

7.5 Serpells Lane Strategic Property Project

Executive Summary

Purpose

The purpose of this report is to provide an update on the Serpells Lane Strategic Property Project as well as consideration of an offer to purchase from Swinburne University of Technology ("Swinburne").

Background

The Council-owned Serpells Lane car park is approximately 2,908m² and is located at 399 Burwood Road, Hawthorn ("the Property").

During its meeting held on 25 July 2022, Council decided to initiate the Serpells Lane Strategic Property Project, which included the rezoning and exploring potential sale of the Property.

Subsequently, Council has been approached by Swinburne, which led to an offer being received to purchase the Property.

Key Issues

- Consistent with the Council resolution of 22 July 2022, work to prepare the Property for sale has progressed.
- Council was approached by Swinburne, which has resulted in an offer to Council of \$16,000,000 (plus GST). A sale to Swinburne does not require a rezoning. Additionally, if the Property is sold to Swinburne there is no statutory obligation for Council to consult formally under the *Local Government Act 2020* prior to making a decision about the sale. If Council wishes to sell to Swinburne, it is recommended consultation should still occur, but it would be on the basis that Council intends to sell the Property to Swinburne.
- Windfall Gains Tax ("WGT") came into effect from 1 July 2023. There is no WGT obligation if a sale is made to Swinburne.
- If Council were to sell the Property on the open market to a private purchaser and the rezoning required to support the sale is approved, there would be a WGT liability which presently cannot be determined. Additionally, Council will need to formally consult under the *Local Government Act 2020* by publishing a Notice of Intention to Sell and hearing submissions prior to making a decision about the sale.
- If Council decides to sell the Property to Swinburne, obligations relating to their proposed development, including the requirement to provide car parking will be imposed on title through a Section 173 Agreement under the *Planning and Environment Act 1987*. This will also ensure that the development is unique as opposed to what could be achieved through a sale on the open market.

Confidentiality

Confidential information is contained in **Attachment 2 and 3**, as circulated in the confidential section of the agenda attachments. The information in this attachment is deemed to be confidential in accordance with section 66(2)(a) and the definition of 'confidential information' in section 3(1) of the *Local Government Act 2020*. The information is Council business information which would prejudice the Council's position in commercial negotiations if prematurely released.

If discussion of the confidential information in the attachments to this report is required for Council to make a decision, Council may resolve to discuss the matter in a confidential session or to defer the matter to the confidential section of the agenda.

Officers' recommendation

That Council resolve to

1. Pursuant to sections 114 and 116 of the *Local Government Act 2020*, give notice on Council's website of the intention to sell the land shown shaded yellow on **Attachment 1** and legally described as: Lot 1 on TP418986F within Volume 03362 Folio 247; Lot 1 on TP684954F within Volume 04042 Folio 269; Lot 1 on TP365258H within Volume 06261 Folio 119; and Lot 1 on TP584361S within Volume 02475 Folio 947 ("the Property") to Swinburne University of Technology ("Swinburne") by private treaty for \$16,000,000 (plus GST).
2. Invite both written and verbal submissions on the proposed sale.
3. Note a further report will be presented to a future meeting of the Services Delegated Committee of Council to enable consideration of submissions and for a decision on whether to proceed with the proposed sale of the Property.

Responsible director: **Phillip Storer, Chief Executive Officer**

1. Purpose

This report provides an update on the Serpells Lane Strategic Property Project, including consideration of an offer to purchase from Swinburne University of Technology ("Swinburne").

If Council decides to sell to Swinburne, or through an open market process, the next step will be to commence community consultation.

2. Policy implications and relevance to community plan and council plan

The Boroondara Community Plan 2021-31 sets out the 10-year vision for Boroondara's future based on values, aspirations and priorities important to the community.

This report relates to Theme 7 of the Boroondara Community Plan with the strategic objective of: *"Ensure decisions are financially and socially responsible through transparent and ethical processes"*.

