

MANNINGHAM

COUNCIL MEETING

AGENDA

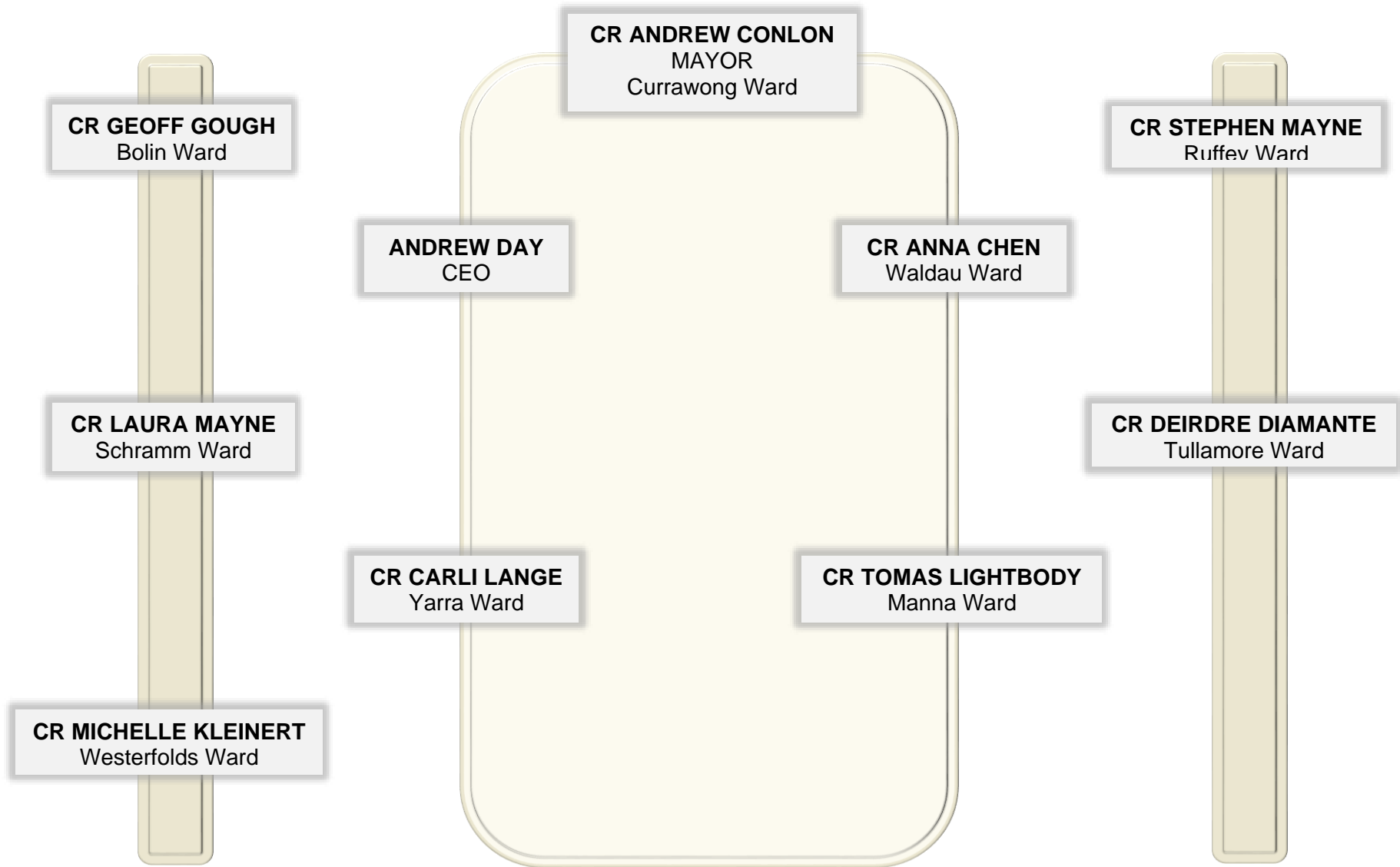
Date:	Tuesday, 23 March 2021
Time:	7:00pm
Location:	Council Chamber, Civic Centre 699 Doncaster Road, Doncaster

This meeting is convened to transact the business listed below.

Andrew Day
Chief Executive Officer

This meeting will be livestreamed. Members of the public who address Council will be heard on the live audio stream, and audio of them speaking will be recorded. All reasonable efforts will be made to avoid capturing live or recorded video footage of public attendees however there might be incidental capture.

COUNCIL MEETING SEATING PLAN



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**1 OPENING PRAYER AND STATEMENTS OF
ACKNOWLEDGEMENT**

2 APOLOGIES AND REQUESTS FOR LEAVE OF ABSENCE

3 PRIOR NOTIFICATION OF CONFLICT OF INTEREST

4 CONFIRMATION OF MINUTES

Confirmation of the Minutes of the Council Meeting held on 23 February 2021.

5 PRESENTATIONS

6 PETITIONS

7 PUBLIC QUESTION TIME

8 ADMISSION OF URGENT BUSINESS

9 PLANNING PERMIT APPLICATIONS

There are no Planning Permit Applications.

10 CITY PLANNING & COMMUNITY

10.1 Council's Submission to the 'Yarra River - Bulleen Precinct Advisory Committee' that addressed the draft Land Use Framework Plan and Proposed Yarra Valley Country Club Redevelopment (Amendment C125)

File Number: IN21/134

Responsible Director: Director City Planning and Community

Attachments: 1 Council's submission to the Yarra River - Bulleen Precinct Advisory Committee [↓](#)

EXECUTIVE SUMMARY

The Minister for Planning appointed the Yarra River – Bulleen Precinct Advisory Committee (Advisory Committee) to provide strategic and statutory planning advice on two matters: the draft Bulleen Precinct Land Use Framework Plan (Framework Plan); and Amendment C125 to the Manningham Planning that relates to the redevelopment of the Yarra Valley Country Club (YVCC) site at 9-15 Templestowe Road Bulleen.

The Advisory Committee took place over twenty days between 18 January and 1 March 2021. Council was represented by a barrister, who was instructed by Harwood Andrews, Lawyers, who represented Council during the Committee hearing for the North East Link Project. Council's submission is included in Attachment 1.

In summary, Council submission outlined its support for the draft Framework Plan but recommended some minor changes. In relation to Amendment C125, Council advised that it supports the general idea of redeveloping the YVCC site to some extent on its southern portion, and acknowledged the public benefit of the northern part of the site being transferred to public ownership for the purposes of public open space. However, Council's submission concluded that it considers Amendment C125 in its current form has a number of critical flaws, to the extent that it recommended that it should not proceed.

The Advisory Committee must submit its report to the Minister for Planning no later than 30 business days from the completion of the hearing, which means the report is due mid-April 2021. The Minister does not have a statutory timeframe in which to release the report.

1. RECOMMENDATION

That Council:

- A. Note Council's submission to the Yarra River – Bulleen Precinct Advisory Committee that addressed the draft Bulleen Precinct Land Use Framework Plan and Proposed Amendment C125 relating to the redevelopment of the Yarra Valley Country Club site.**
- B. Note that following the release of the Advisory Committee's report, a further report will be prepared for Council's consideration that will outline the Committee's key recommendations and Council officers' response and proposed further actions.**

- C. Endorses the commissioning of a preliminary concept plan of potential public open space and recreation uses on the site, including golf being the existing use, and present this plan as a part of the future report back to Council.**

2. BACKGROUND

- 2.1 The Minister for Planning appointed the Yarra River – Bulleen Precinct Advisory Committee (Advisory Committee) to provide strategic and statutory planning advice on two matters:
- a) The draft ‘Yarra River - Bulleen Land Use Framework Plan’ (draft Framework Plan) prepared by the Department of Environment, Land, Water and Planning (DELWP); and
 - b) Amendment C125 to the Manningham Planning Scheme which proposes to redevelop part of the Yarra Valley Country Club (YVCC) for residential purposes, and includes the transferral of the northern portion of the site to a public authority for public open space purposes. The Amendment has been prepared by the Minister for Planning at the request of YVCC Pty Ltd and Linked Solutions Pty Ltd.
- 2.2 The draft Framework Plan seeks to provide direction on the future land use changes along the Yarra River Corridor in parts of Bulleen, Heidelberg and Lower Templestowe.
- 2.3 The Advisory Committee took place over twenty days between 18 January and 1 March 2021. Council was represented by a barrister, who was instructed by Harwood Andrews, Lawyers, who represented Council during the Committee hearing for the North East Link Project.
- 2.4 Council also called on five expert witnesses to address matters relating to:
- Planning
 - Visual impact,
 - Ecology
 - Stormwater management
 - Traffic
- 2.5 A copy of Council’s submission is included in Attachment 1.

3. DISCUSSION / ISSUE

- 3.1 In summary, Council’s submission outlined its support for the draft Framework Plan but recommended some minor changes.
- 3.2 In relation to Amendment C125, Council advised that it supports the general proposal of redeveloping the YVCC site to some extent on its southern portion, and acknowledged the public benefit of the northern part of the site being transferred to public ownership for the purposes of public open space. However, that Council considers the Amendment in its current form has a number of critical flaws, to the extent that it recommended that it should not proceed.

- 3.3 The main issue of concern largely relates to the lack of strategic justification to support the expansion of development into a sensitive and highly valued river valley landscape, where the existing Manningham Planning Scheme seeks to substantially restrict the intrusion of built form.
- 3.4 Concern was also raised whether the form of development that is proposed can indeed be practically achieved given the inter-relationship between hydrological, environmental, ecological, visual and cultural matters.
- 3.5 Council acknowledged the 'gifting' of privately owned land for public open space would result in achieving public benefit and achieve a long held strategic planning objective to provide a continuous public access along the Yarra River corridor. Council's submission sought to ensure that the proposed amendment provides an effective mechanism to ensure that the open space land is transferred to public ownership in a suitable condition.

4. COUNCIL PLAN / STRATEGY

- 4.1 The key following Council Plan themes / goals are relevant on this matter: Liveable Places and Spaces, Resilient Environment and Well Governed Council.

5. IMPACTS AND IMPLICATIONS

- 5.1 The Advisory Committee has been appointed pursuant to Part 7, section 151 of the Planning and Environment Act 1987 (the Act), and was governed by its Terms of Reference.
- 5.2 The Committee consisted of four members with skills relating to strategic and statutory planning, urban design, environment, including flooding, and traffic / transport planning.
- 5.3 The Advisory Committee is expected to make recommendations to the Minister for Planning about the draft Framework and draft planning scheme amendment and options for implementation.

6. IMPLEMENTATION

- 6.1 Timelines
 - 6.1.1 The Advisory Committee must submit its report to the Minister for Planning no later than 30 business days from the completion of the hearing. This means the report is due mid-April 2021.
 - 6.1.2 The Minister does not have a statutory timeframe in which to release the report.

7. DECLARATIONS OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any general or material conflict of interest in this matter.

Yarra River – Bulleen Precinct Advisory Committee

SUBMISSIONS ON BEHALF OF MANNINGHAM CITY COUNCIL

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INTRODUCTION

1. These submissions are made on behalf of Manningham City Council (**Council**),¹ before an Advisory Committee appointed pursuant to Part 7 of the *Planning and Environment Act 1987* (Vic) (**P&E Act**) to consider and make recommendations to the Minister for Planning in respect of several matters – of which two remain under active consideration:
 - a. the draft Yarra River – Bulleen Precinct Land Use Framework Plan (**Framework Plan**); and
 - b. proposed Amendment C125 to the Manningham Planning Scheme, prepared by YVCC Property Pty Ltd (**YVCC**) in relation to the site of the Yarra Valley Country Club at 9-15 Templestowe Road, Bulleen (**YVCC site / subject site**).
2. At this stage in the process the Committee is assumed to be familiar with the relevant background to the matters before it.

FRAMEWORK PLAN

3. As stated in its opening submissions, the Council supports the Framework Plan and commends it to the Committee.
4. The relative brevity of these submissions in respect of the Framework Plan is a product of the Council's position of general support, and the comprehensiveness of the submissions already made by the Department of Environment, Land, Water and Planning (**DELWP**) as its proponent.
5. The Council makes the following further comments in respect of matters that have been the subject of evidence and discussion since the Council's original submissions on the exhibited Framework Plan.

