strategic direction is to ensure that Council is a trusted organisation that embraces innovation. By ensuring Council meeting dates are endorsed in a timely manner and reasonable notice is given to the public.

Policy

Council's Governance Rules state that Council must from time to time fix the date, time and place of all Council Meetings.

Clause 98 of Council's Election Period Policy outlines decisions prohibited during the Election Period under section 69 of the Act. Clause 99.1 stipulates that Council will hold a Special Meeting in October 2024 to consider the Annual Report.

BACKGROUND

A Local Government General Election will be held on 26 October 2024. The legislated change of date of the commencement of the Election Period and Victorian Electoral Commission advice regarding the timeframe for declaration of election results has necessitated changes to the current schedule of Council Meeting dates for November and December 2024.

Council may by resolution amend the date, time and place of a Council Meeting.

Two Special Council meetings are required during the Election Period to consider Principal Approval of the 2023/24 Annual Financial Statements and the 2023/24 Annual Report.

To assist with forward planning, Council Meeting dates for each year are set by Council during the previous calendar year, with the date, time and venue published in Council publications and on the Council's website and also in Council's calendar.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

Pursuant to section 60 of the *Local Government Act 2020* (the Act), Council is required to adopt and apply Governance Rules which describe the way it will conduct Council Meetings and make decisions. The Governance Rules also outline the requirements to set Ordinary and Unscheduled Meetings.

Section 69 of the Act states that a Council's Election Period Policy must prohibit certain Council decisions during the Election Period that:

- relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
- commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
- the Council considers could be reasonably deferred until the next Council is in place; or

10.5 (cont)

- would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

Section 100 of the Act stipulates that Council must consider the Annual Report at a meeting of Council open to the public on a day not later than the day before Election Day.

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.

Financial and Resource Implications

Council Meetings are funded within the annual operational budget. There are no financial or resource implications arising from the recommendations contained in this report.

Innovation and Continuous Improvement

Community participation in the Council Meeting process is encouraged via the opportunity to submit public questions and speak at Council Meetings.

Collaboration

Collaboration with the Executive Leadership Team, the Finance Department and the Communities, Engagement and Integrated Planning Department was undertaken in scheduling the Special Council Meetings during the 2024 Election Period and the incorporation of the Annual Budget into the proposed Council Meeting schedule for 2025.

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

It is recommended that Council amends the Council Meeting schedule for November to December 2024, approves two Special Council Meetings to be held during the Election Period, and adopts the proposed Council Meeting schedule for 2025 as outlined in this report.

10.6 Records of Informal Meetings of Councillors

Department Governance and Integrity
 Manager Governance and Integrity

COUNCIL RESOLUTION

Moved by Cr Lane, Seconded by Cr Munroe

That Council receives and notes the Records of Informal Meetings of Councillors.

CARRIED UNANIMOUSLY

Pre-Council Meeting Briefing – 22 July 2024 – 6.30pm – 6.52pm

Matter/s Discussed:	Councillors Present	Officers Present
<ul style="list-style-type: none"> Council Agenda Items – 22 July 2024 	Cr Massoud (Mayor) Cr Davenport (Deputy Mayor) Cr Barker Cr Carr Cr Cutts Cr Lane Cr Liu Cr McNeill Cr Munroe Cr Skilbeck Cr Stennett	S McMillan J Green L Letic S Sullivan S White V Ferlaino F Nolan S Lozsan K Woods
Others Present: Nil		
Disclosures of Conflict of Interest:		
1. Cr Denise Massoud - Item 10.5 Whitehorse Community Grants Program 2024-2025 2. Cr Mark Lane – Item 12.1 Advanced Waste Processing Project Process		
Councillor /Officer attendance following disclosure:		
Councillors remained at the briefing as items were discussed at the subsequent Council Meeting		

10.6 (cont)

Submission to the new Plan for Victoria – 23 July 2024 – 3.30pm – 4.35pm		
Matter Discussed:	Councillors Present	Officers Present
<ul style="list-style-type: none"> Discussions regarding the submission to the new Plan for Victoria. 	Cr Massoud (Mayor) Cr Davenport (Deputy Mayor) Cr Barker Cr Lane Cr Liu Cr McNeill Cr Munroe Cr Skilbeck	K Marriot A Egan V McLean L Zhao
Others Present: Nil		
Disclosures of Conflict of Interest: Nil		
Councillor /Officer attendance following disclosure: N/A		

Special Councillor Briefing – 5 August 2024 – 6.30pm – 9.05pm		
Matter/s Discussed:	Councillors Present	Officers Present
<ul style="list-style-type: none"> CEO Employment Matters Committee Draft Council Meeting Items 12 August 2024 	Cr Massoud (Mayor) Cr Davenport (Deputy Mayor) Cr Barker (left 8.35pm) Cr Carr Cr Cutts Cr Lane Cr Liu Cr McNeill Cr Munroe Cr Skilbeck	S McMillan V Ferlaino (For Draft Agenda only)
Others Present: D Preiss, Independent Advisor – CEO Employment Matters Committee		
Disclosures of Conflict of Interest: Nil		
Councillor /Officer attendance following disclosure: N/A		

11 Councillor Delegate and Conference / Seminar Reports**11.1 Reports by Delegates and Reports on Conferences / Seminars Attendance**

Department Governance and Integrity
Manager Governance and Integrity

Verbal reports from Councillors appointed as delegates to community organisations/committees/groups and attendance at conferences and seminars related to Council Business.

- Councillor Skilbeck attended a Governance Institute of Australia National Conference for social purpose organisations on 24 August 2024
- Councillor Mark Lane attended Whitehorse Business Group meeting on 2 August 2024.
- Councillor Raylene Carr attended the Domestic Animal Management Plan Advisory Committee meeting on 26 July 2024 .
- Councillor Amanda McNeill attended the
 - Metropolitan Transport Forum on August 2024.
 - Whitehorse Disability Advisory Committee 7 August 2024
- Councillor Blair Barker the attended the Domestic Animal Management Plan Advisory Committee meeting on 26 July 2024
- Councillor Denise Massoud attended the:
 - Shaping Whitehorse Community Panel Session on 30 July 2024
 - Youth Reference Committee forum on 1 August 2024
 - Local Government Mayoral Advisory Panel on 1 August 2024
 - Whitehorse Disability Advisory Committee on 7 August 2024

COUNCIL RESOLUTION

Moved by Cr Liu, Seconded by Cr Lane

That Council receives and notes the:

1. Reports from delegates, and;
2. Reports on conferences/seminars attendance.

CARRIED UNANIMOUSLY

12 Confidential Reports

Nil

13 Close Meeting

The Council Meeting was closed at 8.06pm.

These minutes are circulated subject to confirmation by Council at the next Council Meeting to be held on 26 August 2024.