

COUNCIL MEETING

MINUTES

(Open to the public)

Monday 13 December 2021

Council Chamber, 8 Inglesby Road, Camberwell.

Commencement 6.34pm

Attendance

Councillor Jane Addis (Mayor)
Councillor Jim Parke
Councillor Felicity Sinfield
Councillor Victor Franco
Councillor Wes Gault
Councillor Di Gillies
Councillor Lisa Hollingsworth
Councillor Susan Biggar
Councillor Nick Stavrou

Apologies

Councillor Garry Thompson (Leave of Absence)
Councillor Cynthia Watson (Leave of Absence)

Officers

Phillip Storer	Chief Executive Officer
Daniel Freer	Director Places and Spaces
Carolyn McClean	Director Community Support
Mans Bassi	Acting Director Customer and Transformation
Scott Walker	Director Urban Living
Carolyn Terry	Executive Manager People Culture and Development
Amy Montalti	Chief Financial Officer
David Thompson	Manager Governance and Legal
Christine White	Manager Capital Projects
David Shepard	Manager Environmental Sustainability and Open Spaces
David Cowan	Acting Manager Strategic and Statutory Planning
George Batsakis	Manager Facilities, Waste and Infrastructure
Jim Hondrakis	Manager Traffic and Transport
Kirstin Ritchie	Coordinator Governance
Rebecca Dewar	Acting Coordinator Revenue and Property Services
Ashlee Camm	Organisation Design Lead
Jacinta Stevens	Head of Strategic Procurement and Contracts
Elizabeth Manou	Senior Governance Officer
Robert Costello	Senior Project Planner
Nick Brennan	Senior Strategic Planner

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1. Adoption and confirmation of the minutes

MOTION

Moved Councillor Sinfield

Seconded Councillor Stavrou

That the minutes of the Council meeting held on 29 November 2021 be adopted and confirmed.

CARRIED

2. Declaration of conflict of interest of any councillor or council officer

Refer to Item 7.13 - Proposed CEO Employment and Remuneration Policy - Phillip Storer

3. Deputations, presentations, petitions and public submissions

Nil

4. Informal Meetings of Councillors

Chapter 6 of Council's Governance Rules requires that a summary of matters discussed at Informal Meetings of Councillors be reported to a Council meeting as soon as practicable.

The attached summary of Informal Meetings of Councillors (**Attachment 1**) is reported to Council in accordance with the requirements of the Governance Rules.

MOTION

Moved Councillor Biggar

Seconded Councillor Gault

That Council resolve to receive and note the summary of Informal Meetings of Councillors, as annexed to the minutes.

CARRIED

5. Public question time

PQT1 Ian Hundley of Balwyn North - Disallowed Question

The **Mayor, Councillor Addis** advised that a question had been submitted with notice and the question was disallowed in accordance with Chapter 2 of the Governance Rules.

This question was disallowed in accordance with Rule 55.1.3 of the Governance Rules which provides a question may be disallowed if it may reasonably be considered to be defamatory, indecent, abusive, offensive, irrelevant, trivial or objectionable in language or substance. The question was also disallowed in accordance with Rule 55.1.13 which provides that a question may be disallowed if it relates to any other matter which Council considers would prejudice Council or any person.

The **Mayor, Councillor Addis** informed the meeting all councillors had received a copy of the question and a written response would be provided to Mr Hundley in due course.

PQT2 Ian Hundley of Balwyn North - Commonwealth Funding for Railway Park and Ride Facilities in Glenferrie

The **Mayor, Councillor Addis** read the following question submitted with notice:

“Whilst the draft placemaking plan for Glenferrie shows that the offer of federal funding on railway park and ride facilities, made during the 2019 election campaign, is still being assessed by Council, the recent report by the Senate Finance and Public Administration References Committee, which examined severe shortcomings in the relevant federal funding program, shows the project is now at the planning stage. Which of these is the accurate view?”

The question was allowed in accordance with Chapter 2 of the Governance Rules. The question had previously been put in writing to a Councillor or a member of Council staff more than 10 working days before the Council meeting at which the question was submitted.

The **Director Places and Spaces** responded as follows:

- Council has undertaken technical feasibility studies for the commuter Car Parking Projects focusing on determining the car parking yield, cost and project impacts for each project site and the overall conditions of the sites in terms of deliverability.
- At tonight’s Council meeting before Council is a report seeking endorsement to commence broader Community Engagement.
- Following this period of consultation, analysis of the findings further consideration will be given and a decision by Council on whether to further progress these projects.

The **Mayor, Councillor Addis** informed the meeting all councillors had received a copy of the question and a written response would be provided to Mr Hundley in due course.

PQT3 Leigh Naunton of Balwyn North - Council Procurement Policy

The **Mayor, Councillor Addis** read the following question submitted with notice:

“Why, given the public interest in Council procurement processes and probity and its place in the Climate Action Plan, has the draft procurement policy not been subject to public exhibition?”

The question was allowed in accordance with Chapter 2 of the Governance Rules. The question relates to a matter on the agenda (Item 7.1 of the Officer Reports) for the current Council meeting and therefore was allowed.

The **Chief Financial Officer** responded as follows:

- Given that the Procurement Policy is predominantly developed to guide operational procurement processes, there is no legislative requirement under the Local Government Act 2020 for the Policy to be subject to public exhibition prior to adoption.
- Consultation on the Procurement Policy did occur with Council’s Risk and Audit Committee and feedback received has been incorporated into the Policy.

The **Mayor, Councillor Addis** informed the meeting all councillors had received a copy of the question and a written response would be provided to Mr Naunton in due course.

PQT4 Leigh Naunton of Balwyn North - Commuter Car Parking Feasibility

The **Mayor, Councillor Addis** read the following question submitted with notice:

“Will Council publicly release the full report of the survey of community conducted by Wallis Social Research Group and provide an explanation of the validity of the results if, as stated in the report, 17,747 people were randomly contacted for the survey and out of these, 562 people participated and completed the survey.”

The question was allowed in accordance with Chapter 2 of the Governance Rules. The question relates to a matter on the agenda (Item 7.11 of the Officer Reports) for the current Council meeting and therefore was allowed.

The **Director Places and Spaces** responded as follows:

- Pending endorsement of the community engagement, it is proposed consultation will be undertaken over an eight-week period, commencing on 14 December 2021 and closing on 10 February 2022.
- As part of the community engagement process the reports regarding the community survey undertaken by Wallis Social Research Group for each precinct, will be made available to the community.
- The percentage of all people contacted who agreed to complete the survey is in keeping with market research standards and does not impact on the validity of the results.

The **Mayor, Councillor Addis** informed the meeting all councillors had received a copy of the question and a written response would be provided to Mr Naunton in due course.

6. Notices of motion

Nil

7. Presentation of officer reports

Procedural motion

MOTION

Moved Councillor Stavrou

Seconded Councillor Gault

That the following items:

7.2 October 2021 Monthly Financial Report

7.4 Amendment C353 Part 1 - Kew individual heritage places and regrading - Adoption

7.5 Amendment C355boro - Currajong, 337 Auburn Road, Hawthorn - Adoption

7.7 September 2021 Quarterly Performance Report

7.8 Contract 2021/72 - Tree Root Services

7.9 Contract 2021/101 - Drainage Pit Clearances & Associated Services

be moved en bloc as per the officers' recommendations outlined in the agenda.

CARRIED

7.2 October 2021 Monthly Financial Report

The Monthly Financial Report for October 2021 is designed to identify and explain any major variances to budget at an organisational level for the period ending 31 October 2021.

Council's favourable operating result against year to date budget of \$139.31 million is \$3.03 million or 2% above the October amended budget of \$136.28 million primarily due to a number of factors which are outlined in **Section 2 of Attachment 1 - Financial Overview**.

Capital works actual expenditure is \$17.99 million which is \$428,000 below year to date budget phasing of \$18.42 million. Priority projects expenditure of \$6.85 million is \$1.15 million below year to date budget phasing of \$8.00 million.

Council's Balance Sheet and cash position are sound and depict a satisfactory result. At the end of October, Council's cash position stood at \$102.44 million or \$6.96 million above year to date budget.

MOTION

Moved Councillor Stavrou

Seconded Councillor Gault

That Council resolve to receive and note the Monthly Financial Report for October 2021 (Attachment 1).

CARRIED

7.4 Amendment C353 Part 1 - Kew individual heritage places and regrading - Adoption

The purpose of this report is to seek Council's adoption of Amendment C353Boro Part 1 to the Boroondara Planning.

On 8 November 2021, the Urban Planning Delegated Committee (UPDC) considered submissions received during exhibition of Amendment C353boro. As exhibited, Amendment C353boro proposed to:

- include to following properties in the Heritage Overlay:
 - 26 Goldthorns Avenue, Kew
 - 3-5 Florence Avenue, Kew
 - 97 Argyle Road, Kew; and
- Regrade 33 Thornton Avenue, Kew from a 'non-contributory' to a 'contributory' place in the Thornton Estate Residential Precinct (HO806).