It specifically relates to the following strategies of the Boroondara Community Plan:

- **Strategy 7.1:** Decision-making is transparent and accountable through open governance processes with timely communication and reporting.
- **Strategy 7.2:** Resources are responsibly allocated and used through sound financial and asset planning, procurement and risk management principles.
- **Strategy 7.4:** The voices of our community are heard through engagement strategies to allow effective representation on current and long-term community needs.

Relevant Financial Strategy Principles include:

Creating Community Assets Principle

Council will ensure that the community has access to required community infrastructure, located to meet community needs and city wide priorities and designed with regard to current and future needs.

Construction and acquisition of new community assets must respond to existing needs, new identified needs or adopted strategies. Such facilities must remain within the limitations of Council's financial and resource capacity and provide clear and tangible benefits. Opportunities for community partnerships to develop assets will be pursued.

In reviewing any proposal, Council will consider the financial mechanisms available to assign the capital costs to current and future generations. Asset substitution can be a source of finance where a newly-created asset consolidates services and the vacated asset becomes available for sale.

Analysis of the creation of new assets will also consider contributions to the public realm, environmental and social benefits. The financial analysis will have regard to consequent operational maintenance and renewal costs.

Property Holdings Principle

Council will manage, acquire and dispose of property in the best interest of the Boroondara community. Council recognises the importance of property holdings over the long term to community wellbeing.

Assets will only be considered for disposal where there is no clear Council or community need for that asset in the foreseeable future. All property considered for disposal will undergo a thorough evaluation based on both financial and community benefit factors. Open space will not be sold unless replaced by areas of equal size and/or value. Any proceeds derived from property realisation will be directed towards funding land acquisition, new/upgrade capital works or debt reduction and will not be used to fund operating expenditure. Council will not necessarily hold property that has no current or future identified purpose, or if that purpose can be met more effectively in other ways.

Existing holdings or strategic acquisitions must meet existing needs, new identified needs or adopted strategies. To enhance community benefit opportunities for the alternative use of property (including asset realisation) will be investigated.

Regular reviews of asset holdings will be conducted to identify opportunities for asset realisation. Asset management plans, asset usage, land use planning documents and community benefit will be considerations in such reviews.

3. Background

The Serpells Lane car park is approximately 2,908m² and is located at 399 Burwood Road, Hawthorn ("the Property").

At its meeting on 25 July 2022 Council decided to commence the Serpells Lane Strategic Property Project, including the rezoning and preparation for a potential sale of the Property.

Subsequently, Council has been approached by Swinburne which has led to an offer to purchase the Property.

4. Outline of key issues/optionsOffer from Swinburne

Swinburne submitted an offer to Council in August 2023 of \$16,000,000 (plus GST) (refer **Confidential Attachment 2**) which includes a unique development vision that integrates the Property into the existing campus footprint.

In addition to the offer, Swinburne has committed to:

1. Transform the parking mix in its multi deck car park on Wakefield Street (total 685 car parks) to reduce 'reserved parking' and increase 'casual parking' by 37 parking spaces, taking the total number of casual car parks available to the public to 564 spaces.
2. Continue to provide Henry Street casual car park spaces to members of the public (65 bays).
3. Retain car park pricing at modest levels, broadly aligned to nearby Council car parks with the structure set as:
 - a. 0-2 hours: \$4

- b. 2-3 hours: \$5
- c. Full day: \$10

Council's Traffic and Transport department has provided the following advice on the above commitments.

The Swinburne multi deck car park is available to the public except for 134 spaces which are reserved for the University. The reserved spaces were decreased by 37 spaces to 134 spaces and the level of public parking increased to 564 spaces. The addition of 37 additional public spaces is considered beneficial given that the car park was essentially at capacity between 10:30am to 2:30pm, the flexibility for short, medium, or long term parking and its location in close proximity to the shopping precinct.

Whilst the Henry Street car park does provide the opportunity for public parking at a fee, the car park is not clearly signed as a public car park and appears to be a private car park for the exclusive use of the University. It is recommended that signage be installed to clearly highlight it can be used by the public. Improvements to vehicle access to the car park are also recommended.