Industrial and employment uses

6. The Council acknowledges that the ultimate future of the Bulleen Industrial Precinct (**BIP**) will remain indeterminate for some time, and subject to the requirements of the North East Link project (**NEL**).
7. It also acknowledges that the Sonoco site at 17-25 Templestowe Road, existing use notwithstanding, presents locational difficulties for industry in terms of its closeness to sensitive residential uses – especially following any redevelopment of the YVCC site.

¹ Noting there are also two other submitters who properly refer to themselves as the 'Council' in their own submissions – Birrarung Council (submitter 28) and Banyule City Council (submitter 25).

8. Clearly it would not be a suitable location for the establishment of any new industrial use having the potential to produce inappropriate levels of noise, dust or odour.
9. The Council's concern is that the displacement of an entire established industrial precinct for the purpose of the NEL risks leaving the municipality with a sudden and substantial loss of industrial and employment land and activity.
10. The Council is looking to mitigate that impact so far as can be achieved, to support local employment.
11. The Council's position is reinforced by:
 - a. the submissions of the North East Link Project (NELP);
 - b. the strong support from the NEL Inquiry and Advisory Committee, and the Minister, for the project to support the return of industrial and employment generating uses to the BIP;² and
 - c. the inclusion of relevant objectives to that end contained in the approved Urban Design Strategy and Environment Management Framework.³
12. The Minister's position on this is unequivocal:

... I strongly agree with the LAC that the Manningham Road Interchange design should maximise the return of residual land for employment, including industrial land uses (LAC Recommendation 7 a). Long-term uses for this land that provide employment could, importantly, provide opportunities for displaced BIP businesses to return.⁴

...

I support return of residual land at the Manningham Road Interchange for employment, including industrial land uses (LAC Recommendation 7).⁵
13. On this issue the difference between the position of DELWP on the one hand, and the Council and the Minister on the other, is not really one of opposition or tension so much as emphasis.
14. DELWP supports an 'employment' focused role for the BIP, but with special focus on 'higher order uses' and aesthetic outcomes directed at achieving a 'cultural gateway' or 'cultural core'.⁶

² Submissions on behalf of North East Link Project (15 February 2021) at [13.a], [52].

³ Ibid at [26.c], [30], [52.c].

⁴ *North East Link – Minister's assessment of environmental effects* (November 2019) at p 49.

⁵ Ibid at p 51.

⁶ Part B submissions on behalf of DELWP (18 January 2021) at [6.13] and [7.5] (doc. 65).

15. The Council sees no conflict between that and its own aspirations. To the contrary.
16. DELWP's aspirations for a cultural gateway should also be retained in the Framework Plan. The submissions of Sanctum Studio and Bulleen Art & Garden evocatively show that Bulleen is enriched by the presence of an active, existing creative community.
17. There is no inherent conflict, and in fact there is a potential underlying compatibility, in the notion of precinct for industrial and employment generating uses being able to also host complementary cultural uses:
 - a. Town planning cannot independently create a successful cultural hub – it just needs to create the space in which the necessary elements can grow organically.⁷
 - b. There is no single set of physical, functional and geographic requirements for creative enterprises – every creative endeavour has its own unique requirements – but there are some common themes.

Two of the most important ingredients are affordability and flexibility. And experience shows that commercial and industrial precincts are often the best providers of spaces (eg. converted factory buildings and warehouses) which are more affordable – and not so much subject to economic pressure to preference high yield, high revenue residential land uses – and more flexible in their layout and dimensions.
 - c. Creative uses are not necessarily sensitive to amenity impacts in the same way as residential uses, and in fact at times can produce their own amenity impacts making them better suited to locating in a robust environment, with the freedom that comes with it – where, for example, lights and noise can occur without concern for the constraints of residential amenity expectations that would still prevail in a 'higher order' commercial precinct potentially incorporating a substantial mixed-use / residential component.
18. So far as the Framework Plan is concerned, the Council seeks that:
 - a. References to the BIP should expressly designate future industrial and employment generating uses – in addition (and complementary) to the vision for a new cultural gateway.
 - b. References to the Sonoco land should contemplate 'employment' use (not necessarily industrial) in preference to future residential use.

⁷ Submissions on behalf of Sanctum Studio and Bulleen Art & Garden, 4th page.

Heide access

19. The Council is concerned to see that appropriate and practical visitor access is provided into the future for the Heide Museum of Modern Art, a significant cultural institution.
20. In its initial submissions, the Council proposed that be achieved by way of a separate signalised access for Heide. Further analysis and expert evidence has shown that to be impractical.
21. The Council does not now seek to advance any specific preferred access arrangement – noting in particular that the indicative preference of the Department of Transport for a single shared access point on the YVCC land may not be the museum’s first preference, if it were to necessarily entail the loss of some of its land to accommodate a left-turn deceleration lane.
22. YVCC relies on a variety of factors in support of a preference or presumption for its site access to be located on the Sonoco boundary, which would necessarily leave Heide with a left-in left-out arrangement requiring U-turn maneuvers at the signals.⁵
23. The evidence shows all of those factors to have some relevance, but little determinative weight:
 - a. VicRoads’ ‘in principle’ approval of a certain access shows that it was a feasible proposal put forward by a particular landowner at a particular time for a particular site. That does not necessarily make it the best strategic outcome having regard to the circumstances of Heide in a post-duplication of Templestowe Road, and post NEL, scenario.
 - b. A carefully designed development plan for the YVCC site would still be able to ensure access for any future residential development on the Sonoco site, and adequately address the interface with that site’s present industrial use, regardless of the location of the new access to Templestowe Road.
 - c. Intersection spacing from Bridge Street is only a minor consideration – any access on any part of the YVCC site’s frontage will be somewhere in the range of 300-360 m from the next signals which the traffic experts agree is, in either scenario, imperfect, but perfectly safe and acceptable.
 - d. On the other hand, similarly, a left-in left-out arrangement for Heide requiring U-turn maneuvers at the signals would be imperfect, but safe and acceptable from a traffic engineering perspective.
24. In circumstances where it appears that a safe and suitable arrangement can be achieved from a traffic engineering perspective on either scenario, matters of equity between

⁵ Submissions on behalf of YVCC Property Pty Ltd (9 February 2021) at [4.d].

neighbouring uses (ie. that Heide is not compromised solely to optimise the YVCC site) and consideration of the special importance of Heide to the community, as a significant cultural institution, should also be taken into account.

25. In the Council's submission, the proper conclusion on the state of the evidence is that at this stage the exact form of future access arrangements for Heide cannot be determined, but that planning for the area and for the YVCC site needs to ensure that options are protected and that long term access for Heide is a factor requiring express consideration when the location of the new signalised intersection is finally determined.
26. That applies in respect of both the Framework Plan and Amendment C125.
27. Ultimately, any proposed arrangement which is satisfactory to both the Department of Transport and to Heide is most likely to be one which the Council, on that basis, would also support.

Timing and implementation

28. The Council supports the advancement and implementation of the Framework Plan without delay, and specifically, sees no reason why it should be deferred or kept as a 'draft' document until the final design of the NEL is confirmed.
29. The submissions of NELP make clear that:
 - a. The final design of the NEL is itself anticipated, and intended, to be relevantly informed by the Framework Plan – and that has been provided for through specific requirements in the approved Urban Design Strategy and Environment Management Framework.⁹

In other words the NEL process not only allows for, but in fact positively indicates, the advancement of the Framework Plan.
 - b. The function and content of the Framework Plan provide ample flexibility so as not to create confusion or interference with the design process for the NEL, so long as it is appropriately and relevantly expressed to be subject to the requirements of the NEL.¹⁰

River Red Gum

30. As discussed above, the submissions of NELP usefully articulate the complementary role the Framework Plan will have in the context of the NEL – it is deliberately anticipated

⁹ Submissions on behalf of North East Link Project (15 February 2021) at [26.b], [30].

¹⁰ Ibid at [47]-[50].

that the Framework Plan will defer to, but also inform, the final design and requirements of the NEL.

31. In that light it is more than appropriate that the Framework Plan include an express objective to protect and celebrate this important cultural landmark:
 - a. It would be consistent with the approved Urban Design Strategy of the NEL itself, which expressly requires exploration of *'all practical design alternatives'* to retain the River Red Gum, with removal contemplated only if it *'cannot be avoided'*.¹¹
 - b. As with many other parts of the Framework Plan, the objective can be expressed as (and in any event would be clearly understood to be) subject to the requirements of the NEL final design.

Updated Section 5

32. The Council seeks the following further amendments to the updated draft Section 5 objectives and strategies circulated on 5 February:
 - a. Objective 2.5 – The Council should also be included in the consultation process for the location of new signalised pedestrian crossings.
 - b. Objective 2.6 – A new pedestrian signalised intersection at Dora Street should also be considered, to support the pedestrian and cyclist connection.
 - c. Objective 2.8 – This should also make reference to a cycling connection, as supported by Mr Gnanakone.¹²
 - d. Objective 2.9 – The Council should also be included in this consultation.
 - e. Objective 2.10 – This should also prioritise a connection between Templestowe Village and Heidelberg Activity Centre and railway station, as supported by Mr de Waard and Mr Gnanakone.¹³
 - f. Objective 3.4 – This objective should acknowledge the continuing industrial / employment role of the BIP, consistent with submissions earlier made¹⁴ – *'Develop a new cultural gateway that complements the industrial and employment generating uses in the Bulleen Industrial Precinct ...'*

¹¹ Ibid at [60].

¹² Evidence statement of Mr Valentine Gnanakone (11 January 2021) at p 16 (**doc. 37**).

¹³ Evidence statement of Mr Will de Waard (11 January 2021) at [43]-[46] (**doc. 33**); Evidence statement of Mr Valentine Gnanakone (11 January 2021) at p 16 (**doc. 37**); Conclave of traffic experts – statement of agreed opinions and facts (17 January 2021) at [3] (**doc. 63**).

¹⁴ See submissions above at paragraphs 9-18.

The fourth dot point of the objective should also make reference to a cycling connection, as per objective 2.8.

- g. Objective 4.2 – This objective should encourage an employment generating or mixed-use development that is compatible with adjacent residential uses, consistent with submissions earlier made.¹⁵

The Council does not support the first dot point of the objective, which states that development must conform with DDO2. Any redevelopment proposal would either have to conform with DDO2 by its own force, or otherwise seek an amendment to DDO2 to be assessed on its own merits.

- h. Objective 4.3 – The Council does not support this objective as drafted, insofar as it suggests a vision for the BIP as a precinct intended primarily for cultural and community uses, with employment uses limited to a ‘complementary’ role – rather than an industrial and commercial precinct, where complementary cultural uses are also fostered in connection with the cultural gateway.¹⁶

On the same basis, the Council would seek the inclusion of a further new objective, similarly expressed, to designate the residual land in the BIP for future industrial and employment generating uses.

The fourth dot point of the objective should also make reference to a cycling connection, as per objective 2.8.

Other matters

33. DELWP’s Part B submissions acknowledge an oversight in not identifying the land at 203 Bulleen Road as a development opportunity,¹⁷ and in its marked up draft of the Framework Plan has indicated the inclusion of that site within the ‘key sites table’ on page 49.
34. Consistent with that, map 5A should also be updated to colour the site in hot pink (potential development opportunity) instead of lime green (expansion of parklands / potential active recreation).
35. The Council also queries whether the inclusion of that site within the open space corridor, in objective 1.1 of DELWP’s table of updated draft Section 5 objectives and strategies, is a further oversight.

¹⁵ See submissions above at paragraphs 7-18.

¹⁶ See submissions above at paragraphs 9-18.

¹⁷ Part B submissions on behalf of DELWP (18 January 2021) at [7.3] and [6.22] (doc. 65).

36. The Council is otherwise generally content with DELWP's response to the matters raised in the Council's original submission to the exhibited Framework Plan and, subject to the matters discussed above, it endorses the changes proposed by DELWP in the marked up draft documents circulated during the hearing.