Following consideration of submissions, the UPDC resolved to:

- Split Amendment C353boro into two (2) parts:

- Part 1 - inclusion of 3-5 Florence Avenue, Kew in the Heritage Overlay and regarding 33 Thornton Street, Kew from a non-contributory to a contributory place in HO806.
 - Part 2 - inclusion of 26 Goldthorns Avenue, Kew and 97 Argyle Road, Kew in the Heritage Overlay.
- Refer Amendment C353boro Part 1 to an ordinary meeting of Council for adoption.
 - Request the Minister for Planning to appoint an independent planning panel to consider submissions to Amendment C353boro Part 2.

In accordance with the UPDC resolution, officers recommend that Council adopt Amendment C353boro Part 1 and submit the amendment to the Minister for Planning for approval.

Adopting the amendment is the last stage of the planning scheme amendment process before an amendment is sent to the Minister for Planning for approval and gazettal.

Once gazetted, the changes proposed by Amendment C353boro Part 1 will come into effect, ensuring the properties' heritage values will continue to be considered part of the planning permit process.

MOTION

Moved Councillor Stavrou

Seconded Councillor Gault

That the Council resolve to:

- 1. Adopt Amendment C353boro Part 1 to the Boroondara Planning Scheme, as shown in Attachments 1 to 4, in accordance with Section 29(1) of the Planning and Environment Act 1987.**
- 2. Submit Amendment C353boro Part 1 to the Minister for Planning for approval in accordance with Section 31(1) of the Planning and Environment Act 1987.**
- 3. Following the Minister's approval of Amendment C353 Part 1, update two (2) reference documents to the Boroondara Planning Scheme (the Boroondara Schedule of Gradings Map and Boroondara Heritage Property Database) to include heritage gradings and relevant heritage citations for properties affected by Amendment C353boro Part 1.**
- 4. Authorise the Director Urban Living to undertake administrative changes to the amendment and associated planning controls that do not change the intent of the controls.**

CARRIED

7.5 Amendment C355boro - Currajong, 337 Auburn Road, Hawthorn - Adoption

The purpose of this report is seek Council's adoption of Amendment C355boro to the Boroondara Planning Scheme, to regrade *Currajong*, 337 Auburn Road, Hawthorn from contributory to individually significant in the Longford Estate and Environs Precinct.

Prior to the Panel Hearing which considered Amendment C308boro – Hawthorn East Heritage Gap Study, Council received a community nomination which sought to regrade *Currajong* from contributory to individually significant in the Longford Estate and Environs Precinct. The Panel considered submissions from Council, the property owner and other submitters, and expert evidence from Nigel Lewis, heritage consultant, in support of the community nomination. The Panel determined that whilst it *"was of a mind to recommend a regrading to individually significant"*, such a recommendation would be premature. The Panel raised concerns that fairness and natural justice may not have been available to all parties with respect to evidence presented through the late submission. The Panel also felt a wider comparative assessment would be required to resolve matters raised in relation to the architect, integrity and intactness of the property.

Following the Panel Hearing, officers commissioned Silberberg Consulting to review the community nomination. The review found the property meets the threshold for individual significance based on Criterion D (representativeness) and Criterion E (aesthetic significance). A revised citation for the property was adopted by the Urban Planning Delegated Committee (UPDC) on 3 May 2021 and officers requested authorisation from the Minister for Planning to prepare and exhibit Amendment C355boro. The amendment was authorised by officers from the Department of Environment, Land, Water and Planning (under delegation from the Minister for Planning) on 7 June 2021.

The amendment was publically exhibited from 26 July 2021 to 27 August 2021. Council received 25 generally supporting submissions and no opposing submissions. Three submissions were received which sought changes to the citation, which were not supported by Council's heritage consultant. Following discussions between officers and the relevant submitters, the changes have not been pursued. The only change to the exhibited citation is the correction of a spelling error in two footnotes and in the secondary sources. On this basis, officers do not require the amendment to be referred to an independent Planning Panel for consideration.

Officers recommend Council adopts the amendment and submits the amendment to the Minister for Planning for final approval. Once approved by the Minister, the property will be regraded to individually significant, on a permanent basis.

MOTION**Moved Councillor Stavrou****Seconded Councillor Gault****That Council resolves to:**

- 1. Adopt Amendment C355boro to the Boroondara Planning Scheme, as shown in Attachments 1 to 7, in accordance with Section 29(1) of the *Planning and Environment Act 1987*.**
- 2. Submit Amendment C355boro to the Minister for Planning for approval in accordance with Section 31(1) of the *Planning and Environment Act 1987*.**
- 3. Authorise the Director Urban Living to undertake minor administrative changes to the amendment and associated planning controls that do not change the intent of the controls.**

CARRIED**7.7 September 2021 Quarterly Performance Report**

The Quarterly Performance Report for September 2021 provides detailed reporting on financial and non-financial performance against both the Annual Budget 2021-22 and Boroondara Community Plan 2021-31 (incorporating the Council Plan 2021-25 and Municipal Public Health and Wellbeing Plan 2021-25) for the year.

Council's year to date surplus result of \$152.93 million is \$1.02 million above the Annual Original Budget of \$151.91 million. The favourable variance is attributable to a number of factors which are outlined in **Section 3 of Attachment 1 – Financial Overview**.

The overall financial position at 30 September 2021 is satisfactory with a working capital ratio of 4.12 to 1 (includes reserve funds of \$20.89 million and 0.5% cash contingency for emergency response works).

For the September quarter, 14% of the 2021-22 annual initiatives have been completed and a further 86% have been commenced. Achievements of the Strategic Indicators have been assessed at 82%. This has been impacted by ongoing COVID-19 restrictions as well as a telephony issue, which has now been rectified.

MOTION**Moved Councillor Stavrou****Seconded Councillor Gault****That Council resolve to:**

- 1. Receive and note the Quarterly Performance Report for September 2021 (Attachment 1).**

- 2. Adopt the proposed payment card surcharge rates for 2021-22 included in Attachment 2.**
- 3. Receive and note the results of the Local Government Performance Reporting Framework (LGPRF) indicators and measures (Attachment 3).**

CARRIED

7.8 Contract 2021/72 - Tree Root Services

This report seeks Council endorsement for the award of Contract No. 2021/72 - Tree Root Services. This contract will provide tree root services for an initial contract term of three (3) years with two possible extensions of two years each available up to a total contract period of seven (7) years. It is a schedule of rates panel supplier contract, and is a replacement for the existing contract which has reached the end of its term.

The estimated cost of this contract in 2021/2022 is \$972,000 excluding GST per annum which is in accordance with Council's proposed 2021/2022 budget.

MOTION

Moved Councillor Stavrou

Seconded Councillor Gault

That Council resolve:

- 1. To award Contract No. 2021/72, Tree Root Services to:**

Panel A - Consultancy

- ENSPEC Pty Ltd (ABN 92062909255)**
- Greenscape Tree Consulting Pty Ltd (ABN 28848635812)**

Panel B - Practical Works

- Rootcontrollers Pty Ltd (ABN 32065581133)**
- Citywide Service Solutions Pty Ltd (ABN 94066960085)**

at their tendered schedule of rates for an initial contract term of three (3) years with two possible extensions of two years each to a maximum contract term of seven (7) years. The estimated contract cost for the maximum term is \$7,484,400 (including GST). The cost to Council after the return of the GST Tax Input Credits is \$6,804,000.

- 2. To authorise the Director Places and Spaces to execute the contract agreements with the above contractors.**
- 3. To authorise the Director Places and Spaces to negotiate extensions to the contract with the above contractors up to the maximum seven (7) year term.**

- 4. To note that expenditure under this contract in 2021-2022 is in accordance with Council's adopted budget and expenditure in future years will be in accordance with the approved budget allocations.**

CARRIED

7.9 Contract 2021/101 - Drainage Pit Clearances & Associated Services

This report seeks Council endorsement for the award of Contract No. 2021/101, Drainage Pit Clearances and Associated Services. This contract will provide Council with proactive and reactive stormwater pit cleaning for an initial term of three years, with a possible further extension of two years, for a maximum contract term of five years. This contract is a direct replacement of Contract No. 2016/38, Drainage Pit Clearances and Associated Services, which has reached the end of its maximum term.

The estimated cost of this contract over the full five-year maximum contract term is \$776,193 (including GST), excluding any price adjustment due to the rise and fall. The estimated cost to Council after the return of GST Input Credits is \$705,630.

Expenditure in future years will be in accordance with approved budget allocations. Because of the value of the contract, it was publicly advertised in accordance with the requirements of section 186 of the *Local Government Act 1989*.

MOTION

Moved Councillor Stavrou

Seconded Councillor Gault

That Council resolve:

- 1. To award Contract No. 2021/101, Drainage Pit Clearances and Associated Services, to MetroEnviro Maintenance Pty Ltd (ACN 167 038 495) as Trustee for the Metro Enviro Maintenance Trust (ABN 73 418 120 610) trading as Eldarin Services Metro, at their tendered Schedule of Rates for an initial contract term of three years with possible extensions to a maximum contract term of five years.**

The estimated contract cost for a five-year maximum contract term is \$776,193 (including GST) and excluding any price adjustment due to rise and fall. The estimated cost to Council after return of GST Input Credits is \$705,630.