Most of the fee structure is similar to the fees that Council imposes for paid car parking, although the daily rate at \$10 is a little higher than Council's fee of \$7 per day (2023/24 budget).

These initiatives are supported and already implemented. Signage and access improvements to the Henry Street car park should be pursued with Swinburne.

Proposed development outcome

It is proposed to secure the development vision by registering on the title to the Property a Section 173 Agreement under the *Planning and Environment Act 1987*. Notably, the Key Conditions proposed provides that the development outcome must include one or both of the following:

1. State-of-the-art classrooms, laboratories, and technology-based research facilities for undergraduate and higher degree students and local visiting researchers;
2. Fit-for-purpose spaces for industry partners to work and collaborate with students and academics on campus.

and may include:

3. Student residences to cater for the growing demand for on-campus accommodation, including for students from regional areas and interstate;
4. Retail offerings for students, staff, and visitors.

It is also proposed that the Section 173 agreement require the additional 37 public parking spaces proposed by Swinburne be retained and available to the public either at the site or another site as agreed by Council.

The 37 spaces proposed is slightly in excess of the number of parking spaces in the Serpells Lane car park which our surveys reveal are not used in connection with Swinburne University.

The above Key Conditions would also require that any development must provide car parking in accordance with the provisions of the Boroondara Planning Scheme.

The above development proposals would require Swinburne to achieve a planning permit for building and works, as well as for any use other than education.

Swinburne would also be required to submit a concept plan to Council prior to commencement of development which demonstrates compliance with the requirements of the Section 173 Agreement.

Glenferrie Place Plan

The Draft Glenferrie Place Plan engagement was completed in late 2021 with strongly positive feedback (over 80%) from both traders and the broader community.

The Place Plan proposes relocation of some on-street parking from Glenferrie Road to free up space for improved pedestrian environment, street greening, and a greatly enhanced retail experience throughout the precinct. It also provides options for part replacement of the Serpells Lane public car park should Council proceed with the sale of the land and decide that this car parking requires replacement. However, a Traffic and Carparking Assessment undertaken on the Serpells Lane property concludes that there is sufficient capacity in public car parking within Glenferrie to absorb the loss of the Serpells Lane car park and its replacement is not necessary, particularly having regard to the offer made by Swinburne to create an extra 37 public parking spaces and is therefore a matter for Council.

The updated Draft Glenferrie Place Plan and Supplementary Report on the Park Street Parking Facility underwent community engagement from 21 March 2023 to 2 May 2023. Officers have analysed community feedback and are updating the Glenferrie Place Plan, which is scheduled to be presented to Council for final adoption.

Paid car parking installation and usage

Paid car parking was introduced in the Serpells Lane car park on Friday 12 May 2023 in line with the resolution of the Services Delegated Committee of 20 March 2023.

The following table highlights the revenue from parking and infringements since commencement of paid parking until 31 August 2023.

Table 1: Car parking revenue

Item	Revenue
Ticket machine income	\$26,303.99
Pay Stay application	\$15,793.10
x813 infringements issued	\$97,468.00
Total	\$139,565.09

Prior to the introduction of paid car parking, the car park was at capacity, typically 8am to 9pm with little turnover and high levels of overstaying. With the paid car parking, site inspections on a number of occasions at different times of

the day have confirmed that parking is readily available. A follow up study of car park attendees has been undertaken by a traffic consultant and a comparison summary is presented as follows:

Table 2: Car park usage comparison

Prior to Ticket Parking	After Ticket Parking
30% of motorists overstayed the 3-hour limit	27% of motorists overstay the 3-hour limit
28 motorists parked for 5 hours plus	17 motorists parked for 5 hours plus
Approximately 64% of all motorists parking in the Serpells Lane car park are associated with Swinburne University	Approximately 68% of all motorists parking in the Serpells Lane car park are associated with Swinburne University
Parking utilisation very high throughout the day	Parking readily available at all times

It is concluded that the majority of car park users continue to be associated with Swinburne. If the current weekly return from the site were to be maintained, it would take 35 years to achieve the total return represented by the proposed sale price. With consistent enforcement it is unlikely these returns will be maintained.