AMENDMENT C125

37. The Council supports the general idea of redeveloping the YVCC site to some extent on its southern portion, with the northern part of the site passing to public ownership and management.
38. But it considers that the amendment as proposed suffers a number of critical flaws, such that the Committee should recommend that it not proceed at this stage.
39. The Council's concerns relate to matters which cannot just be hand-waved as 'design detail' to be resolved at some later stage.
40. For the purpose of this planning scheme amendment, the Committee needs to be satisfied that:
- a. Significant changes to the general nature and arrangement of use and development on the land, in its context, are underpinned by a sound strategic rationale and consistent with the objectives of the planning framework as it relates to this site.
 - b. An appropriate planning tool has been selected to implement those changes – in this case, a new schedule to the DPO, which needs to:
 - i. set out the key high-level parameters for the arrangement and extent of development on the land, principally by way of an outline development plan; and
 - ii. comprehensively identify and make provision for the detailed information and investigations required for the approval of a development plan, as well as some necessary requirements for permits and agreements.
41. The Council agrees that a DPO schedule is the appropriate planning control, and it also accepts that most of what would need to be included in the control has been included in the most recent version of the proposed DPO schedule, circulated by YVCC on 8 February 2021.
42. There are a few outstanding issues in the general content of the proposed DPO schedule, which are set out later in this submission. Most of those issues are capable of being fixed in the drafting and would not, of themselves, justify a conclusion that the amendment should not proceed.

43. The Council's position in relation to the amendment is based primarily on:
- a. serious doubt that the filling in of the Yarra River floodplain and encroachment of urban development into a highly valued, highly sensitive environment, to the extent proposed, is the right strategic outcome; and
 - b. serious doubt that it will be possible to develop the site generally in accordance with the proposed Outline Development Plan and Building Heights Plan, and to provide sufficient additional floodplain storage volume to offset the proposed fill, without being forced to make unacceptable compromises on other critical matters such as visual and landscape outcomes.
44. The Council is also not convinced that the visual impact of built form, as it would be experienced from the sensitive river environs, has been shown to sufficiently meet the objectives of the SLO2, the DDO2, and related policy and strategy for the protection of the Yarra River corridor environs.

The concept of 'net community benefit'

45. The Committee should approach the submissions of YVCC in relation to the assessment of net community benefit with a great deal of caution.
46. Specifically, the Committee would fall into legal error if it were to approach its task by accepting at face value any submission to the effect that the concept of 'net community benefit' in cl 71.02-3 is:
- a. some kind of alternative assessment option which *'differs to the usual assessment of a planning application'*, or which *'requires a different approach to assessment'*;¹⁸
 - b. an assessment which involves a simple 'weighing' exercise of positive against negative impacts, like the 'no net detriment' test under the *Gambling Regulation Act 2003* (Vic) – ie. *'whether the 'pros' for the community outweigh any 'cons'*;¹⁹
 - c. a concept which is *'practical and more flexible'*, *'more critically evaluated'* or in any way to be distinguished from the notion of 'acceptable outcomes';²⁰
 - d. an invitation or permission to undertake an analysis directed *'above and beyond the confines of the planning schemes'*, if by that it is intended that the analysis may be set adrift or unmoored from the applicable policy framework;²¹ or

¹⁸ Submissions on behalf of YVCC Property Pty Ltd (9 February 2021) at [12]-[13].

¹⁹ Ibid at [13]; oral evidence of Ms Peterson in cross-examination.

²⁰ Ibid at [14].

²¹ Ibid. Noting that no planning assessment ever sits wholly within *'the confines of the planning schemes'* – there are always higher order directions of the P&E Act itself in play (eg. the objectives of planning in section 4, the duties and powers of planning authorities under section 12).

- e. a concept which requires or permits of decision-making to derogate in any way from the 'usual' exercise of integrating relevant planning policies and balancing conflicting planning objectives within a policy framework.
47. 'Net community benefit' is not a statutory test.
48. It is a concept which takes its meaning from its specific context within cl 71.02 of planning schemes, in which:
- a. the required task is always the integration of a range of planning policies relevant to the issues to be determined, and the balancing of conflicting planning objectives within a given policy framework; and
 - b. net community benefit and sustainable development for the benefit of present and future generations is simply a description of the outcome to which that task of applying the policy framework is directed.
49. In every case, the exercise is always no more and no less than the integration and application of relevant policy and planning objectives.
50. Any decision-making approach which loses sight of that fundamental essence of the task risks wandering far from the proper role of a planning authority under the P&E Act.
51. As Osborn J explained in *Knox City Council v Tulcan Pty Ltd*:
- Reference to the State and Local Planning Policy Frameworks demonstrates that a proposal may potentially be favoured by some policy considerations but opposed by others. ... The goal of the State Planning Policy Framework is expressly stated in terms that recognised decision makers must address the question of whether outcomes are acceptable in terms of 'net community benefit'. ...*
- The concept of net community benefit is not one of ideal outcomes, but of outcomes which result in a net benefit to the community assessed within a policy framework by reference to both their benefits and disbenefits.²²*
52. And in *Rozzen v Macedon Ranges Shire Council*:
- The test of acceptable outcomes ... is informed by the notions of net community benefit and sustainable development. An outcome may be acceptable despite some negative characteristics. An outcome may be acceptable because on balance it results in net community benefit despite achieving some only of potentially relevant planning objectives and impeding or running contrary to the achievement of others.²³*

²² *Knox City Council v Tulcan Pty Ltd* [2004] VSC 375 at [13.e] (emphasis added).

²³ *Rozzen v Macedon Ranges Shire Council* [2010] VSC 583; (2010) 181 LGERA 370 at [171] (emphasis added).

53. It is a fallacy to conceptualise ‘net community benefit’ as some kind of new, special or alternative method for determining – or a ‘different’ way of thinking or approaching – town planning decisions under the P&E Act.
54. The only thing new about ‘net community benefit’ is that it has been talked about a lot more often in recent years. But the concept always has been, and still is, the exact same concept that Osborn J described more than sixteen ago in *Tulcany*, and again just over a decade ago in *Rozzen*.
55. It is not the case that there is no ‘clear test’ for an assessment of net community benefit.²⁴ The ‘test’ to determine net community benefit is just the same test that planning authorities have been applying for decades – to integrate policies and balance planning objectives within a policy framework.
56. It is also a fallacy, of a similar kind, to conflate ‘net community benefit’ with the outcomes of social planning evidence or a social and economic impact assessment. Planning is a much wider and more multifaceted enquiry than that.
57. The social and economic impacts of a planning decision, identified in s 12(2)(c) of the P&E Act, are one of many considerations – just one of many factors to be taken into account when applying the planning policy framework to a planning decision.
58. Ms Peterson expressly agreed with that proposition when it was put to her in cross-examination. She not only expressly agreed with, but even anticipated and skillfully articulated for herself the general principles set out above as to what ‘net community benefit’ means, when they were put to her in cross-examination in effectively the same terms as these submissions.
59. Ms Peterson also agreed that although she has the requisite skills and qualifications to undertake a comprehensive town planning assessment, she has not been asked to do that in the present case.
60. She was instead given the narrower, more specialised task of assessing social and economic impacts for the purpose of assisting the Committee’s consideration of those matters in accordance with s 12(2)(c) – and she has, quite properly, confined her assessment and opinions to that discrete task.
61. In that context, the submissions of YVCC do Ms Peterson a disservice by treating her conclusions as determinative of the question of net community benefit. They elevate her evidence to a role in this process which her careful and well-considered answers in cross-examination make clear that she herself would not attribute it.
62. The Committee should reject the submissions of YVCC on these matters, approach Ms Peterson’s evidence for what she herself correctly understood it to be – evidence

²⁴ Cf. Submissions on behalf of YVCC Property Pty Ltd (9 February 2021) at [11].

going to one factor to be taken into account under s 12(2)(c) of the P&E Act – and approach the proposed planning scheme amendment generally by applying itself to the proper, well-established task set out in cl 71.02.

Lack of strategic justification

63. The fundamental failing of the amendment is that it has not started at the beginning – the first question every planner should ask before any of the subject matter experts put pen to paper to come up with a proposal.
64. What does the planning framework contemplate for this site?
65. The larger part of the evidence called on behalf of YVCC has been directed at how to manage the interface of a new urban encroachment into what is currently a vegetated, effectively undeveloped recreational area forming part of the broader river floodplain environs.
66. There is no dispute that from within those environs, the proposed amendment would establish a new and clearly perceived expanse of urban development over a substantial distance, where presently there is no appreciable built form presence.
67. Mr Biles was clear in his evidence that the amendment does not pretend to do otherwise. He and Mr Murphy did not see themselves as being tasked to hide a development; only to manage and mitigate its visual prominence by tempering the extent of built form and filtering views of it behind vegetation.
68. At a more conceptual but no less significant level, the amendment would have the effect of allowing an extent of recreational open space forming part of the river floodplain to be claimed for urban development – in effect, reducing the relative extent of land belonging to a valued river valley to expand the relative extent of urban development over it.²⁵
69. The amendment has clearly just started from the substantially unquestioned, and mostly unanalysed, assumption that the subject site can and should be given to urban development up to the maximum achievable extent – up to the practical fixed limit of the electricity easement – provided it is well designed.
70. Ms Jordan, the only expert called by YVCC whose role and expertise is to look behind that assumption, explained her own thinking about it in response to a question from Mr Sherman:
 - a. it was just the proposal that had been given to her;
 - b. she ‘didn’t see any obvious need or requirement that the line needed to be moved’; and

²⁵ Evidence statement of Mr Rob Milner at [147], pages 32-33.

- c. she ‘kept an open mind until the visual work was undertaken’.²⁶
71. The evidence and submissions of YVCC fail to articulate any underlying basis for the assumption. They fail to provide an answer to the first question of any planning scheme amendment – how does this change, in principle, align with the planning framework?
72. Does the planning framework support a significant expansion of urban development, and the creation of a clearly perceived new urban interface, into a sensitive and highly valued river valley landscape, where the planning scheme very deliberately seeks to substantially restrict the influence and intrusion of built form?
73. Ms Jordan’s evidence never really engages with that question.
74. So far as the strategic role of the land is concerned, she:
- a. identifies and acknowledges the suite of relevant planning policies and controls as centred around the protection and enhancement of the environmental and landscape values of the Yarra River corridor;
 - b. identifies generalised support for increased housing in the municipality; and
 - c. segues without any real explanation to a conclusion that the subject site has a significant strategic role to play in addressing housing demands.²⁷
75. Ms Jordan’s oral evidence also revealed some quite fundamental shortcomings in conceptualising the key landscape character outcomes sought by the planning framework for the Yarra River environs:
- a. In response to a question from Mr Sherman as to how she would go about judging the extent of fill in light of the objectives of the SLO2, she answered to the effect that she:
 - i. does not ‘read’ the SLO2 as having ‘emphasis on the floodplain’, but rather, as placing ‘greater emphasis on the river corridor and riparian environment’;
 - ii. does ‘question that the public has a connection or desire to preserve the floodplain, as distinct from the river corridor’; and
 - iii. does not see ‘the floodplain itself being critical to achieving the objectives’.

²⁶ Where quotations are used in describing the evidence of experts, they are intended to be taken to represent the best approximation of what was said by the witness – derived from notes taken by others during the hearing, and not as direct transcription. The members of the Committee should always act upon their own best recollection and understanding of the direct evidence given during the hearing. Summaries of evidence in these submissions are intended to assist the Committee by drawing its attention to salient parts of that evidence.

²⁷ Evidence statement of Ms Sophie Jordan at [47]-[56], pages 23-25.

- b. In response to further questions, put on behalf of the Council, she agreed that development potential in this location is tempered by the key policy focus on the protection and enhancement of environmental and natural landscape qualities – but then vigorously disagreed with a series of propositions concerning the vision and objectives of the planning framework relevantly articulated in cl 12.03-1R, the SLO2 and DDO2, and in the *Middle Yarra River Corridor Study* which formed the basis for those planning controls:²⁸
- i. she disagreed that the relevant planning framework articulates an outcome which could in any sense be described as seeking a ‘non-urban’ character for the river corridor environs;
 - ii. she disagreed that it invokes any meaningful distinction between visual character attributes identifiable as ‘naturalistic’ and ‘vegetated’ as distinct from those associated with ‘urban’ and ‘built form’ environments – with planning for this site seeking to achieve dominance of the former, by minimising the latter as a foreign or ‘intrusive’ influence into a preferred naturalistic character; and
 - iii. she disagreed that the floodplain itself is to be considered part of the protected river corridor environs.
76. That is not to ignore that in her written evidence she properly identified and considered certain important discrete factors which the planning framework identifies as bearing on the preferred outcome – factors such as views of built form being ‘subordinate’ to vegetation, ‘filtered’ behind vegetation, and not rising above the prevailing canopy height.
77. But those are not just a checklist of freestanding objectives. They are various elements necessary (but not necessarily sufficient) to a coherent naturalistic / ‘non-urban’ visual character outcome which her written evidence does not articulate or fully appreciate, and which in her oral evidence she firmly disclaimed.²⁹
78. The Committee will by this point be familiar with the contents of cl 12.03-1R, the SLO2 and the DDO2.
79. In the course of cross-examination of Ms Jordan, its attention was also directed to parts of the *Middle Yarra River Corridor Study* which articulate in some detail the values of the river corridor environs those controls are intended to protect, and the character outcome contemplated – in particular, Part 5.2 which defines the three distinct areas to be

²⁸ *Middle Yarra River Corridor Study – Recommendations Report* (Planisphere, October 2016).