- 2. Authorise the Director Places and Spaces to execute the contract agreements with the above contractors.**
- 3. Authorise the Director Places and Spaces to negotiate extensions to the contract with the above contractors to the maximum five-year contract term.**
- 4. Note that expenditure under this contract in 2021-2022 is in accordance with Council's adopted budget, and expenditure in future years will be in accordance with the approved budget allocations.**

CARRIED

7.1 Procurement Policy 2021-25

The draft Procurement Policy 2021-25 ('Policy') provided at **Attachment 1** is designed to increase Council's autonomy, was developed in accordance with section 108 of the *Local Government Act 2020* ('the Act'), and must be adopted by the Council no later than 31 December 2021. The Policy establishes a framework that maximises the benefits that can be delivered through procurement activities, and is supported by a range of internal staff guides, procedures and manuals to complement the Policy to ensure compliance with the Act.

The Policy provides a contemporary approach to procuring goods, services and works into the future with greater emphasis on our community and Council's Corporate Social Responsibility in environmental, social, ethical and local economy outcomes. The Policy provides flexibility in the way staff undertake procurement while maintaining sound governance, risk and control oversights.

The new procurement thresholds (Schedule 1 of the Policy) align with delegated financial powers, making the procurement experience for staff one which is soundly and consistently based while providing greater flexibility and efficiency.

The draft Policy was reviewed by Maddock Lawyers to ensure compliance with the requirements stipulated in the Act.

MOTION

Moved Councillor Franco

Seconded Councillor Sinfield

That Council resolve to:

- 1. Adopt the Procurement Policy 2021-25 (Attachment 1).**
- 2. Note the Procurement Policy 2021-25 will become effective from 1 January 2022.**
- 3. Note for transparency the supporting procurement guidelines at Attachment 2 will be published on Council's website.**
- 4. That the Procurement Policy 2021-25 and the supporting procurement guidelines be issued for public consultation in February 2022 and at the conclusion of this period the matter come back before Council.**

CARRIED

7.3 Discontinuance of Roads and Reserves Policy

The purpose of the Discontinuance of Roads and Reserves Policy (the Policy) is to set out Council's approach to the discontinuance and disposal of roads and reserves.

The policy documents how roads no longer reasonably required for access, no longer required for the purpose for which they were originally set aside or roads being closed for any other purpose will be discontinued and sold or transferred. The policy is important to ensure transparency, equity and consistency in this process.

Council's Discontinuance of Roads and Reserves Policy was last reviewed by Council in 2015. Officers have completed a review of the 2015 policy and believe it has provided Council with a consistent and unambiguous framework for the progression and settling of road discontinuance projects. During the life of the policy, almost 50 discontinuance projects have been presented to Council for deliberation.

Key amendments to the existing policy are detailed in part 4 of this report.

MOTION

Moved Councillor Hollingsworth

Seconded Councillor Gillies

That Council resolve to adopt the reviewed policy document, Discontinuance of Roads and Reserves Policy (as annexed to the minutes).

CARRIED

7.6 Adoption of Amendment C342boro - Kew Hebrew Congregation Heritage Overlay

On 24 May 2020, Council received a request from a community member to investigate the heritage significance of the buildings located at 53 Walpole Street, Kew currently not protected by the Heritage Overlay. The nomination was lodged in response to a planning permit application to expand facilities for a school which proposed demolition of many of these buildings.

Following a heritage assessment by Council's heritage consultant Context, the Urban Planning Delegated Committee (UPDC) resolved on 7 September 2020 to adopt the heritage citation for the site and to seek authorisation from the Minister for Planning to prepare and exhibit a planning scheme amendment to introduce a permanent Heritage Overlay across the entire site.

Authorisation for Amendment C342boro was granted on 13 November 2020. Public exhibition of the amendment was carried out between 18 February 2021 and 19 March 2021.

On 17 May 2021, the UPDC considered a report on the exhibition of Amendment C342 and resolved to refer the amendment, and all submissions received, to an independent Planning Panel for consideration.

The panel held a public hearing from 22 to 30 July 2021 to consider all submissions received. Three submitters appeared before the panel.

Council received the panel's report on 13 September 2021 with the Panel supporting the extension of the Heritage Overlay over the entire site, subject to some changes to the exhibited heritage citation.

A concurrent planning permit assessment process has concluded, with the Minister for Planning directing Council to issue a planning permit for development of the site. The Minister also refused Council's request to implement an interim Heritage Overlay, on the grounds that this would prevent the permitted development.

While the Minister has granted a planning permit implying demolition of buildings on the site and has refused Council's interim Heritage Overlay request, for the time being the buildings remain in place. Issuing a planning permit is no guarantee the proposed works will take place. The property has been identified as having heritage significance worthy of protection by a Heritage Overlay. Until there is a material change to the buildings on the site, that significance remains.

At the UPDC meeting on 8 November 2021, the UPDC resolved to adopt a revised version of the heritage citation for the site, in accordance with the recommendations of the panel and to refer the amendment to a meeting of Council to be adopted. Officers have also updated the heritage citation to correct some factual errors based on further feedback provided by the Trustees of Norman Smorgon House following the UPDC meeting.

It is now recommended that the Council resolve to adopt Amendment C342boro to the Boroondara Planning Scheme, and to submit the amendment to the Minister for Planning for approval and incorporation into the Boroondara Planning Scheme.

MOTION

Moved Councillor Stavrou

Seconded Councillor Sinfield

That the Council resolve to:

- 1. Adopt the revised heritage citation as shown at Attachment 1.**
- 2. Adopt Amendment C342boro to the Boroondara Planning Scheme, as shown in Attachments 2, 3 and 4, in accordance with Section 29(1) of the *Planning and Environment Act 1987*.**
- 3. Submit Amendment C342boro to the Minister for Planning for approval in accordance with Section 31(1) of the *Planning and Environment Act 1987*.**
- 4. Authorise the Director Urban Living to undertake minor administrative changes to the amendment and associated planning controls that do not change the intent of the controls.**

CARRIED

7.10 Contract 2021/226 - Retail Energy (Procurement Australia contract 2506-0641) - Electricity - Small Sites

Council is currently party to a number of energy contracts managed and facilitated by Procurement Australia, namely for electricity supply (large markets) and electricity supply to public lighting, both through a Power Purchase Agreement (PPA) for green electricity. Small market electricity is currently provided through a standard supply contract. The expiration dates for these contracts are varied.

In June 2021, Council, along with a range of other councils appointed Procurement Australia as its agent to undertake an open tender process with the intention to enter into Energy Supply Agreements with successful energy retailers. This report focuses on the evaluation for retail energy as it applies to electricity supply (small markets) for a term of three years. The estimated cost of this Contract for a three-year term including the supply of GreenPower® (renewable energy from an accredited generation source) is \$1,145,100 (including GST) and excluding any price adjustment due to rise and fall. The cost to Council after the return of the GST Tax Input Credits is \$1,041,000. Expenditure in future years will be in accordance with approved budget allocations.

Procurement Australia held a competitive tendering process to establish Energy Supply Agreements with an energy retailer or retailers to service members' requirements in New South Wales, South Australia, Queensland, ACT, Tasmania and Victoria. This report seeks for Council endorsement to engage AGL as the Victorian member's energy retailer for electricity supply (small markets) under Procurement Australia Contract No. 2506-0641 satisfying the requirements of the Local Government Act 2020.

MOTION

Moved Councillor Hollingsworth

Seconded Councillor Franco

That Council resolve:

- 1. To award Contract No. 2021/226, Retail Energy - Electricity Small Sites, to:**
 - AGL Sales Pty Limited (ACN 88 090 538 337)**

at their tendered schedule of rates for an initial contract term of there (3) years. The estimated contract cost for the maximum term is \$1,145,100 (including GST). The cost to Council after the return of the GST Tax Input Credits is \$1,041,000.
- 2. To authorise the Director Places and Spaces to execute the contract agreements with the above contractors.**
- 3. To note that expenditure under this contract in 2021-22 is in accordance with Council's adopted budget and expenditure in future years will be in accordance with the approved budget allocations.**
- 4. To note the total estimated cost over the 3-year period allows for the supply of GreenPower electricity consistent with Council's Climate Action Plan.**

CARRIED

7.11 Commuter Car Parking- Feasibility Update and Request to Progress to Community Engagement

This report seeks Council endorsement to progress the Federal Government Funded Commuter Car Parking (CCP) projects to the consultation and engagement stage. Pending Council support, the feasibility and survey findings shall be communicated as part of a broader community consultation and engagement phase. This early work is comprised of two main components: technical feasibility and preliminary community engagement survey.

Findings from the technical feasibility include high level technical design, including functional layout with proposed car parking yield, traffic impact studies, cost estimates, planning constraints and expected delivery timelines and impacts.

The preliminary community engagement survey provides an early indication of community sentiments regarding additional car parking in each precinct and likely future use and distance people may travel to access these car parks.

MOTION

Moved Councillor Gault

Seconded Councillor Gillies

That Council:

- 1. Endorse the draft Commuter Carpark Projects as outlined in this report at**
 - a. Glenferrie (Attachment 3)**
 - b. Canterbury (Attachment 4)**
 - c. Camberwell (Attachment 5)**

for the purpose of community consultation commencing 14 December 2021 – 10 February 2022.