Rezoning process

Amendment C385boro proposes the rezoning of the car park from Public Use Zone 6 (PUZ6) to Commercial 1 Zone (C1Z). The amendment was publicly exhibited in late 2022. On 5 December 2022 the Urban Planning Delegated Committee (UPDC) resolved to refer all submissions received to an independent planning panel for consideration.

The independent panel hearing was held on 27 and 28 February 2023. The independent panel's report was received on 14 April 2023. The independent panel has supported Council's proposal and recommended that the amendment be adopted by Council without changes.

A report was considered by the Urban Planning Delegated Committee on 15 May 2023. The Committee resolved to:

- 1. Receive and acknowledge the Panel's report and recommendations, as shown at Attachment 1, in accordance with Section 27 (1) of the Planning and Environment Act 1987.*
- 2. Refer Amendment C385boro to a Meeting of Council to be adopted in accordance with Section 29(1) of the Planning and Environment Act 1987. A decision on whether to adopt will be made following a formal decision to proceed with a sale of the land.*
- 3. 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.*

Site investigations

Valuation

Council commissioned Charter Keck Cramer to provide an updated market valuation which was completed in August 2023. This is discussed further in section 6 of this report.

Windfall Gains Tax ("WGT") update

WGT came into effect 1 July 2023. A "WGT event" is a rezoning (other than an excluded rezoning) that triggers an assessment and imposition of WGT on the owner. A rezoning from PUZ to C1Z is a WGT event.

If the Property is sold to Swinburne, there will be no need to rezone the land as Swinburne's use would be permitted as of right by the PUZ (PUZ2 – Education), and so there would be no "WGT event".

If Council sells on the open market, the contract of sale would need to allocate liability for WGT.

Utility services availability

A services engineering consultant has found that there are necessary utility networks to support development.

Telstra easement

A Telstra easement located towards the western boundary. While it would be costly to remove, there is still opportunity for it to be developed, for example as garden, private open space and even potential to build up and over the easement. Any building over or close to the easement requires Telstra consent.

Environmental assessment

A comprehensive environmental assessment has been completed. The Property is considered suitable for high-density residential and/or mixed-use development including an underground car park, subject to remediation of fill material.

Survey

An updated feature and level survey as well as title re-establishment has been completed.

Arboricultural assessment

An arboricultural assessment has been completed and no significant issues have been found.

Legal summary

Maddocks has been engaged to provide legal advice in relation to the project and the following is noted:

1. Titles and encumbrances have been reviewed.
2. Any direct negotiation offer received from Swinburne needs to be more compelling than what Council could obtain through a market-led sale process. This requirement is consistent with the *Local Government Best Practice Guidelines for the Sale of Land*, dated June 2009 (developed by the State Government).
3. The land comprising the Serpells Lane carpark was purchased by Council over time, with all but the laneway access to the site being acquired by Council between 1905-1938. The laneway was purchased in 1968 using separate funding provided by traders. The car park comprises a total of 2,908m² of which the laneway totals 286m² or 8.9% of the total site. Additionally, there are no parking spaces on the land acquired using trader funds. The traders are claiming they accrue rights through their separate scheme payments which concluded 1982. Council's legal advice confirms the traders have no proprietary interest in the land and it would be difficult for them to successfully claim such rights exist. At most, the possibility of a public purpose trust arises which means that Council has no legal liability to traders but any risk can be mitigated by providing some additional parking in the vicinity. It is considered the offer by Swinburne to make an additional 37 spaces available for community use in its car park will mitigate any risk. Delivery of this outcome is best achieved by including the offer made by Swinburne in the proposed Section 173 Agreement.

It is considered that each of these issues is addressed in the proposed recommendation as required.