²⁹ By way of illustration, Part 2.9 of the *Middle Yarra River Corridor Study* (page 29), titled ‘Threats and Pressures’, contains a series of images to depict various poor visual outcomes which that study – and the planning controls which followed – are specifically seeking to avoid. Yet many, if not most, of those images could still fairly be described as having views of built form ‘filtered’ or ‘subordinate’ to vegetation and/or below the prevailing canopy height.

protected, and Part 5.5 which describes what is sought to be achieved and how the controls are intended to achieve it.

80. It is adequately clear from the terms of cl 12.03-1R and the overlays that they are concerned with a far more extensive area than the waterway itself and the immediate surrounds of its riverbanks.
81. The *Middle Yarra River Corridor Study* expressly identifies why that is so:
- a. The very first listed ‘design principle’ in Part 1.4 identifies that ‘*[t]he Yarra River is valued and appreciated as much for the vegetation and parkland that dominate its corridor as for the presence of the waterbody itself.*’³⁰
 - b. Later, at Part 2.6, the study includes a pertinent quote from the 2003 *City of Yarra Built Form Review*:

*Most people ... experience the river corridor not from the river and its banks, but from vantage points outside the corridor, or as they drive across the river on a bridge. What they see (or expect to see) is a line of trees, a heavily vegetated river corridor. They will rarely see the water itself, except perhaps as a glimpse amongst the trees. The expression of the river corridor as a corridor of vegetation, particularly of canopy trees, is most important.*³¹
 - c. And at Part 5.2, the experience of the ‘River Experience Corridor’ (ie. the fore and middle ground landscape around the river and adjoining parklands) is described in a manner which contrasts markedly with Ms Jordan’s repudiation of any meaningful thematic distinction in the relevant planning objectives between ‘naturalistic’ / ‘non-urban’ and ‘developed’ / ‘urban’ character:

*When walking or cycling along the trail, or visiting the many areas of parkland, the experience is generally one of a naturalistically vegetated corridor. The success of this experience rests on the extent to which one feels enveloped in a continuous corridor of vegetation, a retreat from the hard surfaces and bustle of urban life. In reality, urban activity and development are often closer than one might expect, and urban reality breaks into the experience from time-to-time, such as when a major road crosses the corridor along its journey.*³²
82. At the start of her oral evidence Ms Jordan stated that she was ‘very familiar with the history and background of the controls for the Yarra River, especially the DDO2 and the SLO2’, and that she brought that that knowledge and experience to her evidence.

³⁰ *Middle Yarra River Corridor Study – Recommendations Report* (Planisphere, October 2016) at p 10.

³¹ *Ibid* at p 25.

³² *Ibid* at p 56.

83. That may be. But it is hard to reconcile with her clearly and repeatedly stated view that the river floodplain itself does not even form part of the river corridor environs which those controls seek to protect.
84. Even the most cursory review of the *Middle Yarra River Corridor Study* clearly shows, as Ms Jordan eventually conceded, that:
- a. the floodplain is the area described as the ‘River Experience Corridor’ in the *Middle Yarra River Corridor Study*;³³ and
 - b. that study, and the planning policy and controls which resulted from it, do very much seek to protect and enhance the naturalistic, vegetated character of the ‘River Experience Corridor’ – ie. the floodplain itself – as an integral part of the river environs.
85. There is no dispute that the *Middle Yarra River Corridor Study* did not involve a site-specific assessment of the subject site.
86. Nor is there any issue in principle (at least from the Council’s perspective) with what logically follows from that – that a modification of the controls which currently apply to the subject site might be justified by a more granular, site-specific assessment.³⁴
87. And there is no dispute that the DDO2 and SLO2 do not require built form to be ‘invisible’ (and no party or witness in this hearing has suggested that to be the case).
88. But they do seek to achieve a far higher level of protection from the visual intrusion of built form than Ms Jordan’s evidence would indicate.
89. And any site-specific proposal to advance a significant increase to both the geographical and visual extent of urban development in such a context demands a far more considered and thorough strategic assessment to sit behind it.

The feasibility problem

90. The amendment seeks to facilitate a complex development project on a challenging site.
91. It will require extensive civil works to relocate enormous volumes of soil and reshape the land in such a way as to retain its floodplain storage function while simultaneously and compatibly managing a new, extensive built form interface with a high standard of sophisticated ecological, landscape and urban design measures to respond to a sensitive environment with significant landscape values.

³³ Ibid.

³⁴ Submissions on behalf of YVCC Property Pty Ltd (9 February 2021) at [90]-[95].

92. It may well be accepted that YVCC has established, through the evidence it has called, that each of those things can be individually achieved.
93. But in the course of that evidence, as each expert has explained what is actually required to achieve an acceptable outcome within the scope of their particular area of attention, and as the assumptions each expert has relied upon have gradually come to light, something else has become clear.
94. Each of YVCC's experts has proceeded with no knowledge of what the others are doing, what conclusions the others are coming to, and what effect those conclusions have on necessary assumptions someone else has been making for the purpose of their own work.
95. It is not enough to show that each one of the key regulatory requirements and planning objectives for this site can be achieved, so long as others are ignored for the purposes of the exercise.
96. This hearing is not an academic exercise. It is the assessment of a proposed planning scheme amendment to facilitate a development in the real world which will need to concurrently achieve the entire collection of relevant requirements and objectives.

Flood storage, earthworks, batters and trees.

97. One thing the development must achieve is adequate flood storage to offset the extent of fill, so as to not increase flood levels.
98. Ms Mag relied on a TuFlow model producing results close enough to compliance to make an educated guess, based on her professional experience, that the flood storage requirement would definitely be able to be achieved – by undertaking further excavation to an extent that she could confidently say remained available on the site.
99. She agreed in her oral evidence that her opinion was dependent on the model. It would have been surprising if she had said otherwise. She was the one who asked for the modelling to be done.
100. Without it, she would have had literally no information at all upon which to base any conclusions about whether flood storage can be offset.
101. There is no problem with Ms Mag's 'close enough to be sure' approach, at this stage of the planning process. It is not necessary to know exactly how flood storage will be achieved, only that it can be, and Ms Mag's expertise to make that judgment is accepted.
102. Indeed, all of the hydrology experts in the conclave were prepared to at least tentatively agree to the same conclusion, by way of the same course of reasoning.
103. But that conclusion depends entirely on the model being able to produce results:
 - a. that can be relied on – which it turns out is not the case; and

- b. that are based on the general extent of excavation actually able to occur on the site – which it turns out is not the case either.
104. Mr Dunn’s conclusion that errors in the model make it unfit for purpose, and that it should not be relied upon to inform any decision making with respect to the impact of the proposed development,³⁵ is enough on its own to completely remove the foundation of any conclusion by any of the hydrology experts that flood storage can be achieved with certainty.
105. Without the model, the hydrology experts have nothing. And Mr Dunn’s evidence that the model cannot be relied on stands unchallenged by cross-examination or by any evidence given by any other expert. There is no basis upon which his conclusion might not be accepted by the Committee.
106. In any event, even if the model itself had been reliable, its results would still not be – because they are based on a series of significant wrong assumptions as to the extent of excavation achievable on the subject site.
107. The model was based on the excavation depicted in the CJ Arms earthworks contour plan (Rev E) (**earthworks plan**)³⁶ – a fact which only came to light by chance, when that plan was produced at the Council’s request on becoming aware that Mr Goss had relied on it for an unrelated purpose.
108. The excavation depicted in the earthworks plan is deep – up to about six or seven metres in parts, and generally two to four metres in the fairways where most of the excavation happens.
109. It is also steep – with a 1:4 batter across the easement, and even steeper batters around the existing lines of trees between the fairways.
110. And it turns out that the excavation it depicts would have the effect of destroying all the existing trees within the overall excavation footprint – a fact which also only came to light by chance, when Mr Murphy’s annotated copy of the earthworks plan was produced at the Council’s request, in order to understand Mr Mueck’s answers in cross-examination as to what his ‘worst case scenario’ for vegetation removal had been based on.
111. That is a problem, because Mr Murphy could not have been clearer in his evidence that an acceptable visual landscape outcome requires that no existing trees are removed.
112. It is also a problem because all of the urban design and landscape experts agree that all excavation on the site needs to create a naturalistic landform with varying slopes generally no steeper than 1:6.

³⁵ Memorandum of Scott Dunn (2 February 2021) at page 2.

³⁶ Plans – Civic (14265 2B revE): 9-15 Templestowe Road, CJ Arms (**doc. 83e**).

113. Ms Mag and Mr Dunn agree that opportunities for excavation additional to that shown in the earthworks plan – although ample in terms of how much extra would be needed to get the TuFlow model results over the line – are confined to a relatively limited area of the subject site.³⁷
114. They agree that there is no opportunity to excavate deeper, and they agree that the north-western portion of the site would not be an appropriate location given its elevation (and extent of vegetation).
115. Ms Mag identified the furthest fairway on the north-eastern edge of the site, adjoining the Parks Victoria managed land, as the only area not already fully excavated in the earthworks plan which would realistically be available to excavate more.
116. The agreed position of the witnesses at the conclave was no better than equivocal to start with – *‘the amount of available open space within the floodplain suggests a satisfactory outcome is likely to be achieved ... the lost flood plain storage may be able to be offset with the proposed development line being the absolute maximum encroachment into the existing flood plan’*.³⁸
117. Each of the hydrology witnesses confirmed during the hearing that their agreed opinion in the conclave had been formed on the assumption that the modelled extent of excavation could be achieved.
118. But at the time of the conclave, they were still in complete ignorance of the various ways in which the modelled extent of excavation could not be achieved (not to mention the reliability of the model itself).
119. At the time Ms Barich gave her evidence, the problems Mr Dunn identified in the model had not yet been discovered, nor had Mr Murphy’s annotated plan showing that the modelled extent of earthworks would kill all the trees.
120. Even then she firmly maintained, in cross-examination on behalf of YVCC, that further information was required to be certain that floodplain storage could be achieved.
121. When pressed about her earlier statement that there ‘would appear to be’ ample room within the floodplain to excavate to achieve sufficient floodplain storage, the following exchange occurred:

‘But you just said floodplain storage can be achieved.’

- ‘Yes but not in an appropriate way, with appropriate batter slopes – you have batter slopes above permanent water bodies which are unsafe.’

³⁷ Ms Barich was not asked about this in her evidence.

³⁸ Conclave of stormwater and hydrology experts – statement of agreed opinions and facts (15 January 2021) at [10] and [13] (emphasis added) (doc. 64).

- ‘That can be addressed in the design though.’
- ‘It can be addressed, but only with a larger footprint.’
- ‘That’s a technical issue, for detailed design’.
- ‘No, it’s a matter that needs to be addressed before the development line is set, to ensure the development line is actually achievable.’
122. Mr Dunn and Ms Mag both gave evidence to the effect that, if the agreed requirements of all the landscape and urban design experts are to be achieved, then:
- a. the confidence they had at the conclave, in the ability to offset lost floodplain storage, was based on a wrong assumption; and
 - b. the modelled extent of earthworks will be reduced to the extent that they no longer hold certainty that the lost floodplain storage can be offset if the floodplain is filled all the way to the edge of the easement.
123. Mr Dunn explained that clearly throughout his oral evidence. Ms Mag took a little bit longer to get there.
124. Ms Mag accepted in cross-examination that in combination, the various requirements of the landscape and urban design experts would reduce the extent of excavation depicted in the earthworks plan – meaning a greater amount of additional excavation would need to be undertaken elsewhere – and at the same time also reduce the amount of land available for any further excavation to occur.
125. She accepted that she has no way of knowing how much those factors will constrain the extent of excavation or the space left available to excavate, because she has not been given the information she would need to tell her that.
126. As YVCC recounts in its submissions, in summarising Ms Mag’s evidence, she did state that she would be ‘very surprised if a design solution cannot be achieved’ for floodplain storage consistent with landscape and urban design constraints.³⁹
127. But her evidence did not end there. Two further questions followed:
- ‘But that design solution may have to be to push back the development line away from the easement in order fit everything in.’
- ‘Yes, it may have to be – as we agreed in the conclave, the development line is a maximum.’