- 2. Following the consultation phase and giving consideration to the community feedback, receive a further report at a future Council Meeting in 2022 giving consideration to progressing each project.**

CARRIED

Division

Councillor Franco called for a division

Affirmative

Councillor Jim Parke
Councillor Felicity Sinfield
Councillor Wes Gault
Councillor Di Gillies
Councillor Lisa Hollingsworth
Councillor Jane Addis
Councillor Susan Biggar
Councillor Nick Stavrou

Negative

Councillor Victor Franco

The Mayor declared the Motion **CARRIED**

Note - Councillors agreed a copy of the Council resolution would be provided by Council officers to the Member for Kooyong, the Hon Josh Frydenberg MP.

7.12 Draft Boroondara Bicycle Strategy: Community consultation

The Boroondara Bicycle Strategy sets out the framework to improve bicycle infrastructure and increase mode share in the City of Boroondara. The current Bicycle Strategy was adopted in 2008 and is due for renewal.

The development of a new Boroondara Bicycle Strategy commenced with an initial phase of community and stakeholder engagement undertaken during the 2019/2020 financial year to identify issues and opportunities for consideration. This work to date has informed the development of the draft Strategy (**Attachment 1**).

Over the past 10 years through the implementation of the previous strategy actions, there have been significant changes in cycling infrastructure across the city, safety improvements and significant growth in cycling participation for a range of purposes. Coupled with the COVID-19 pandemic, use of bicycles (including their sales) has grown exponentially.

The draft Boroondara Bicycle Strategy has been developed to drive the improvement and support further expansion of Boroondara's bicycle network over the next 10-year period.

The draft Strategy includes a draft Implementation Plan (**Attachment 2**) outlining a range of recommended infrastructure projects and other initiatives to support safer and connected bicycle routes and increase bicycle mode share across the municipality. The draft Implementation Plan outlines all actions proposed to be undertaken over the 10-year life of the Strategy, with a specific focus on high-priority 'Stage 1' actions to be implemented in the first 2 calendar years (2022 and 2023), including high level cost estimates.

Community consultation is proposed for the draft Strategy and draft Implementation Plan. A refined draft Strategy and draft Implementation Plan will then be presented to Council for formal consideration.

Following adoption of the new Strategy, the recommended actions identified within the Implementation Plan would be investigated and implemented over the following 10 years through operational and capital works budgets, considered and approved through Council's annual budget process.

Officers would also seek to advocate for or make use of any funding opportunities arising through State or Federal Government programs, where applicable.

A new Implementation Plan would be developed every 2 years to ensure the actions in the Strategy are delivered progressively over the life of the document.

MOTION**Moved Councillor Biggar****Seconded Councillor Franco****That Council:**

- 1. Endorse the draft Boroondara Bicycle Strategy (Attachment 1) and draft Implementation Plan (Attachment 2) for the purpose of community consultation from 14 December 2021 until 28 February 2022.**
- 2. Following the consultation phase and consideration of feedback receive a further report presenting the Bicycle Strategy and Implementation Plan at a future Services Delegated Committee meeting in 2022 seeking adoption.**

CARRIED**7.13 Proposed CEO Employment and Remuneration Policy**

In accordance with the Local Government Act 2021, all Victorian Councils are required to develop and adopt a CEO Employment and Remuneration Policy by 31 December, 2021.

The proposed Policy meets the requirements of the Act and has been developed based on a template provided to the sector by Maddocks. Policy provisions are consistent with provisions within the contract of the current CEO.

The Chief Executive Officer declared a general conflict of interest in this item in accordance with section 128 of the Local Government Act 2020.

The Chief Executive Officer left the chamber at 7.50pm prior to the consideration and vote on this item.

Procedural motion - Adjournment**Moved Councillor Parke****Seconded Councillor Sinfield****That the Council meeting be adjourned.****CARRIED**

The Council meeting was adjourned at 7.57pm

Procedural motion - Resumption

Moved Councillor Parke

Seconded Councillor Sinfield

That the Council meeting be resumed.

CARRIED

The Council meeting was resumed at 8.08pm with all councillors present except Councillor Thompson and Councillor Watson.

MOTION

Moved Councillor Parke

Seconded Councillor Sinfield

That Council resolve to adopt a CEO Employment and Remuneration Policy as annexed to the minutes, subject to the Committee being:

- a) A whole of Council Committee (i.e. 11 Councillors)**
- b) A Delegated Committee in accordance with the Local Government Act 2020**

CARRIED

The Chief Executive Officer entered the chamber at 8.10pm and resumed his seat.

8. General business

8.1 Leave of Absence - Councillor Thompson and Councillor Watson

MOTION

Moved Councillor Sinfield

Seconded Councillor Parke

Council resolve to grant Councillor Thompson and Councillor Watson a leave of absence from Council for Monday 13 December 2021.

CARRIED

8.2 Appreciation to Manager Governance and Legal

Councillor Gault and **Councillor Sinfield** noted the Manager Governance and Legal had resigned because of his success in obtaining a more senior position at another Council.

Councillor Gault and **Councillor Sinfield** on behalf of councillors thanked the Manager Governance and Legal for his dedicated and loyal service to Council.

8.3 Maintenance Requests - Parks and Gardens

Councillor Sinfield informed Council she had received numerous requests for maintenance to be undertaken at various Council parks and gardens across the municipality.

The Director Places and Spaces advised Council's contractor had experienced workforce issues arising from COVID-19 and Council had provided formal notice to the contractor regarding their obligations.

The Chief Executive Officer requested councillors forward any maintenance requests they receive to the administration to action.

Councillor Franco also stated he had received correspondence regarding this matter and welcomed the notice being issued to the contractor.

8.4 Appreciation to Executive Manager People Culture and Development

The Mayor, Councillor Addis noted the Executive Manager People Culture and Development had resigned from Council to further pursue her career aspirations.

Councillor Addis thanked the Executive Manager People Culture and Development for her service to Council.

9. Urgent business

Nil

10. Confidential business

10.1 Waste Reforms

Procedural Motion - Closure of meeting to the public

MOTION

Moved Councillor Sinfield

Seconded Councillor Biggar

1. That, in accordance with sections 66(1) and 66(2)(a) of the Local Government Act 2020, the meeting be closed to members of the public for the consideration of the agenda item titled:

10.1 Waste Reforms

2. This agenda item is confidential information for the purposes of section 3(1) of the Local Government Act 2020 because:
 - (a) the item is Council business information, being information that would prejudice the Council position in commercial negotiations if prematurely released (section 3(1)(a)); and
 - (b) this ground applies because the agenda item concerns commercial negotiations and the premature disclosure of the information would be prejudicial to the interests of the Council.

CARRIED

The Council meeting was closed to the public at 8.22pm.

Procedural Motion - Reopening of meeting to the public**MOTION****Moved Councillor Sinfield****Seconded Councillor Biggar****That the Council meeting be reopened to the public.****CARRIED**

The Council meeting reopened to the public at 8.25pm with all councillors present except for Councillor Thompson and Councillor Watson.

The meeting concluded at 8.26pm**Confirmed****Chairperson**

Date

MINUTES ATTACHMENTS



Council

Monday 13 December 2021

Attachments annexed to the minutes for the following items:

- 4. Informal Meetings of Councillors
- 7.3 Discontinuance of Roads and Reserves Policy
- 7.13 Proposed CEO Employment and Remuneration Policy

MINUTES ATTACHMENTS



Council

Monday 13 December 2021

Attachments as annexed to the resolution:

4. Informal Meetings of Councillors

4 Informal Meetings of Councillors

Abstract

Chapter 6 of the Council Governance Rules requires a summary of the matters discussed at a meeting of Councillors that:

- is scheduled or planned for the purpose of discussing the business of Council or briefing Councillors;
- is attended by a majority of councillors;
- is attended by at least one member of Council staff; and
- is not a Council meeting, Delegated Committee meeting or Community Asset Committee meeting

are tabled at the next convenient Council meeting.

The attached record of Informal Meetings of Councillors (**Attachment 1**) is reported to Council in accordance with this requirement.

Officers' recommendation

That Council resolve to receive and note the record of Informal Meetings of Councillors, as annexed to the minutes.