5. Consultation/communication

At its meeting of 22 July 2022, Council resolved to commence the statutory procedures consistent with section 114 of the *Local Government Act 2020* to sell the Property by giving notice of its intention to sell and calling for submissions. This has not occurred yet as site investigations and other preparations have been taking place.

If Council decides to sell to Swinburne, appropriate general communication and engagement is proposed. In this instance, there is no statutory requirement to advertise a public notice and invite submissions consistent with section 114 of the *Local Government Act 2020* as a sale to Swinburne would be exempt under section 116 of the *Local Government Act 2020*. However, given the way that the proposed sale process has been described in the decision to commence the project in July 2022, as well as during the planning scheme amendment C385boro rezoning process, there is an expectation in the community that there will be an opportunity to lodge submissions with Council for consideration before a decision is made to sell the Property. This occurred to anticipate the possibility that Council may resolve to sell the Property on the open market. As such, the following is proposed.

Council should give public notice of its intention to sell the Property directly to Swinburne on Council's website inviting submissions from affected parties.

Submitters may request to be heard by Council prior to a decision being made about the sale.

If any submissions are received, a further report will be presented to a future meeting of the Services Delegated Committee of Council for consideration as part of the decision making process.

6. Financial and resource implications

A sale to Swinburne would not require Council to proceed with Planning Scheme Amendment C385boro. If no rezoning is required, a WGT event will not be triggered. It would also remove the need for marketing and agency costs.

If the Property is offered to the open market, the rezoning of the Property to C1Z would proceed and the contract of sale will need to allocate liability for WGT.

A current market valuation report has been completed by Charter Keck Cramer. The assessed value is set out in **Confidential Attachment 3**. The assessed value is not published in the public section of this report as the decision Council intends to make is unknown and, depending upon the decision, publication could compromise Council's commercial interests.

See **Confidential Attachment 3** for a copy of the valuation report.

Funds realised as a result of a sale would add to Council's surplus as this revenue is not currently provided for in Council's Long Term Financial Strategy (LTFS). Should the recommendation of a sale to Swinburne be supported this could add \$16,000,000 to Council's 2023/24 budget surplus of \$5,060,000 bringing the total 2023/24 surplus to \$21,060,000.

If we were to apply the square metre value of the Property to the 37 parking spaces offered by Swinburne this equates to \$4,287,317 for the land alone. We have the opportunity to replace the parking used by the public at the Serpells Lane car park, respond to the concerns raised by traders about having funded the access lane and effectively acquire additional public parking without cost to Council. This takes the value proposition for the site from \$16,000,000 to \$20,287,317 if secured by the Section 173 Agreement as a condition of sale.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

Officers consider that the Serpells Lane Strategic Property Project will allow Council to realise a positive social and environmental outcome, through the use of the sale proceeds to deliver other community outcomes consistent with