³⁹ Submissions on behalf of YVCC Property Pty Ltd (9 February 2021) at [180].

‘And when you say maximum, you mean it might not be the final location of the development line.’

– ‘Yes, that’s correct.’

Implications for the assessment of the amendment

128. The relevant question for the Committee is whether the key high-level parameters for the arrangement and extent of development, as set in place by the proposed DPO schedule, have been properly set.
129. It is uncontroversial that in that context, it is not necessary to know design details of how flood storage requirements will be met – so long as it can be shown that they can be met.
130. But it should be equally uncontroversial that it does need to be established, with certainty, that those requirements will be able to be met.
131. Otherwise, why even have Ms Mag give evidence on the matter at all?
132. Ms Mag at least, for her part, expressly agreed in cross-examination that the question whether sufficient excavation can be undertaken to achieve adequate floodplain storage is something which absolutely needs to be determined before implementing a DPO schedule to facilitate a development that relies on substantial fill on the floodplain.
133. The submissions of YVCC miss the point by circling continually back to the experts’ agreed position at the conclave.⁴⁰
134. All three experts separately stated or conceded in their oral evidence that their opinion at the conclave was based on relevant assumptions, about the extent of achievable earthworks, which no longer hold true.
135. And those submissions also miss the point by appearing to suggest that cross-examination of Ms Mag was intended to establish that she should have undertaken her own assessments of visual impact, landscaping, urban design and the like, rather than deferring to the expertise of other disciplines.⁴¹
136. Of course she should defer to the recommendations and requirements of other experts. The problem is she couldn’t defer to the other experts, because she was never even told what facts she had to defer to.
137. It is not suggested in any way that Ms Mag’s assessment should have had a wider scope going beyond her own expertise. No more is suggested than that she should have been given correct factual assumptions to base her own work on.

⁴⁰ Ibid at [170], [180] and [182].

⁴¹ Ibid at [178]-[179].

138. The Council's cross-examination of Mr Biles and Mr Murphy (and for what it is worth, Mr Goss, Mr Mueck, Mr Hunt and Ms Mag) was directed in significant part at establishing:
- a. the assumptions each expert relied on in forming their opinion (eg, earthworks to make a moonscape of the eastern part of the floodplain);
 - b. the specific measures each expert identified as essential to achieving an acceptable outcome (eg, retain all existing vegetation and avoid cratered landforms); and
 - c. whether there is mutual compatibility – or irreconcilable conflict – between the assumptions and conclusions of the witnesses, to be satisfied that all the key regulatory requirements and planning objectives for this site can be achieved concurrently.
139. Hopefully that explanation assists YVCC to find the Council's questioning of its witnesses a bit less perplexing.⁴²
140. Finally, the submissions of YVCC once more miss the point by emphasising that, as Ms Mag said, a 'design solution' is possible.
141. A design solution is always possible. The question of relevance is whether a design solution is possible within the fixed parameters that will be set down by the proposed DPO schedule.

Implications for the proposed DPO schedule

142. To put it another way – the question is not whether a design solution is possible, but whether it is possible to do generally in accordance with the Outline Development Plan and Building Heights Plan, as the proposed DPO schedule would mandate.
143. Ms Mag answered that question directly. Her evidence is that a design solution may necessitate revisiting the location of the 'building line' on the Outline Development Plan away from the easement.⁴³
144. In other words, her evidence is that a design solution may not be able to be generally in accordance with the Outline Development Plan and the Building Heights Plan that are before the Committee.
145. In theory, that could be resolved for the Outline Development Plan by building further flexibility into the location of the 'development line', to permit approval of a development plan with a reduced extent of fill (ie. one in which fill, and consequently development, has been pulled back substantially from the line of the electricity easement).

⁴² Ibid at [165]-[167].

⁴³ See submissions above at paragraph 127.

146. As Mr Czarny explained in cross-examination, it would be relatively easy to build such flexibility into the Outline Development Plan.
147. The problem is that it would not be so easy to then transpose that flexibility into the accompanying detailed Building Heights Plan, which any approved development plan is also required to be generally in accordance with.
148. The Building Heights Plan is unambiguously put forward by YVCC as the centerpiece of its response to the critical visual and landscape sensitivities of the site.
149. It is the distillation of much of the work of Mr Goss, Mr Biles and Mr Murphy, each of whom (together with Ms Jordan, and Mr Sheppard) characterised it as an essential component of the proposed DPO schedule.
150. Only Mr Czarny would contemplate its simplification to a point where flexibility could be built in – and only then, as an alternative to his first preferred outcome of preparing a new one based on an LVIA, and only in a significantly more restrained form with more substantive setbacks of built form away from the edge of the fill platform.
151. If the development line moves, how does that affect the relative sizes, shapes, heights and locations of the various segments of development shown on the Building Heights Plan? Do we just remove A4? Or do we remove C1 and A5 from the boundary of Sonoco and shift everything else south? Or do we retain each of A4, B1, B2 and C1, but compress them all to fit into the reduced space?
152. There is no right answer to that.
153. Not from a practical perspective – what are the Council’s planners assessing a proposed development plan supposed to understand ‘generally in accordance’ as requiring in such circumstances?
154. Nor from a merits perspective – how do we know whether any alternative arrangement of built form will achieve the same visual outcome?
155. Mr Goss specifically confirmed in cross-examination that no work has been done to model and assess built form impacts based on any fill design other than a fill platform built up to the easement line.

Implications for approval of a development plan

156. The Council is concerned about the feasibility issue because it perceives the practical reality of the risk it creates.
157. All the discussion around floodplain storage, including in these submissions, has been couched in terms of the ability to achieve it.

158. In reality, there is no possibility that floodplain storage will not be fully offset in any development which occurs on the subject site. It is a requirement which must be achieved, without exception. The feasibility issue does not create a flooding risk.
159. What it creates is a risk that when a development plan is submitted for approval, compliance with the two combined, non-negotiable, set in stone requirements – to offset floodplain storage, and to be generally in accordance with the Outline Development Plan and the Building Heights Plan in the DPO – will force unacceptable compromises to be made elsewhere, most likely in the visual and landscape outcome.
160. The most recent, 8 February amended version of the proposed DPO schedule contains a change to the requirements for the Earthworks Strategy Plan in subclause 3.1, obviously directed to the agreed opinion of the experts in the landscape and urban design conclave regarding batter slopes – but with a very important qualification added in:

An Earthworks Strategy Plan must be provided that addresses, but is not limited to:

...

- *The approach to cut and fill across the site, including:*

...

- *a summary depiction of all batter slopes, which must achieve the appearance of a natural landform, defining the grades on each, with no vegetated slopes steeper than 1:36 unless a steeper slope is required as a consequence of excavation works or detailed design of the proposed drainage solution;⁴⁴*

161. Whether by accident or design, that is a tailored solution for the problem created by the fact the floodplain storage model did not account for visually acceptable batter slopes.
162. It provides an express allowance for a unanimous requirement of the landscape and urban design experts about an appropriate visual response to landform to be set aside, if it transpires that more excavation is needed to offset floodplain storage.
163. As for the existing trees Mr Murphy categorically requires be retained, no express exemption is required to derogate from that – because his requirement has not been adopted into the proposed DPO schedule anyway:
- a. The Landscape Master Plan is required to ensure the retention of existing vegetation specifically, and solely, near the boundary on the western interface to Heide.
 - b. No requirement of that kind applies to the north-western and northern interface to the future public open space area.
164. Maybe those two examples can be closed off, with further drafting.

⁴⁴ Tracked changes underlined; emphasis double underlined.

165. But it wouldn't go to the root of the problem.
166. If it were to turn out to be not feasible to achieve everything, then it is the extent of fill into the floodplain which should be reduced, not anything else. And then, further work would be required to model and assess a new built form envelope based on the modified fill platform.
167. But once the DPO schedule is in the planning scheme, it is too late for that.

Visual assessment of built form

168. The work undertaken by Mr Murphy and Mr Biles, using the model created by Mr Goss, to produce the 'Building Heights Plan' in the first revised DPO schedule, represents a significant improvement on the prior complete lack of any kind of landscape visual analysis to inform the exhibited amendment materials.
169. It is astounding that a proposed amendment of this nature, on this site, was advanced so far before any kind of work of that nature was undertaken at all.
170. It is important however to understand the role and the limitations of that work.

Lack of strategic foundation

171. For the reasons already explained, it is a task directed at how best to manage an urban interface in a sensitive landscape – a task which necessarily assumes, but does not in itself determine, the underlying strategic question as to whether an interface of that kind should be established in the first place.⁴⁵

Doubts in defining the intended outcome

172. The conclusions of YVCC's experts that a satisfactory landscape and visual outcome has been achieved depends as much on their understanding of what is to be achieved as whether it has in fact been achieved.
173. In other words, what does the planning framework say will constitute an appropriate outcome in this location?
174. That is in large part a planning question, and it is appropriate for that reason that the process involved not just Mr Goss, Mr Murphy and Mr Biles, but also Ms Jordan.
175. But it is also a problem because, to the extent urban design and landscape evidence is best served by professional planning input to inform that fundamental assumption, it would have been ill served on this occasion – by reason of the earlier identified

⁴⁵ Submissions above at paragraphs 63-74.

shortcomings in Ms Jordan's appreciation of the key landscape character outcomes sought by the planning framework for the Yarra River environs.⁴⁶

176. That, in turn, compromises an important foundation for the work undertaken by Mr Murphy and Mr Biles, and casts some doubt on the underlying assumptions of the proponent's whole project team – what vision were they seeking to realise, and what benchmark did they see themselves as needing to meet?

Limitations of the tools used for assessment

177. As explored with Mr Goss in cross-examination, his model is a useful tool to understand the geometry of a proposal in its context – the real scale of forms and how forms relate as one moves around a space – but it is not the right tool to assess the prominence of development relative to vegetation in a landscape.
178. Importantly, the model inevitably over-represents the visual prominence of vegetation, and its effect in screening or obscuring built form which in real life may be far more exposed, due to the combined effect of:
- a. the geometric representation of trees (ie. as solid 'blobs' rather than branches and foliage);⁴⁷ and
 - b. the limited precision of the overhead imagery used to create the model, which results in variances of up to half a metre in canopy extent and substantial obscuring of understory areas which in reality provide unobstructed views through.
179. In Mr Goss's view, a photomontage is the better tool for such purposes.
180. The Building Heights Plan was formulated using only the model. No photomontages were available to the experts at that time.
181. Conversely, every one of the photomontage viewpoints (with the exception of view 9) had already been selected before the model was created. In other words, the identification of views for the photomontages was not even informed by the model, let alone by a comprehensive Landscape and Visual Impact Assessment (LVIA).
182. The key limitation of a photomontage is that it is static – it shows no more than a single specific view from a single specific place.
183. That is an important limitation in this environment, which is not perceived from a limited number of fixed viewing locations but as movement through a space:

⁴⁶ Submissions above at paragraphs 75-88.

⁴⁷ Probably better described as 'polyhedrons', but Mr Sherman's term is more evocative.

Because the experience of moving along the river and the trail is dynamic, the viewsbed also is dynamic. At some locations on the trail, foreground vegetation obscures the horizon; at others there are open views. Even where this wider landscape is mostly obscured by foreground vegetation, progressive and intermittent glimpses of the wider landscape can be obtained from the trail. A photograph from a static viewpoint 'proving' that something is not visible behind the trees can be misleading in this respect.⁴⁸

184. That is why the selection of viewpoints is so important.
185. The selected viewpoints for the photomontages do not reflect the most significant, or the most sensitive, or the most representative or the most impacted views of built form which the amendment would facilitate.
186. No-one yet knows what the most significant or sensitive views are, because no LVIA has been undertaken to identify and record them.
187. Mr Czarny's 'initial, cursory appraisal' identified views from the narrower western part of the floodplain within subject site – generally from the electricity pylon to around the depot and eighth tee, where built form would be closest to the river – as some of the most important, and the interface there as the most problematic.
188. No photomontages exist for any view from anywhere in that area.⁴⁹
189. YVCC's silence on that is in marked contrast to its vigorous challenge throughout the hearing in respect of two viewpoints Mr Sheppard was specifically concerned about, from Templestowe Road over the soccer fields and from within the Heide Sculpture Park.
190. Mr Czarny discussed the lack of any assessment of views from within the western part of the subject site specifically, in his evidence in chief.
191. There has been no challenge to his opinions that those views are significant, and that they have not been assessed.
192. In cross-examination, he was asked nothing more than to confirm that views from that area would be screened by vegetation, to which he replied that 'the foreground vegetation plays a role, no doubt, but it hasn't been assessed'.
193. It is hard to resist the inference that YVCC is simply unable to defend the lack of assessment of any views from the open space at the western end of the subject site, and has been left with no option other than to say nothing about it.
194. Interestingly, that silence extends even to YVCC's summary of Mr Sheppard's evidence.