Assembly details	Councillor attendees	Officer attendees	Matters discussed	Conflict of Interest disclosures
Councillor Briefing & Discussion 15 November 2021	Cr Garry Thompson Cr Jim Parke Cr Felicity Sinfield Cr Victor Franco Cr Wes Gault Cr Di Gillies Cr Jane Addis Cr Cynthia Watson Cr Susan Biggar Cr Nick Stavrou	Phillip Storer (CEO) Daniel Freer (DPS) Carolyn McClean (DCS) Scott Walker (DUL) Mans Bassi (aDC&T) Carolyn Terry (EMPCD) David Thompson (MG&L) Nick Lund (MLC) Jim Hondrakis (MTT) Andrew McHugh (MHWS) Sam Taylor (SCSR) Kirstin Ritchie (CG) Michelle Forster (AAL) Bhushan Jani (CTM) Oliver Mihaila (STE) Megan Levvey (CL) Sean Buncle (CLO) Helen Pavlidis (SGO)	<ul style="list-style-type: none"> Aged Services Reform Update 2021 Draft 2022 Meeting Cycle Draft Boroondara Bicycle Strategy Canterbury Sportsground Pavilion Renewal Local Government Amendment Rates and Charges Bill En Bloc Motions Council and Delegated Committee meetings 	Nil
Councillor Briefing & Discussion 29 November 2021	Cr Garry Thompson Cr Jim Parke Cr Felicity Sinfield Cr Victor Franco Cr Wes Gault Cr Di Gillies Cr Lisa Hollingsworth Cr Jane Addis Cr Cynthia Watson Cr Susan Biggar Cr Nick Stavrou	Phillip Storer (CEO) Daniel Freer (DPS) Carolyn McClean (DCS) Scott Walker (DUL) Mans Bassi (aDC&T) Carolyn Terry (EMPCD) Amy Montalti (CFO) David Thompson (MG&L) Christine White (MSP) David Shepard (MESOP) Nick Lund (MLC) Jennifer Reid (MST&P) Kirstin Ritchie (CG) Rebecca Dewar (aCRPS) Alannah Matheson (CTR) Ashlee Camm (ODL) Elizabeth Manou (SGO)	<ul style="list-style-type: none"> Tree Renewal Commuter Car Parking September 2021 Quarterly Performance Report Sponsorship & Partnership Policy Discontinuance of Roads and Reserves Policy Proposed CEO Employment and Remuneration Policy Seating Arrangements - Council Chamber Maintenance Officer Reports Councillor Equipment 	Phillip Storer

MINUTES ATTACHMENTS



Council

Monday 13 December 2021

Attachments as annexed to the resolution:

7.3 Discontinuance of Roads and Reserves Policy

Discontinuance of Roads and Reserves Policy

2021

Responsible Directorate: Chief Financial Office

Authorised By: Council

Date of Adoption: <Date>

Review Date: <Date>

Policy Type: Council



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1 Introduction

The Council owns or controls property as custodian on behalf of the community. The Council is committed to the responsible management of Council's assets and resources.

1.1 Purpose

This policy sets out Council's approach to the discontinuance and disposal of roads and reserves.

This policy documents how the discontinuance and disposal of roads that are *no longer reasonably required for access* or for reserves that are no longer reasonably required for the purpose they were originally set aside for, or no longer required for any other public purpose, will be handled in a transparent and equitable manner.

1.2 Scope

This policy applies to all roads, reserves and other similar land as defined below:

- "Road" is as defined in Section 3 of the *Local Government Act 1989*. The term "road" includes, but is not limited to, a right of way, street, easement of way or footpath.
- "Reserve" means a reserve (such as a drainage reserve) or other similar land for which Council has the power to deal with under section 24A of the *Subdivision Act 1988*, but does not include a reserve set aside for recreational purposes.

These roads and reserves include, but are not limited to:

- Vehicular or pedestrian roads and rights of way.
- Constructed trafficable roads, where part of those roads may be no longer reasonably required for public use.
- Drainage reserves and other similar land but does not include Recreation Reserves.

1.3 Corporate framework

The Policy supports Council's Mission and Vision as it is consistent with the *Boroondara Council Plan 2021-31*:

Theme 7: Leadership and Governance, Strategic objective 7 - *Ensure decisions are financially and socially responsible through transparent and ethical processes.*

2 Background

2.1 Context

It is estimated that there are up to 2000 roads in the municipality, estimated at over 100 kilometres in length or 40 hectares in area. Of these, approximately 30 per cent are constructed (paved) and 70 per cent unconstructed.

Unconstructed roads typically arise from earlier private subdivisions of broad acres into house blocks and the creation of access roads from the original title. When individual house blocks were sold and removed from the parent title, eventually only



roads and reserves remained. A parent title may be, and on occasion has been sold, however, public access rights remain.

Under section 7B of the *Limitations of Actions Act 1958*, a person cannot claim land by adverse possession in respect of Council titled land. Not all road or reserve property is held in Council title.

Roads or reserves enclosed within abutting properties for more than 15 years may be claimed by adverse possession however the road or reserve status is not removed unless occupation of more than 30 years can be established. The original property owner is precluded from reclaiming ownership. Due to the cost of claiming adverse possession and time involved, sale by Council can be a cost effective means of acquiring ownership by interested parties without relying on expensive and time consuming legal processes.

Council does, from time to time, become aware of unauthorised occupation of roads and reserves. Council does not condone unauthorised occupation of land and will act to ensure that unauthorised occupation is not rewarded or encouraged.

1) Occupation of Council titled land.

Where Council becomes aware of the occupation of a road or a reserve on Council titled land, it will first determine whether the road or reserve is reasonably required.

a) If the road or reserve is no longer reasonably required:

- (i) Council will seek to discontinue the road or reserve and negotiate the sale of the land in line with Principles 1 or 2 under section 4.2.8 of this Policy. In some instances Principle 4 may be appropriate; and
- (ii) If the land is not sold Council will consider ordering the occupier to vacate the land. If a request to vacate is not complied with, legal advice shall be sought as to how to achieve restoration of the occupied land to Council control.

b) If the road or reserve is reasonably required, the occupiers will be requested to vacate the land. If the land is not vacated, legal advice shall be sought as to how to achieve restoration of the occupied land to Council control.

2) Occupation of non-Council titled land (e.g. still in the name of the original subdivider).

Where Council becomes aware of the occupation of a road or reserve on non-Council titled land, it will first determine whether the road or reserve is reasonably required.

a) If the road or reserve is no longer reasonably required:

- (i) Council will seek to discontinue the road or reserve and negotiate the sale of the land in line with Principles 1, 3 or 4 under section 4.2.8 of the Policy;
- (ii) Council will take title to any unsold land; and
- (iii) For land that Council has taken title, Council will consider ordering the occupier to vacate the land. If a request to vacate is not complied with,



legal advice shall be sought as to how to achieve restoration of the occupied land to Council control.

- b) If the road or reserve is reasonably required, Council will consider ordering the occupier to vacate the land. If an order to vacate is not complied with, legal advice shall be sought as to how to achieve restoration of the occupied land to Council control.
- c) If the road or reserve is considered minor, provides little amenity benefit, is not used or required as a thoroughfare or access to surrounding properties and is of little monetary value, Council may take no action.

3) Continued occupation of land.

For any land, Council titled or non-Council titled, that has been deemed not reasonably required and the occupier continues to occupy the land, the occupier will be responsible for the continued maintenance of the land including but not limited to all fencing, vegetation and structures on the land

2.2 Policy environment

As part of the road network, roads and reserves were developed to satisfy an historical need and were documented in early plans of subdivision. In most cases this land is still required for access or other strategic purposes and as such Council will ensure the land remains open and available to the public and is kept free of any encroachment or obstruction.

Council will retain public ownership of roads and reserves where;

- they continue to add character to the public realm;
- have a future strategic purpose or there may be a future opportunity to activate the road or reserve;
- may improve the walkability and permeability of the public realm;
- they improve the amenity of the area;
- they provide options for improved environmental outcomes;
- balances are required between competing needs (private vs public ownership); or
- the historical element of the road or reserve continues to be celebrated.

The Council may support the discontinuance and sale of a road or reserve for reasons including the following;

- the road or reserve is not required for general public use;
- it may result in amenity improvements particularly where the land becomes a haven for anti-social behaviour or a place to dump rubbish;



- it may result in a safer and more secure neighbourhood by reducing access points to properties;
- it may result in a better use of land;
- Council, on behalf of the community, may obtain a fair and equitable return on land that was originally set aside for a public purpose;
- Council will reduce its maintenance burden;
- it may rectify an anomaly which will result in greater certainty of property ownership and associated rights;
- the land has no strategic value to Council;
- the road or reserve has no heritage value;
- the road or reserve is not required to maintain the urban character of the area;
or
- the road or reserve is not required for access to other premises.

3 Methodology

A typical road or reserve discontinuance includes the procedural steps outlined in Appendix 1 (roads) and Appendix 2 (reserves).

3.1 Consultation

Under this policy consultation will be undertaken about specific land parcels with all internal and external stakeholders in line with Council's *Community Engagement Policy* prior to any road or reserve being discontinued.

The relevant Ward Councillor will also be kept informed.

4 Policy statement

4.1 Policy Aims

Through this policy, Council seeks to provide a consistent and efficient process for the discontinuance and sale of roads and reserves, and a high quality customer service to all those affected. Council will work towards this outcome by providing the community with clear direction about the circumstances in which roads and reserves will be discontinued.

Council supports the following aims:

To discontinue and dispose of roads and reserves no longer required by the public or Council, abutting residents or considered surplus, subject to appropriate consultation and adequate commercial return.

Not to discontinue and sell any road or reserve adjoining public open space unless extenuating circumstances exist. Fencing along the open space proportion of any road or reserve abutting open space will generally be removed.

Not to discontinue a road or reserve with heritage value.