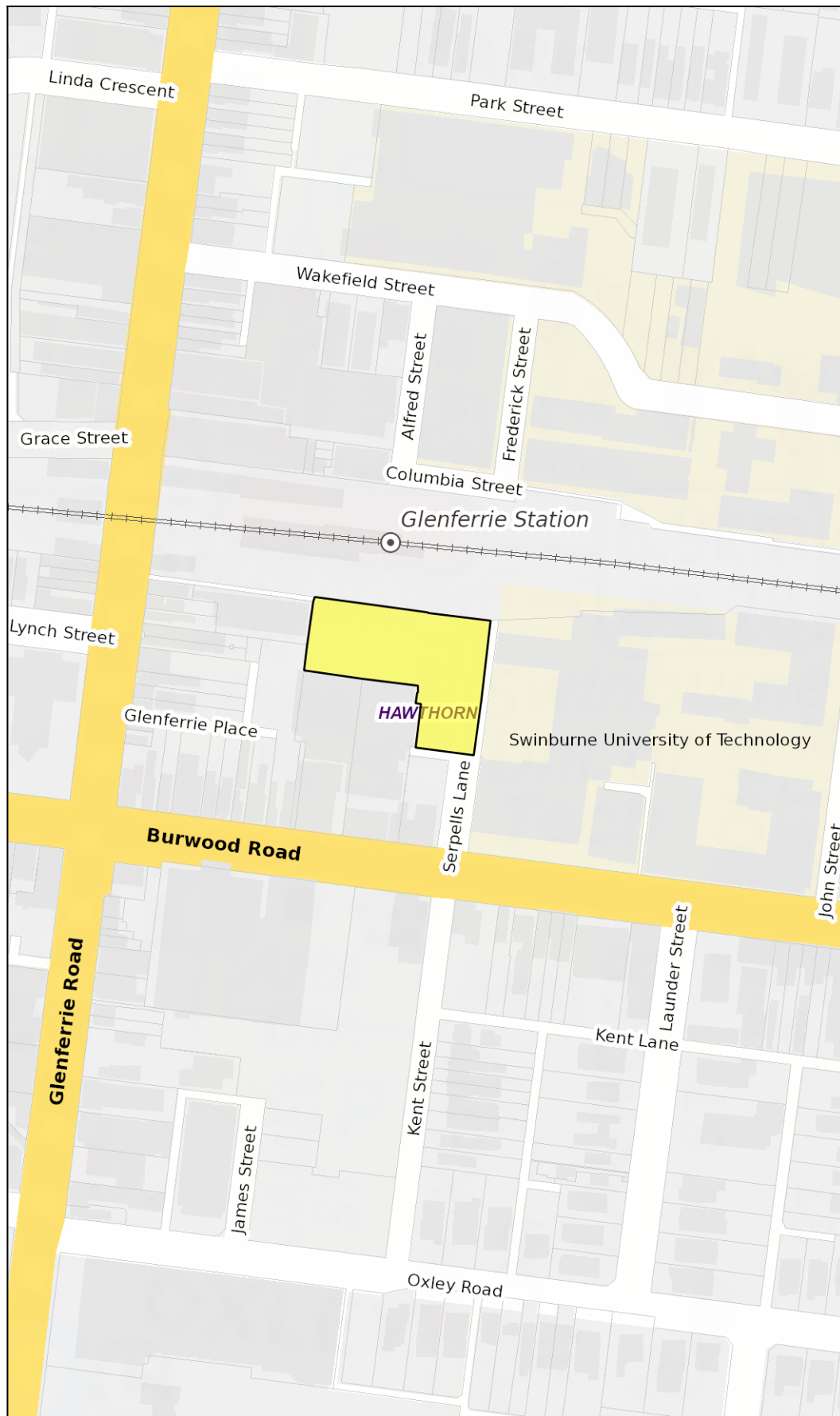
Council's Creating Community Assets principle which states: *Asset substitution can be a source of finance where a newly-created asset consolidates services and the vacated asset becomes available for sale. Analysis of the creation of new assets will also consider contributions to the public realm, environmental and social benefits.*

9. Conclusion

Selling to Swinburne at the offer of \$16,000,000 along with securing a development outcome through a Section 173 Agreement represents a compelling proposition for Council having regard to the valuation and terms of the Section 173 Agreement. It is therefore recommended that Council accept the offer. Research demonstrates the car park is mainly used by Swinburne staff and students. The asset is not required for another Council purpose and the funds derived from its sale create capacity to build new community assets which will enhance the wellbeing of our community. If the Property is sold to Swinburne the uncertainty around application of WGT does not arise. Finally, Swinburne plays an important role in our municipality and arguably offers community benefit beyond that which a private development may create.

Manager: **Amy Montalti, Chief Financial Officer**

Report officer: Michael Hutchison, Head Strategic Property and Revenue

**KEY**

Suburbs



Property



Railway Stations



Railway Line



Natural Waterways

Other Waterways

Yarra River

Melb Water Channel

Other Waterways

Yarra River

Building Footprints



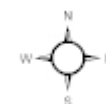
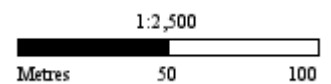
Recreation Areas



Hospitals



Education



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