⁴⁸ *Middle Yarra River Corridor Study – Recommendations Report* (Planisphere, October 2016) at Part 5.2, p 56.

⁴⁹ Compare Mr Czarny's viewpoints 1 and 3 (Evidence statement of Mr Craig Czarny, Appendix C 'place values' map and photos) (doc. 41) and Mr Goss's camera locations map (Visual amenity evidence of Mr Chris Goss, section i (first page)) (doc. 55).

195. The submissions of YVCC repeatedly assert that Mr Sheppard has no concerns about any views to the proposed development area from across the river or from the future public open space.⁵⁰
196. Those submissions misstate Mr Sheppard's evidence.⁵¹
197. When Mr Sheppard was asked, in cross-examination on behalf of YVCC, whether there were any viewpoints Mr Goss had not included in his evidence which should have been assessed, he said there were 'one or two – south of the site from Templestowe Road and also over the north-east corner of the site – and there are more from close to the river on the southern side, looking back at the site – Mr Czarny identified some – an open viewpoint from the western corner, and another from Banyule Flats.'
198. Further, as Mr Goss agreed, every selected viewpoint for the photomontages from the open space area of the subject site is angled oblique to the development, so none of them show the maximum exposure of built form behind landscaping – landscaping which:
- a. as Mr Murphy agreed, is the critical element in managing views of otherwise highly exposed development to an acceptable degree;⁵² and
 - b. as Mr Goss agreed, is a matter far better understood with photomontages than with the model (for the reasons summarised above).⁵³

Landscape and Visual Impact Assessment

199. All of the relevantly qualified experts agree with Mr Czarny that an LVIA is required for this amendment.
200. That should be no great surprise. As Mr Czarny said in his evidence, an LVIA is a standard requirement for development in sensitive landscape contexts.
201. However, some critical qualifications to that agreed conclusion emerged, mainly during the experts' oral evidence.
202. They do each maintain that an LVIA is required, but not on the same basis:
- a. Mr Biles says an LVIA is required only for the limited purpose of master planning for the open space, and not to test the built form impacts of development.

⁵⁰ Submissions on behalf of YVCC Property Pty Ltd (9 February 2021) at [148]-[150] and [172.d].

⁵¹ There is no reason to think that would have been intentional. It is a significant challenge to take accurate notes 'on the fly' in a hearing with no transcript or recording available to review, and in the author's experience it is hardest of all in the course of conducting cross-examination. See also footnote 26 above as regards summaries of evidence in submissions generally.

⁵² Something which can also be appreciated by considering the unoccluded building outlines in the photomontages, which show the extent of built form which would be visible but for the presence of vegetation.

⁵³ Submissions above at paragraphs 177-179.

That is not because he disagrees that an LVIA is the appropriate tool for the purpose, but because he considers himself to already be in a position to conclusively predict the outcome of such an assessment, if it were to be conducted, and to confidently say that it would not result in any change to the built form envelopes derived from Mr Goss's model and included in the proposed DPO schedule.

- b. Mr Sheppard considers that Mr Goss's model is technically proficient but not as comprehensive as an LVIA, and that considering the complex topography and vegetation involved, the more rigorous exercise of an LVIA is needed to have sufficient confidence about visual impacts in this case.

He believes that a comprehensive LVIA would potentially show further tempering of built form to be warranted, and the appropriate built form envelopes to be less than those derived from the model and included in the proposed DPO schedule.

However, he considers that can be adequately addressed by a requirement within the proposed DPO schedule to undertake an LVIA before approval of a development plan, so long as the maximum building heights in the schedule are effectively employed as provisional maximums – and specified as being subject to further input from the LVIA, to the effect that the outcome of the LVIA takes precedence.

- c. Mr Czarny also considers that an LVIA is needed to properly consider visual impacts, but disagrees with Mr Sheppard about the appropriateness and practicality of attempting to, in effect, undertake what is supposed to be the foundational assessment and attempt to retrofit its outcomes onto a set of already determined built form controls.
- 203. For the reasons explained by Mr Czarny, the Council submits that an LVIA should not be required just as a subsequent 'add-on', but as a foundational enquiry to guide the drafting of an appropriate planning control before it is put forward as an amendment to the planning scheme.
 - 204. If instead the Committee were to conclude that Amendment C125 should proceed, then further careful drafting would be required to implement the outcome supported by Mr Sheppard.
 - 205. It would need to be carefully drafted because anyone reading an extremely detailed, granular planning control will naturally infer that the details have been comprehensively resolved – here, the drafting would need to successfully rebut that natural inference and make it clear that it not just permissible, but in fact essential, that they be revisited.

Amenity considerations and Sonoco

206. The Environment Protection Authority (EPA) submissions raise, without really resolving, several potentially important matters.
207. One is potential contamination of the open space land, which is addressed later in these submissions. Another is potential amenity impacts from dust or odour from Sonoco.⁵⁴
208. The EPA states that it is unclear whether a specified separation distance may apply in accordance with EPA Publication 1518.⁵⁵ But it makes no comment as to what implications that might have for development on the YVCC land.
209. That is a matter which would have been best addressed by the EPA (who have said little) and/or by Sonoco (who have not made a submission).
210. Still, it is a matter the Committee will need to consider:
- a. It has the potential to make it impossible to develop the land generally in accordance with the Outline Development Plan, if any significant setback from Sonoco were to be required (much the same as if the extent of the fill platform needed to be moved substantially back further south of the electricity easement).
 - b. EPA Publication 1518 is a reference document to cl 13.06-1S (Air quality management) and cl 13.07-1S (Land use compatibility), each of which seeks to avoid land use conflicts arising from the collocation of incompatible land uses.
 - c. As the guideline itself states, at page 3:

Planning authorities should be consistent with this guideline when making strategic land use decisions. It is important that responsible authorities address the separation of land uses at the strategic planning stage to minimise potential conflicts during the subsequent planning permit approvals.
211. As the EPA observes, it is impossible to identify whether a specified separation distance may apply and if so, what distance is required, without having better information about Sonoco's operations.
212. But Sonoco is approximately 15 metres from the boundary of the subject site, and the range of industry categories it may fall within have recommended separation distances generally in the range of 100 to 250 metres between the industrial building and the property boundary of any sensitive land use.⁵⁶

⁵⁴ The Council has already addressed the Committee in relation to noise and considers that it can be appropriately dealt with by way of an acoustic report. It notes that the EPA is also satisfied in that regard.

⁵⁵ EPA Publication 1518, *Recommended Separation Distances for Industrial Residual Air Emissions* (2013).

⁵⁶ Ibid – see, eg, 'Printing' (page 9), 'Paper and paper pulp manufacture' (page 10). Measurement of separation distances is explained at page 12.

213. EPA Publication 1518 does include methods by which a variation from recommended separation distances may be justified,⁵⁷ and given there are existing residences on Templestowe Road within approximately 50 metres of Sonoco, it might be reasonably inferred that any development on the YVCC land is highly unlikely to require a setback in the order of hundreds of metres.
214. Still, EPA Publication 1518 makes clear that it is for the proponent, as the agent of change, to provide the necessary evidence to planning authorities that a variation is appropriate⁵⁸ – just as it is for the proponent of this amendment to demonstrate that the proposal is in accordance with the objectives of cl 13.06-1S and cl 13.07-1S.
215. The EPA clearly stated that an assessment under EPA Publication 1518 should be undertaken, five months ago in its submission on the exhibited draft amendment.⁵⁹
216. It is not apparent why that has not occurred. The fact that it hasn't may be another symptom of 'planning on the run', and the problems which arise when a proposal is advanced before it is ready.

The proposed land transfer

Social and economic value

217. If it has not yet been made clear enough, the Council considers that the transfer of the floodplain portion of the subject site to public ownership, for public enjoyment as part of the wider Yarra Valley parklands, is a manifestly good thing which will result in a significant social benefit.
218. That was stated in express terms during the cross-examination of Ms Peterson, and the Council has never suggested it to be otherwise.
219. The economic benefit of over \$34 million claimed by YVCC, however, is vastly overstated. The valuers did not 'over-inflate' their figures; they just made a fundamental error in their assumptions, which Mr Quick then accidentally compounded by adding on a further \$4.7 million through a simple calculation error.⁶⁰
220. The fact of the matter is that the open space land, once detached from the developable southern portion of the site, has little economic value and is of little if any imaginable practical use to anyone, for any purpose other than as a public park.

⁵⁷ Ibid at Part 9, pp 13-14.

⁵⁸ Ibid.

⁵⁹ Submission 60 (EPA Victoria, 24 September 2020) at page 4.

⁶⁰ Mr Quick readily recognised and accepted in cross-examination that the \$4.7 million attributable to the PAO2 land is already counted within the \$28.9 million attributable to the future public open space land – see M3 Property Valuation Report (12 October 2020) at p 41 (**doc. 73**). Despite that, YVCC's written submissions repeat the exact same double-counting error at [19] and [24].

221. That is because it is effectively sterilised for any conceivable profitable or productive purpose, by reason of the planning controls which apply to it – primarily the DDO2, which prohibits the construction of any building, of any kind, in any location anywhere on the land, even for the purpose of one of the few permissible uses within the SUZ1.
222. If thirty million dollars seems more in the range of what a person might pay for such a parcel of land if they were able to at least construct a building somewhere on it – say a classroom, a church, a changeroom or even a toilet block – that’s because it is more in that range.
223. The M3 valuation report expressly adopts the assumption that the DDO2 mandatory setback requirement is not regarded as material, because it would still allow for single-storey or two-storey buildings to be constructed on part of the land to facilitate an education, recreation or religious use.⁶¹
224. That assumption is plainly incorrect. The valuers misunderstood the effect of the planning controls and assumed, mistakenly, that the land can be developed. The valuation is worthless because it is entirely premised on a fiction.
225. It is frankly astounding that YVCC’s representatives appear to still be oblivious to that, continuing to rely on the valuation report, after having carefully taken the Committee through the two pages of the report where the flawed basis of the valuation is expressly set out, and then having had the problem spelled out in the cross-examination of Ms Peterson.
226. Anyway, it all matters far less than YVCC would have it matter.
227. YVCC seeks to advance a case to the effect that the social and economic value of the transferred land would be so monumental as to be the determining factor of ‘net community benefit’. For the reasons already explained earlier in these submissions, that conception of ‘net community benefit’ is flawed to begin with.⁶²
228. If a proposal is antithetical to planning policy then it cannot buy its way to a ‘net community benefit’, regardless of whether the transferred land is worth thirty million dollars or thirty dollars.
229. The Committee should not accept YVCC’s assertions that the land transfer will result in a substantial public economic benefit, or in any windfall gain to the public purse.
230. It is quite literally a parcel of land which cannot be developed, or used for anything much else than as a place to sit, walk, run, kick a ball around and enjoy the open air. In other words, as a park. It is a superb piece of land for a park, but not really for anything else.

⁶¹ M3 Property Valuation Report (12 October 2020) at p 40, last dot point (doc. 73).

⁶² Submissions above at paragraphs 45-62.