Where a road or reserve is no longer reasonably required for any public purpose, Council's preference is to discontinue and dispose of the entire road or reserve at one time rather than engage in a series of individual transactions over a period of time.

Council will take title to land from a discontinued road that remains unsold.

Council will consider ordering the occupiers of a discontinued road or reserve to vacate the land. If a request to vacate is not complied with legal advice shall be sought as to how to achieve restoration of the occupied land to Council control.

4.2 Discontinuance Conditions

4.2.1 Conditions of Sale

The sale price will be in accordance with Council's Principles outlined under 4.2.8 Valuation of Land of the policy.

Council reserves the right to place any easement, covenant or other condition deemed required on the land to be sold.

The title to the land from the discontinued road or reserve must, within 12 months of the transfer, and at the purchasers' expense, be consolidated with the title of the purchaser's main property, except where the purchasers' property is subject to an Owners Corporation.

4.2.2 Costs and GST

1) Costs

In addition to the purchase price, the purchaser of the land shall be responsible for payment of their own conveyancing costs, and for all costs associated with the creation and lodgement of any easements, covenants or other conditions over the land deemed necessary.

Where the sale of the land contains infrastructure:

- Any costs of relocating the assets of any service authority are to be borne by the purchaser of the land.
- Any bluestone pitchers or other re-useable materials remain the property of the Council and the cost of recovery is to be apportioned to the purchasers.
- Any new or replacement drainage, and other associated costs are to be apportioned equally to those abutting owners involved in the road or reserve discontinuance and sale.
- Any required fencing or special conditions relating to special or unique fencing requirements shall be costs borne by the purchaser. This would be particularly relevant in ensuring that overland drainage flow is not restricted in any way as a direct result of the discontinuance and sale of a road or reserve to adjoining owners.



2) GST

In accordance with the provisions of the GST Act 1999, the sale of discontinued roads and reserves will generally attract GST. This obligates Council to ensure that the sale price of such land is GST inclusive.

4.2.3 Division of Land

The division of unoccupied roads and reserves will be on an equal share basis to adjoining property owners. Unless exceptional circumstances apply, Council will provide all abutting owners with first opportunity to purchase land from a discontinued road or reserve adjoining their property before seeking offers from other parties.

If an adjoining property owner is not interested in purchasing part of the land adjoining their property, the "full" area may be offered to other adjoining property owners for purchase.

Roads and reserves that have been occupied for less than 15 years (insufficient time to accrue possessory rights) may be divided as though the land were unoccupied.

Roads and reserves that have been exclusively occupied for more than 15 years (so as to accrue possessory rights) will be offered to the occupier in the first instance.

4.2.4 Gazetting a Notice of Discontinuance

Gazetting of a notice of discontinuance frees the land from all private and public rights and encumbrances except for certain rights and powers of the public authorities.

Unless the subject road is on Crown land, the gazetting vests ownership of the land in Council, and Council can subsequently sell the land or retain it for municipal purposes.

The discontinuance of a road or reserve is viewed as a significant action because of the potential negative impacts a loss of a legal right of way or light and air rights can cause.

4.2.5 Conditional Agreements

If a road or reserve is to be discontinued and the land sold, the statutory discontinuance procedures will only be commenced once a Conditional Agreement, in the form of an Offer to Purchase, has been secured from the intended purchaser/s.

4.2.6 Sale of land previously discontinued

If Council intends to sell land from a previously discontinued road or reserve which was not sold at the time of the discontinuance, it will comply with the requirements of section 114 of the Local Government Act 2020 including a community engagement process in accordance with its Community Engagement Policy.



4.2.7 Title to unsold land

1) Roads

The discontinuance and sale of a road does not normally involve a plan of subdivision. The land 'vests' in Council on the date that the discontinuance is published in the Government Gazette.

A Title Plan is used to allocate/divide the land when transfers reach Land Use Victoria and to record easements 'saved' as part of the discontinuance process.

Council will take title to all unsold discontinued sections of road. Once Council becomes the registered proprietor (Council titled land) occupiers are no longer able to claim the land by adverse possession.

2) Reserves

The discontinuance and sale of a reserve or similar land normally involves a plan of subdivision under section 24A of the *Subdivision Act 1988*.

Upon registration of the plan of subdivision at Land Use Victoria, Council will become the registered proprietor of all Lots in the subdivision (Council titled land), and occupiers will no longer be able to claim the land by adverse possession.

4.2.8 Valuation of Land

The following principles apply when determining the sale price of land from a discontinued road or reserve.

Principles 3 and 4 will not apply to the sale of land from Council titled roads or reserves.

Principle 1

Council will offer land from a discontinued road or reserve to the abutting property owners for purchase at the current market value, as determined by Council's contract valuers. The valuations under this policy will reflect the additional value the subject parcel of land will add to the value of the existing property of the potential acquirer and will take into consideration the market value of land within the immediate locale having regard to the location of the subject land and characteristics including whether the land:

- Is incapable of being developed in its own right given the small land area;
- Is only marketable to the adjoining owners;
- Is long and narrow, and/or;
- Is encumbered with an easement.

Principle 2

When a property owner can demonstrate exclusive occupation of a Council titled road or reserve for 15 years or longer, the purchase price may be offered at a price based on 50% of the market value determined under Principal 1.

A Council report seeking authorisation for the price negotiated will occur.



Evidence of exclusive occupation will include the signing of a statutory declaration together with any other supportive documentation. Council's GIS aerial photograph records will also provide information.

Principle 3

When a property owner can demonstrate exclusive occupation of a non-Council titled road or reserve for 15 years or longer and the purchase price of a parcel of land is substantially higher than the cost of an adjoining owner acquiring the land via an adverse possession claim (where adverse possession claim criteria are satisfied) the purchase price may, be discounted to an amount equal to adverse possession costs (estimated at \$9,000 as at the date of adoption of this policy). This amount will be reviewed annually to ensure it reflects the current costs of an adverse possession claim.

A Council report seeking authorisation for the price negotiated will occur.

Principle 4

In exceptional circumstances Council may consider further price negotiation. Exceptional circumstances can include, but are not limited to circumstances where the size of a parcel of land and the resultant purchase price based on the area, may prohibit a reasonable chance of Council being able to sell that parcel to any other party.

A Council report seeking authorisation for the price negotiated will occur.

4.3 Recovery of Costs

Council will endeavour to recover the costs associated with it undertaking the discontinuance procedures in certain circumstances, including instances where:

- the purchase price of the land, based on market value alone, is insufficient to cover Council's costs.
- where a commercial development or gain is involved.
- in a large or complex project where significant costs are likely to be incurred.

5 Implementation and monitoring

5.1 Evaluation

It is anticipated this policy will be reviewed within 5 years unless arising circumstances require a review sooner or later than this.



5.2 Accountabilities

For all queries or feedback regarding this policy, please use the contact details for the responsible department below.

Position Title	Contact number	Contact department email
Coordinator Revenue and Property Services	9278 4325	revenue@boroondara.vic.gov.au

5.3 Financial implications

This policy aims to provide Council with a more relevant pricing structure to facilitate the disposal of roads and reserves that are no longer required for public access thus generating once off income for Council.

Each sale of a discontinued right of way will realise proceeds for council and incur a small level of legal and conveyancing costs. In the event that an individual transaction cannot cover the costs to be incurred, Council will not proceed with the transaction.

Where requested, Council will consider receiving payments for discontinued land by instalments on the condition that the Transfer of Land will not occur until full and final payment has been received.

6 References

6.1 Related documents

Legislation

Limitations of Actions Act 1958

Local Government Act 1989

Local Government Act 2020

Road Management Act 2004

Planning and Environment Act 1987

Subdivision Act 1988

Transfer of Land Act 1958

Policy

Community Engagement Policy 2021

6.2 Definitions

Council	Indicates reference to the City of Boroondara as a geographical area and also refers to the entity which has the authority to make decisions on behalf of the Boroondara community.
Discontinuance	means the exercise of power under clause 3 of Schedule 10 of the <i>Local Government Act 1989</i> with respect to a road and the



	vesting and removal of reserve status under section 24A of the <i>Subdivision Act 1988</i> .
Encroachment	means an intrusion on to another's property rights by building or occupation.
Obstruction	means the placement of a fence, gate, equipment or any other matter or material to prevent lawful access to a road.
Road	Road is as defined in Section 3 of the Local Government Act, 1989. The term "road" includes but is not limited to a right of way, street, easement of way or footpath.
Reserve	Reserve means a reserve (such as a drainage reserve) or other similar land for which Council has the power to deal with under Section 24A of the Subdivision Act 1988, but does not include a reserve set aside for recreational purposes.

Appendix 1 Road Discontinuance Process Steps

Step 1

Following either an application from an abutting property owner or an internal enquiry, determine whether or not the road is reasonably required for access.

Step 2

Consult all necessary internal Council departments and external Service Authorities seeking comments on the proposal including any assets within the land or requirements over the land.

Step 3

Obtain a valuation for the land and consult all abutting property owners to establish support or otherwise for the discontinuance of the road and sale of the land.

Step 4

Secure conditional agreements, in the form of an Offer to Purchase, from property owners entitled and interest in purchasing the land.

Step 5

Providing sufficient interest exists, present a report to Council recommending that Council commence the formal procedures under section 206, clause 3 of Schedule 10 of the *Local Government Act 1989*.

Step 6

If the recommendation is adopted, give public notice of Council's intention to discontinue and sell the road in both a newspaper and on Council's website. The public notice will inform interested parties of their right to make a submission to Council on the proposal. In addition, all abutting property owners are to be advised of the proposal in writing and provided with a copy of the public notice.

Step 7

If any submissions are received within 28 day of the public notice, a further report will be presented to Council's Services Special Committee to enable the consideration of any written and/or verbal submissions and for a decision on whether to discontinue and sell the road in full, in part or not to discontinue and sell the road.

Step 8

If no submissions are received, the Chief Executive Officer, or any such other person as the Chief Executive Officer approves, will determine whether to discontinue and sell the road in full, in part or not to discontinue and sell the road.

Step 9

If Council resolves to discontinue and sell the road, place a notice of discontinuance in the Victoria Government Gazette.

Step 10

Sell/Transfer the land to adjoining property owners and Council to take title to any unsold land.

Appendix 2 Reserve Discontinuance Process Steps

Step 1

Following either an application from an abutting property owner or an internal enquiry, determine whether or not the reserve or similar land is reasonably required for the purpose it was originally required for.

Step 2

Consult all necessary internal Council departments and external Service Authorities seeking comments on the proposal including any assets within the land or requirements over the land.

Step 3

Obtain a valuation for the land and consult all abutting property owners to establish support or otherwise with a discontinuance of the road and sale of the land.

Step 4

Secure conditional agreements, in the form of an Offer to Purchase, from property owners entitled and interest in purchasing the land.

Step 5

Providing sufficient interest exists, present a report to Council recommending that Council commence the formal procedures:

- Part A: Sale of Land Procedures under section 114 of the *Local Government Act 2020*.
- Part B: Subdivision procedures under part 4 of the *Planning & Environment Act 1987* (Vic) and section 24A of the *Subdivision Act 1988* (Vic)

PART A: Sale of Land Procedures

Step 6

If the recommendation is adopted, give public notice of Council's intention to sell the land from the reserve in both a newspaper and on Council's website. The public notice will inform interested parties of their right to make a submission to Council on the proposal. In addition, all abutting property owners are to be advised of the proposal in writing and provided with a copy of the public notice.

Step 7

If any submissions are received within 28 day of the public notice, a further report will be presented to Council's Services Special Committee to enable the consideration of any written and/or verbal submissions and for a decision on whether or not to sell the land.

Step 8

If no submissions are received, the Chief Executive Officer, or any such other person as the Chief Executive Officer approves, will determine whether or not to sell the land.

PART B: Subdivision Procedures

Step 9

If Council resolves to sell the land, commence the subdivision procedures including preparation and certification of a plan of subdivision to vest the reserve in Council, remove (discontinue) reserve status from the land and subdivide the land into various lots.

Step 10

Once the Plan of Subdivision is registered at Land Use Victoria, sell/transfer the land to the adjoining property owners. Council will retain title to any unsold land.

MINUTES ATTACHMENTS



Council

Monday 13 December 2021

Attachments as annexed to the resolution:

7.13 Proposed CEO Employment and Remuneration Policy

CEO EMPLOYMENT AND REMUNERATION POLICY

1. Purpose of Policy

This is the Chief Executive Officer Employment and Remuneration Policy (**Policy**) of **City of Boroondara (Council)**, made in accordance with section 45 of the *Local Government Act 2020*.

This Policy provides for the following matters which Council is responsible for under the Act or as a requirement of this Policy:

- (a) the recruitment and appointment of the Chief Executive Officer ensuring that:
 - (i) the recruitment decision is based on merit;
 - (ii) the recruitment processes support transparency in the recruitment process and the public advertising of the position; and
 - (iii) regard is had to gender equity, diversity and inclusiveness;
- (b) approving the Contract of Employment entered into between Council and the Chief Executive Officer;
- (c) the provision of independent professional advice in relation to the matters dealt with in the Policy;
- (d) the monitoring of the Chief Executive Officer's performance;
- (e) an annual review of the Chief Executive Officer's performance; and
- (f) determining the Chief Executive Officer's remuneration.

2. Date of Commencement and Review

- 2.1 This Policy commences operation on 14 December 2021.

3. Definitions

- 3.1 In this Policy, unless the context suggests otherwise the following words and phrases mean:

Act means the *Local Government Act 2020*.

Annual Review Report has the meaning given in paragraph 11.3

Chief Executive Officer or **CEO** means the Chief Executive Officer of Council.

Committee means the CEO Employment and Remuneration Delegated Committee established under this Policy.

Contract of Employment means the contract of employment between Council and the CEO, including any schedules.

Council means **City of Boroondara**

Councillors means the individuals holding the office of a member of Council **City of Boroondara**.

Council meeting has the same meaning as in the Act.

Executive Search Consultant means a consultant with specialist expertise in sourcing and evaluating candidates for senior executive roles.

Independent Advisor means the consultant appointed by Council from time to time to provide independent advice in accordance with section 45(2)(a) of the Act.

KPIs means Key Performance Indicators or performance criteria however described.

Mayor means the Mayor of Council.

Performance Plan means the annual performance plan setting out KPIs for the CEO.

Policy means this CEO Employment and Remuneration Policy adopted in accordance with section 45 of the Act.

Public Sector Wages Determination means any Determination that is currently in effect under section 21 of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* in relation to remuneration bands for executives employed in public service bodies.

Recruitment Policy means the recruitment policy adopted by the CEO under section 48(2) of the Act.

Regulations means the Regulations made under Division 7 of Part 2 of the Act.

Remuneration Package means the total gross remuneration package paid to the CEO pursuant to the Contract of Employment.

Resolution means a resolution of Council made at a properly constituted Council meeting.

4. Overview

4.1 This Policy outlines the mechanisms which support Council in fulfilling its obligations regarding the CEO's employment and under the Act.

4.2 The aims of the CEO in relation to this Policy are to:

4.2.1 work collaboratively with the Committee in determining the Performance Plan on an annual basis;

4.2.2 actively participate in the performance appraisal process as required by the Committee;

4.2.3 make use of constructive feedback from Councillors and Committee Members in relation to performance appraisals;

4.2.4 undertake professional development on an as needed basis, or as part of the Performance Plan; and

4.2.5 promptly draw the Committee's attention to any situation where any variation of the Performance Plan may be required in light of the current circumstances.

4.3 The aims of Council (including via the Committee) in relation to this Policy are to:

4.3.1 establish the Committee;

4.3.2 provide processes for the recruitment of a natural person, and their appointment, to the position of CEO;

- 4.3.3 draft and approve the Contract of Employment entered into between Council and the CEO;
- 4.3.4 seek and be guided by independent professional advice in relation to the matters dealt with in this Policy;
- 4.3.5 provide processes for determining and reviewing the CEO's Remuneration Package;
- 4.3.6 provide processes for the monitoring of the CEO's performance including setting the Performance Plan and conducting an annual review;
- 4.3.7 determine, as required, any variations to the Remuneration Package and terms and conditions of employment of the CEO; and

5. CEO Employment and Remuneration Committee

- 5.1 Council will establish a CEO Employment and Remuneration Committee (**Committee**).
- 5.2 The Committee will be a delegated committee.
- 5.3 The purposes of the Committee are to consider, determine (when applicable) and make recommendations to Council with respect to, the:
 - 5.3.1 selection and appointment of the Independent Advisor;
 - 5.3.2 independent advice received from time to time from the Independent Advisor;
 - 5.3.3 performance monitoring of the CEO with respect to achievement of the KPIs;
 - 5.3.4 annual review of the CEO's performance against the KPIs;
 - 5.3.5 the CEO's remuneration;
 - 5.3.6 provisions to be suggested for inclusion in the Contract of Employment from time to time;
 - 5.3.7 implementation of this Policy.
- 5.4 The Committee must include all eleven (11) Councillors.
- 5.5 The Committee is to be chaired by:
 - 5.5.1 the Mayor; or
 - 5.5.2 if the Mayor is absent, the Deputy Mayor.
- 5.6 The Committee is to hold meetings as often as is necessary to:
 - 5.6.1 consider documentation relevant to the CEO's performance and remuneration,
 - 5.6.2 prepare documentation relevant to the CEO's employment and remuneration, including, where that documentation concerns matters outside the Committee's delegation, Council reports and contractual documents, for the approval of Council; and
 - 5.6.3 review the Remuneration Package and conditions of employment of the CEO.

- 5.7 The Committee's procedures will be conducted in accordance with Chapter 3 of the Governance Rules.
- 5.8 The Committee will determine at its first meeting:
 - 5.8.1 how often the Committee will meet, provided that the Committee meets at least twice in each year; and
 - 5.8.2 such other matters as the Committee considers necessary and desirable in connection with its operation and procedures, subject always to the Act and the Governance Rules.
- 5.9 The Committee must comply with the conditions and limitations contained within the Instrument of Delegation to the CEO Employment and Remuneration Committee.