231. The Committee has no credible basis upon which to assume that there would be any prospective purchaser able to turn such land to any purpose capable of even meeting the not insubstantial ongoing cost of maintaining it – something the Yarra Valley Country Club was unable to achieve even with the help of \$4 million per year of electronic gaming machine revenue.
232. The land may well be an ongoing economic burden to whoever owns it (currently YVCC, and hopefully in the future a public land manager). But that certainly doesn't mean it should be counted as an economic disbenefit, or at least not one of great consequence.
233. Governments exist to provide services of benefit to the whole community, services cost money, and governments raise taxes to pay for the services. As Ms Peterson said, and the Council agrees, the maintenance of the land as a public park would be an excellent use of tax money.
234. Economic value aside, it is undoubtedly the case that the land transfer will result in a significant social benefit, which the Committee should take into account in accordance with s 12(2)(c) of the P&E Act.⁶³

Future ownership and management

235. As has been alluded to on a few occasions in the course of the hearing, 'negotiations' are to be had as to which public authority would take ownership and ongoing responsibility for the open space land, if it were given over to public ownership as part of a planning process facilitating the redevelopment of the southern portion of the YVCC site.
236. For the most part, that is a matter for another day, and one which the Committee need not concern itself with resolving.
237. So far as it concerns the proposed amendment, the Committee does however need to satisfy itself that the proposed planning scheme amendment provides:
 - a. an effective mechanism to ensure that the public open space land is given over to public ownership consequent on the redevelopment of the southern part of the subject site, and cannot end up being retained (willingly or unwillingly) in private hands; and
 - b. clear requirements to ensure the public open space land is handed over in a suitable state, and that the responsibility for establishing it to a suitable state to be handed over lies with the developer.⁶⁴

⁶³ But note submissions below at paragraph 315.b.

⁶⁴ For the avoidance of doubt, the Council agrees that the long-term costs of maintaining the land would obviously lie with the relevant public land manager.

238. The difficulty with the first of those two considerations is that the question of how to ensure the land is given over to public ownership is not easily separated from the question of which public body is going to own it.
239. In response to a question from the Committee as to what would happen if no public body were willing to take ownership of the open space land, YVCC asserted that it had 'huge difficulty negotiating with government bodies to take it', and that the Council for its part had initially opposed taking it but now likely would.
240. That submission, presumably based on instructions, is not accurate so far as it concerns the Council:
- a. The Council itself (by its Councillors or delegates) has at no time considered, nor taken any position in respect of, any kind of proposal or request that it agree to take ownership of part of the YVCC land.
 - b. A consultant retained by YVCC has made informal approaches to various individual Council officers on a number of occasions, seeking agreement that the Council will take ownership of the public open space land.
 - c. Council officers initially expressed interest in the possibility the land might be used to replace the soccer fields lost to the NEL (which are now to be relocated to the adjoining driving range site and part of the Parks Victoria land).
 - d. They told YVCC's consultant that the matter was not so simple though, and that before any formal consideration could be given there would first need to be:
 - i. clarity about what is proposed for the site, in what state it would be handed over, and a considered plan as to how the development of the balance of the site would be advanced; and
 - ii. discussions with others having a legitimate interest in the future of the site as public land – at the very least DELWP, Parks Victoria, Melbourne Water and the Wurundjeri Woi Wurrung people.

That is also the position Council put forward in its submissions on the exhibited draft amendment, and it remains the Council's position.⁶⁵

241. The identity of the most suitable future public land manager (and consequently, the Council's view as to whether it or a different public body should take the land) depends in large part on how the land will be used:
- a. Any part of the land which were to be used as active open space, such as for sports fields, would be squarely within the typical remit of a municipal council.

⁶⁵ Submission 13C (Manningham City Council, 24 September 2020) at [15]-[17].

- b. For so much of the land as is to be retained for its ecological and landscape values, as part of the greater Yarra Valley Parklands, Parks Victoria would be the more obvious and sensible choice. The Council lacks the specialised resources to holistically manage one segment within a wider expanse of important and ecologically sensitive river valley parkland, to the standard of a statutory authority created for the specific purpose of managing important and ecologically sensitive parklands, which already manages most of the Yarra Valley Parklands in Manningham and has done so for many decades.
242. In that light, the submissions of Parks Victoria to this Committee cannot be left to pass without comment.
243. It is disappointing, to put it mildly, that a statutory body whose entire purpose for existence is to protect, conserve and manage parklands felt that one of the most pressing matters it wished to put before a Committee hearing submissions and evidence about the future use and development of a substantial stretch of valued river valley parkland was how much it does not want to manage another part of that parkland and, for what it's worth, that it would also like to get rid of the adjoining Crown land it already manages.⁶⁶
244. YVCC will need to do more than just wash its hands of the land – but by the same token, planning for this area should not be stymied, and the opportunity missed to have new parkland for the benefit of the community, for no better reason than an unedifying squabble between the instrumentalities of government as to whose budget will cover it.
245. The proposed DPO schedule would link the approval of any development plan to a binding commitment to transfer the open space land to the Council 'or another statutory body' at no cost, through the mechanism of an agreement under s 173 of the P&E Act.
246. That is not ideal, because the Council is a necessary party to a section 173 agreement while other potentially more suitable public land managers are not.
247. It may ultimately have the effect of turning an impasse about the future ownership of the land into the Council's problem rather than the developer's problem, by formalising an operating assumption that if no other public body puts its hand up then the Council is to be the one left holding the bag.
248. But it is the only practical planning tool available, and there is no reason why any impasse within government should be the developer's problem either.
249. There is a need to be pragmatic, and it needs to be recognised that the prospect of the open space land being owned and managed by a less than ideal public land manager is far preferable to it not being in public hands at all. On that basis, the Council supports the use of the section 173 agreement.

⁶⁶ Submissions on behalf of Parks Victoria (17 February 2021) at [27]-[42].

250. In the light of the above considerations, however, and with regard in particular to the bewildering attitude of Parks Victoria, the Council does seek that in the event the amendment were to proceed:
- a. the DPO schedule (and subclause 2.3 in particular) be drafted in terms that avoid creating an expectation or assumption that the Council is to be the owner – for example, rather than *'to Manningham City Council or another statutory body'* the requirement could be *'to the Crown, the responsible authority or a public authority'*⁶⁷; and
 - b. the Committee's report and recommendations are likewise given in terms that avoid creating an unexamined expectation or assumption that the Council will be the ultimate owner – though the Council would be happy for the Committee to provide express consideration and comment on the matter if it saw fit to do so.

Details of the proposed amendment

251. If, despite the broader problems identified, Amendment C125 were to proceed, the Council makes the following submissions in relation to its content.

Building height, density and garden area

252. The proposed DPO schedule anticipates buildings generally in the range of 2-3 storeys over most of the development area, with two pockets of development designated for buildings of 3-4 storeys.
253. The Council considers that generally 2-3 storey townhouse style development across the site is appropriate.
254. It is less certain as to whether 4 stories can be appropriately accommodated. Not for reasons of height per se, so much as for the different character that starts to emerge with denser forms of development and a shift in the balance between townhouse and apartment typologies – a large part of the reason why it now accepted that the GRZ (which ordinarily permits no more than 3 storeys) is the appropriate zone control.
255. That said, it does not vigorously oppose the DPO and GRZ schedules contemplating that limited development at 4 storeys might be achieved at selected locations, with restraint and careful design, particularly having regard to the slope of the site.
256. The Council does not support the inclusion, in the proposed zone schedule, of a specific exemption for the subject site from the standard garden area requirements of the GRZ in cl 32.08-4.

⁶⁷ The present drafting requires revision in any event, to include transfer to the Crown (if to be managed by Parks Victoria) and to adopt P&E Act defined terms (ie. *'public authority'*).

257. There is nothing in the evidence or submissions of YVCC that even offers a sensible basis for why this site should be treated differently to every other site in a GRZ.
258. Ms Jordan's reasoning was, in effect, a criticism of the fact the garden area requirement exists at all rather than an explanation of why it should not apply in the specific circumstances of the subject site.
259. Whether she's right about that or not, this Committee is not here to consider amendments to State standard zone controls.
260. Clause 32.08-4 already provides a general exemption for all lots of less than 400 sqm, and a custom exemption which can be implemented at the development plan stage by the designation of any area as a 'medium density housing site'.
261. There is no reason why any lot within the subject site of more than 400 sqm, which has been considered not to warrant a 'medium density housing site' designation in an approved development plan, should not provide the standard garden area.
262. In cross-examination, Ms Jordan:
- a. said she is not sure that the purpose of the standard garden area requirement is to maintain any particular neighbourhood character; and
 - b. agreed that if neighbourhood character is the purpose, then the subject site would not be a logical location to provide a site-specific exemption from a control having such a purpose.
263. The explanatory report for Amendment VC110, which first introduced the garden area requirement into planning schemes, describes its purpose as being '*to protect the garden suburban character of existing urban areas*' and '*to ensure development outcomes that do not compromise neighbourhood character including predominant landscape values*'.⁶⁸
264. To like effect, Planning Practice Note 84 describes the garden area requirement as '*the percentage of a lot that must be set aside to ensure the open garden character of suburbs is protected*'.⁶⁹
265. It cannot be reasonably asserted that such character objectives have less relevance to the subject site than to the average suburban block – a site in respect of which YVCC's witnesses have consistently emphasised the importance of the development having an open and vegetated character, and advanced that objective through the 'green fingers' of canopy trees in the Outline Development Plan and all of the matters which subclause 3.1 of the proposed DPO schedule requires to be addressed in a Landscape Master Plan.

⁶⁸ Amendment VC110 – Explanatory Report at pp 4-5.

⁶⁹ PPN84: *Applying the minimum garden area requirement* (May 2018) at p 1.

Native vegetation and biodiversity

266. There are no matters of substance in dispute in relation to ecology.
267. YVCC's resistance to incorporating a single one of Dr Lorimer's suggested amendments to the DPO schedule's Native Vegetation and Biodiversity Report requirements is a pointless debate.
268. Mr Mueck does not disagree with the substance of any of Dr Lorimer's suggestions – he just resists them, with surprising forcefulness, as a matter of principle.
269. His stance and responses to Dr Lorimer's (at worst, innocuous) suggestions is probably a good example of the inherent drawbacks of calling an expert as a witness in defense of their own work.
270. The Council relies on Dr Lorimer's evidence as to the purpose and utility of his suggestions, and adds the following remarks.

Report to cover the entire site

271. Mr Mueck agreed in evidence that the Native Vegetation and Biodiversity Report should be required to cover the entire subject site, as Dr Lorimer suggests, but opposed the inclusion of words to the effect on the basis that he 'thought it was already implied'.
272. YVCC's lawyers then apparently considered that to be a compelling and correct basis to reject Dr Lorimer's suggestion in the most recently updated (8 February) version of the proposed DPO schedule.
273. Mr Mueck is wrong. It is by no means implied that the report must cover the entire site. The proposed DPO schedule expressly allows for a development plan to be prepared for only part of the land, in which case the natural implication would be that the report only need cover that part of the land. The express words suggested by Dr Lorimer are in fact required to achieve the outcome both experts agree on.

'Net gain' principle

274. Mr Mueck opposes the deemed application of the 'net gain' principle of section 9(4) of the *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017* (Vic) on the basis that section 9(4) of that Act must be meaningless because 'net gain' is not defined in the dictionary in section 3.
275. In arriving at the conclusion that Parliament enacted a meaningless requirement in section 9(4), he did not think it necessary to read section 9(4) itself.
276. YVCC's lawyers then apparently considered that to be another compelling and correct basis to reject Dr Lorimer's suggestion in the most recently updated (8 February) version of the proposed DPO schedule.

277. As was put to Mr Mueck in cross-examination, section 9(4) forms part of a suite of existing statutory obligations which do not apply to municipal councils,⁷⁰ and Dr Lorimer's suggestion is intended to do no more than to extend its application to the Council, were it to become the owner of the land, in circumstances where it would otherwise benefit from a specific exemption.
278. The Council is hardly going to complain if the Committee preferred Mr Mueck's view on that, but there is no sensible reason why it ought to.

Light spill

279. Mr Mueck opposed the inclusion of light spill as a matter requiring consideration because it is already included within the Site Plan requirements.
280. But he then agreed in cross-examination that light spill is an ecological issue, that the Site Plan is not prepared by ecologists, and that the whole point of setting out requirements for an ecological report is to identify the matters which the ecologist should consider.
281. In light of those concessions, it is anyone's guess why Dr Lorimer's suggestion was rejected in the most recently updated (8 February) version of the proposed DPO schedule.

Satisfaction of the responsible authority

282. Mr Mueck expressed the view that much of what Dr Lorimer's suggestions sought to specify could simply be demanded by the Council, as responsible authority, and the developer would then have no choice but to comply anyway.
283. Taken to its logical conclusion, that would mean the DPO schedule does not need to set out any requirements at all, because the Council can just decide for itself what it wants and then refuse to approve the development plan unless it gets it.
284. Of course, that is not how it works – decisions about development plans can be and often are disputed, with section 149(1)(a) of the P&E Act providing a specific mechanism to do so, and when that happens it is a lot better if the DPO schedule simply says what is required rather than leaving it to assumptions which may not be shared by everyone.