6. Recruitment of CEO

- 6.1 The Committee will establish and coordinate the process to recruit the CEO, designed to ensure that Council can select the best available candidate from a short list of preferred candidates.
- 6.2 The Committee will determine, and make a recommendation to Council, as to:
 - 6.2.1 whether there is a need to engage an Executive Search Consultant to run the recruitment process; and, if so
 - 6.2.2 the Executive Search Consultant to be appointed to run the recruitment process.
- 6.3 If an Executive Search Consultant is engaged, the Committee, the Chair of the Committee or a member of Council staff nominated by the Committee must liaise with the Executive Search Consultant in connection with the recruitment process.
- 6.4 When considering the recruitment of the position of CEO to, the Committee must:
 - 6.4.1 ensure that the recruitment decision is based on merit;
 - 6.4.2 support transparency in the recruitment process and the public advertising of the position; and
 - 6.4.3 ensure that regard is had to gender equity, diversity and inclusiveness.
- 6.5 The Committee must ensure that the Executive Search Consultant publicly advertises the CEO role unless a decision has been taken to renew the incumbent CEO's contract.
- 6.6 The Committee must direct the Executive Search Consultant to prepare, and provide to Council, a schedule of dates for key decisions to be made by resolution of Council throughout the recruitment process.
- 6.7 The Committee must provide a report and recommendation to Council so that each key decision identified in the schedule prepared under paragraph 6.6 can, if necessary, be made by resolution of Council.

7. Appointment of the CEO

- 7.1 Council will receive a report from the Committee on the completion of its role in the recruitment process, and Council will proceed to decide on a preferred candidate from the short list with the support of the Committee to negotiate and finalise the Contract of Employment.
- 7.2 The Committee will provide a recommendation to Council on the provisions to be contained in the proposed Contract of Employment.
- 7.3 The appointment of the CEO must be made by a resolution of Council.

8. Reappointment of the CEO

- 8.1 Within 6 months prior to the expiry of the current CEO's Contract of Employment, the Committee will provide a recommendation to Council on:
 - 8.1.1 whether the CEO should be reappointed under a new Contract of Employment; and
 - 8.1.2 if the recommendation is to reappoint the CEO, the proposed provisions of the further Contract of Employment.
- 8.2 Any reappointment of the current CEO must be made by a resolution of Council.

9. Contract of Employment

- 9.1 The Contract of Employment is to be read in conjunction with this Policy (but the terms of the Policy are not incorporated into the Contract of Employment).
- 9.2 The Contract of Employment will, at a minimum, outline the following:
 - 9.2.1 the employment term, which must not exceed 5 years in accordance with section 44(2) of the Act;
 - 9.2.2 the responsibilities and duties of the position, including compliance with the Act and the Code of Conduct for Council staff;
 - 9.2.3 the conflict of interest management requirements;
 - 9.2.4 the CEO's Remuneration Package and other entitlements;
 - 9.2.5 any legislative and contractual obligations, including those during and continuing after appointment;
 - 9.2.6 the CEO's leave entitlements;
 - 9.2.7 dispute resolution procedures;
 - 9.2.8 processes for managing unsatisfactory performance;
 - 9.2.9 processes for early termination, including notice of termination provisions with notice of termination by Council being restricted to a maximum of nine (9) months; and
 - 9.2.10 any other matters required to be contained in the Contract of Employment by the Regulations.

- 9.3 The Contract of Employment may only be varied by a resolution of Council, and upon acceptance by the CEO, recorded in a deed of variation.

10. Remuneration and Expenses

- 10.1 The Remuneration Package provided to the CEO will form part of the Committee's annual review, having regard to (in accordance with section 45(3) of the Act):
- 10.1.1 any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent);¹ and
 - 10.1.2 any Public Sector Wages Determination;² and
 - 10.1.3 a report benchmarking the CEO remuneration with similar local government CEO and public sector roles.
- 10.2 Remuneration will be reviewed on an annual basis, in accordance with the CEO's Performance Plan and contractual requirements.
- 10.3 Council will meet expenses incurred by the CEO in relation to:
- 10.3.1 membership and subscription fees payable to professional associations which are reasonably necessary in order to carry out duties;
 - 10.3.2 reasonable costs incurred where attending conferences, seminars or other professional development activities; and
 - 10.3.3 reasonable costs incurred in performance of required duties.

11. Performance Monitoring and Annual Review

- 11.1 The Committee will adopt an annual Performance Plan for the CEO, which will include KPIs. The proposed Performance Plan must be developed collaboratively between the CEO and the Committee.
- 11.2 The CEO is to provide a report against the Performance Plan to the Committee on an annual basis.
- 11.3 In preparation for its annual review of the CEO's performance, the Committee will prepare an annual review report (**Annual Review Report**) which includes its views on the following:
- 11.3.1 whether, and to what extent, the CEO has met the KPIs under the Performance Plan;
 - 11.3.2 whether, and to what extent or in what respect, any KPIs or other criteria ought to be varied under the Performance Plan;
 - 11.3.3 whether, and to what extent, the Remuneration Package ought to be varied; and

¹ Section 45(3)(a) of the Act requires Council to have regard to any statement of policy issued by Government of Victoria which is in force with respect to its wages policy (or equivalent). The current Victorian Government Wages Policy applies in the public sector until 31 December 2021. See: <https://www.vic.gov.au/wages-policy-and-enterprise-bargaining-framework>

² Section 45(3)(b) of the Act requires Council to have regard to the published remuneration bands for executives employed in public service bodies. See: <https://www.vic.gov.au/tribunals-determination-vps-executive-remuneration-bands>

- 11.3.4 any other necessary matters.
- 11.4 The Committee will finalise the Annual Review Report only after meeting with the CEO to discuss the Committee's views on the matters that it addresses.
- 11.5 Upon finalising the Annual Review Report, the Committee will advise the CEO of its final views on the matters addressed therein.
- 11.6 Following the initial 6 months of the CEO's term, a workshop with Councillors and the CEO should be coordinated so that:
 - 11.6.1 the CEO can prepare and present an overview of their findings during the early months, and highlight any projections or forecasts of relevance to Council during their tenure;
 - 11.6.2 Councillors can provide feedback to the CEO on their perspective of the CEO's performance during the initial period; and
 - 11.6.3 Council and CEO can agree to projects and priorities for inclusion in the CEO's Performance Plan and KPIs.
- 12. Acting CEO**
 - 12.1 Council must appoint an Acting CEO when there is a vacancy in the office of the CEO which will exceed 28 consecutive days or the CEO is unable to perform the duties of the office of Chief Executive Officer.
 - 12.2 The appointment of the CEO must be made by a resolution of Council unless the Acting CEO is appointed for a period not exceeding 28 days, in which case the CEO may appoint an Acting CEO under delegation from Council pursuant to section 11(3) of the Act.
 - 12.3 The Committee may advise Council on the selection and appointment of an Acting CEO.
- 13. Independent advice**
 - 13.1 The Independent Advisor is responsible for providing independent professional advice in relation to the matters dealt with under this Policy in accordance with section 45(2)(a) of the Act.
 - 13.2 The Independent Advisor will be appointed by the Committee following a process to seek experienced and suitably qualified persons, but must not be the Executive Search Consultant appointed by Council to assist in the recruitment process. The Committee will be supported and provided with a shortlist of candidates by the Executive Manager People Culture and Development.
 - 13.3 Council will determine the:
 - 13.3.1 term of appointment of the Independent Advisor; and
 - 13.3.2 remuneration of the Independent Advisor,and ensure that it is a term of the Independent Advisor's engagement that the Independent Advisor keep confidential all information which the Independent Advisor acquires by virtue of the engagement.
 - 13.4 Council, or the Committee with the approval of a Resolution, can, on an as needed basis, obtain additional independent professional advice in relation to the matters dealt with under this Policy.

14. Administrative Support

- 14.1 Council acknowledges that, in implementing this Policy, it, the Committee and/or the Independent Advisor will from time to time require the assistance of members of staff, including assistance in relation to governance and human resources matters.
- 14.2 Council, the Committee and/or the Independent Advisor may from time to time request a member of staff to provide assistance in implementing this Policy, recognising that the position of the member of staff is made difficult because he or she is accountable to the CEO (or a person acting as CEO) and therefore acknowledging that requests for assistance need to be limited to no more than those which are reasonably necessary.

15. Interaction with Act and Regulations

- 15.1 This Policy applies subject to any inconsistent obligations in the Act or the Regulations.

16. Confidentiality

- 16.1 Council is not required to disclose any personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

17. Delegations

- 17.1 Council must not delegate the power to appoint the CEO, whether on a permanent or acting basis, however, it may delegate to the CEO the power to appoint an Acting CEO for a period not exceeding 28 days (sections 11(2)(d) and 11(3) of the Act).
- 17.2 Council must not delegate the power to make any decision in relation to the employment, dismissal or removal of the CEO (section 11(2)(e) of the Act).

18. Review of Policy

- 18.1 This Policy will be reviewed within 6 months of its adoption by Council.
- 18.2 This Policy will thereafter be reviewed at least every three (3) years by the Committee and within 6 months of each Council election, and the Committee will make a recommendation to Council with respect to any suggested changes.