Hydrology, stormwater and drainage

285. For the reasons already explained, the uncertainty as to whether adequate floodplain storage can be achieved in accordance with the Outline Development Plan is a critical failing of the proposed amendment.

⁷⁰ By reason of section 14(3)(c)(iii), land owned by a municipal council cannot be declared 'Yarra River land' under section 14(1) or (2) and is therefore not covered by the Yarra protection principles of Part 2 (including section 9(4)).

286. Other issues related to stormwater and drainage are generally matters which can be appropriately addressed in design at later stages, through the Drainage and Hydrology Stormwater Management Strategy Report required by the proposed DPO schedule.
287. Some, but not all, of Mr Dunn's suggestions have been included in the latest draft of the proposed DPO schedule.
288. Those which remain outstanding are:⁷¹
- a. That there be a maintenance period of at least 24 months prior to the transfer of ownership of any stormwater treatment assets, to ensure those assets are successfully established and handed over in a functioning state.
 - b. That excavation for floodplain storage be subject to the following requirements:
 - i. designs to be submitted the satisfaction of the responsible authority and Melbourne Water;⁷²
 - ii. Permit to Fill to be obtained from Melbourne Water; and
 - iii. certified survey plans of 'as built' conditions to be submitted to the satisfaction of Melbourne Water, to confirm that the floodplain storage objectives of the design have been met.⁷³
289. No reason has been given why those suggestions were rejected in circumstances where:
- a. his evidence in support of those changes has not been challenged in cross-examination, nor in the evidence of any other expert; and
 - b. all the relevant experts agreed in the conclave that all the proposed additions and modifications to the DPO schedule put forward by both Mr Dunn and Ms Mag should be adopted.⁷⁴

Affordable housing

290. The proposed 2% base requirement for affordable housing is miserly. It is out of step with current fair expectations for a redevelopment site like this.

⁷¹ Mr Dunn also identified as outstanding his suggested requirement that excavation and the reinstatement of excavated areas occur prior to the transfer of ownership of the open space area and prior to the placement of fill – but that has been addressed in the most recent version of the proposed DPO schedule, by way of amendments to subclause 2.3.

⁷² This is provided for in part by the fourth dot point under the Earthworks Strategy Plan in subclause 3.1 of the proposed DPO, noting that as drafted it need only be to the satisfaction of the responsible authority.

⁷³ Mr Dunn identifies these additional requirements in the context of the Drainage and Hydrology Stormwater Management Strategy Report in subclause 3.1 of the proposed DPO, but they are probably better implemented as required permit conditions under subclause 2.2.

⁷⁴ Conclave of stormwater and hydrology experts – statement of agreed opinions and facts (15 January 2021) at [11].

291. Ms Peterson was quite open in not even pretending to support it as an appropriate percentage in its own right, but said it should be considered in the context of the \$30 million value of the open space land – a value which, for the reasons explained earlier (but not known to Ms Peterson), is a fiction.
292. The Council's adopted *Residential Strategy* nominates a minimum of 5%⁷⁵ – a figure Ms Peterson agreed is a reasonable benchmark especially having regard to the shortage of affordable housing in Manningham.
293. The 5% benchmark nominated in the *Residential Study* came about as a result of a strategy identified in the Council's earlier adopted *Affordable Housing Policy and Action Plan 2010-2020*, to identify planning tools to increase affordable housing supply including the setting of minimum targets for the provision of affordable housing by developers in well located housing developments outside of Doncaster Hill (for which a 10% benchmark had already been set).⁷⁶
294. The purpose of that goal was to address a specific identified and increasing need in the municipality, which was identified as having higher housing costs than many other middle ring areas of metropolitan Melbourne, very substantial barriers to home ownership and significant levels of rental housing stress.⁷⁷
295. That need has not gone away – it has only increased, and the submissions of Manningham Inclusive Community Housing (MICH) provide an important illustration of the real impact it has on many people in the community.
296. In that context, it is really not much to expect that the windfall private benefit which flows from a favourable change to planning controls, and the opportunity to develop land in the municipality at substantial profit – a profit which is proportionately greater in this location by very reason of the fact that housing prices are so high – might come with the very modest obligation that a handful of the houses be appropriate for the housing needs of people on a moderate annual income of up to \$130,000 for a family with children.⁷⁸
297. That is becoming ever more a standard expectation in planning, especially where a windfall private benefit will arise from a change to planning controls to facilitate the redevelopment of a single site.
298. All the more when the site is a golf course – the *Planning Guidelines for the Conversion of Golf Course Land to Other Purposes* specifically direct consideration to whether a proposal

⁷⁵ *Manningham Residential Strategy* (Manningham City Council, March 2012), Action 5.1, page 21.

⁷⁶ *Affordable Housing Policy and Action Plan 2010-2020* (Manningham City Council, November 2010), Action 2.1d, page 9.

⁷⁷ *Ibid* at pp 14-20.

⁷⁸ *Planning and Environment Act 1987* (Vic) s 3AA; Victorian Government Gazette G23 (6 June 2019) (doc. 69).

'contributes to local housing priorities such as the provision of affordable or social housing, sheltered housing or crisis accommodation'.⁷⁹

299. The minimum provision of affordable housing, at any percentage, should not be linked to higher yields or building heights. This is a sensitive location in which built form envelopes need to be carefully and precisely circumscribed, and it would not be appropriate to apply an 'uplift' as is more common in robust environments like the central city.
300. There is no reason this amendment should not come with a requirement to at least meet the minimum benchmark of 5% affordable housing.
301. The Council also seeks:
 - a. a requirement that the affordable housing be developed in association with an accredited housing association;⁸⁰ and
 - b. if no more than the minimum 5% is provided, that it also be directed at specific needs such as low or very low income households, or even a tailored outcome for people with an intellectual disability along the lines proposed by MICH in its submission to the Committee.

Contamination

302. The Council accepts the evidence of Mr Taylor on this issue. But it observes that his evidence also includes his answers to Mr Sherman in cross-examination (and to questions from the Commission), to the effect that:
 - a. further assessment is required to understand the extent of any potential contamination of the open space land and to determine its suitability for use as public open space;
 - b. that assessment should be undertaken to determine the suitability of the land for use as public open space and not just consequent on development;
 - c. the proposed DPO schedule, as drafted, does not provide for such assessment (and any necessary actions arising from it) to be undertaken by the developer before the land is transferred – or, where earthworks are not undertaken, for it to occur at all; and
 - d. the assessment, and all necessary actions which arise from it, should be undertaken by the developer at its own cost, before the land is transferred to a public land manager.

⁷⁹ *Planning Guidelines for Conversion of Golf Course Land to Other Purposes* (DELWP, June 2020) at p 12.

⁸⁰ See, eg, Yarra Planning Scheme clause 43.04, schedule 11 (DPO11 – Amcor site, Heidelberg Road, Alphington), subclause 2.0.

303. Those answers are also reflected in concerns expressed by the Environment Protection Authority (EPA) in its submission.⁸¹
304. YVCC in its submission *'acknowledges that it may be appropriate for there to be soil investigations undertaken in the future public open space prior to transfer of that land to a public agency.'*⁸²
305. In the light of the evidence there is no 'may' about it – it is absolutely appropriate, and important, that such investigations are undertaken, and any necessary audit or remediation actions arising from those investigations attended to, by the developer before the land is transferred.
306. Further, there is no basis for YVCC to say that is just *'a matter as between YVCC and the acquiring agency'* which does not need to be addressed in the DPO schedule.⁸³
307. YVCC has advanced the benefits of the land transfer 'at no cost' as the centerpiece of its case, and it relies heavily on social planning evidence which assumes that to be so.
308. As discussed earlier, for planning purposes the Committee should satisfy itself that the proposed amendment provides an effective mechanism to ensure the open space land is given over to public ownership, and also that when it is handed over, it is received in a suitable state to realise the promised public benefits.
309. It is important that the DPO schedule provide certainty about both of those things. It is no more acceptable for the planning control to leave responsibility for potentially contaminated land for 'negotiation' (and potential deadlock) between the developer and a future public land manager than it would be to leave the transfer itself in doubt.
310. The DPO schedule requires further additions to:
- a. subclause 3.1, to require investigations (including soil testing) to determine the nature and extent of contaminated land within the future open space portion, the actions required to ensure it is suitable for use as public open space, and to require the carrying out of any such actions; and
 - b. subclause 2.3, to specify that any necessary actions arising from that investigation must be taken before the land is transferred to a public land manager.

Other matters

311. The Council has no concerns or comments in relation to Aboriginal cultural heritage or geotechnical requirements. It accepts the evidence of the witnesses who were called to give evidence on those matters.

⁸¹ Submissions on behalf of EPA Victoria (18 February 2021) at Section 5, pp 7-8.

⁸² Submissions on behalf of YVCC Property Pty Ltd (9 February 2021) at [238].

⁸³ Ibid.

312. It takes no position as to how the built form outcome in the DPO schedule should be given effect in the zone schedule and an amended DDO2, so long as all the controls operate consistently, and are reasonably able to be understood and applied by professional planners.
313. The Council agrees with YVCC that in the *Planning Guidelines for Conversion of Golf Course Land to Other Purposes*, the reference to setting aside for open space 'at least 20% of the land area to be developed' is more sensibly interpreted in a wide sense, meaning 20% of the entirety of the land formerly used as a golf course – not in the narrow sense of being 20% of some lesser portion of that land, where buildings and works are physically to occur.⁸⁴
314. It takes that view having regard to:
- a. the reference (within the same dot point) to the relevant land being encumbered by easements, reservations and the like, which would appear to anticipate the relevant land area may include land which cannot be developed; and
 - b. land set aside for open space becomes, by definition, land outside of the 'area to be developed' in the narrower sense – so the narrow interpretation would be logically circular and self-defeating.
315. Relevantly, that means that:
- a. the land to be transferred would comprise an adequate open space contribution, without requiring a further 20% to be taken from within the southern developed portion of the subject site; and
 - b. in having regard to the social benefit associated with the creation of new public parkland,⁸⁵ it is relevant to have regard to the fact that out of the approximately 15.8 ha to be transferred, about 4.5 ha comprises public open space which would have been expected for any such proposal in any event, with the balance of about 11.3 ha comprising a benefit 'over and above' usual expectations.⁸⁶
316. In relation to the second-last dot point under subclause 2.3 of the proposed DPO schedule, to do with the future rezoning of the open space land, the Council has some

⁸⁴ *Planning Guidelines for Conversion of Golf Course Land to Other Purposes* (DELWP, June 2020) at p 13.

⁸⁵ See submissions above at paragraph 234.

⁸⁶ The figures cited are taken from the M3 valuation report. Note that there are numerous discrepancies between the land areas calculated in the M3 valuation report and those cited by Ms Peterson in her evidence – the total site area of 22.4 ha is the only consistent figure between the two. In the Council's opinion the discrepancies are not large enough to make any difference for the purposes of this hearing – the discrepancy between the two reports as regards the total land area to be given away at no cost (including all PAO land) is only 0.444 ha, so it is either 70.8% of the total site if the M3 figures are adopted or 72.8% if Ms Peterson's figures are adopted. YVCC's submissions adopt Ms Peterson's figures. It is not clear which of the two sets of figures is correct, and YVCC's submissions at [23] don't really explain the differences – though they do seem to indicate that part of the reason Ms Peterson's figure for the total transferred area is higher may be due to a calculation error in converting between square metres and hectares (552 m² is only 0.0552 ha, not 0.552 ha).

doubt about the utility, appropriateness, and potentially even the legality of such a requirement – and it also queries why the Council is specifically nominated as responsible for preparing a future planning scheme amendment.

317. Finally, the Council neither expressly supports nor opposes the requirement for a ‘Community Engagement Strategy’, but makes the following comments for the Committee’s benefit:
- a. It is possible the requirement was intended to be responsive to ‘Step 5’ of the *Planning Guidelines for Conversion of Golf Course Land to Other Purposes*, which encourages ‘a comprehensive community consultation program’, though arguably this proposal has already passed that step in the ‘assessment pathway’.⁸⁷
 - b. Planning Practice Note 23 expressly discourages the use of ‘non-statutory consultation practices to assist in deciding planning applications’ under the IPO and DPO, citing the risk that ‘defects in the notice process can be judicially reviewed in the Supreme Court’.⁸⁸

The apprehension would seem to be that the doctrine of ‘legitimate expectations’ might be invoked against responsible authorities who adopt a regular practice of non-statutory notification.⁸⁹ That seems theoretically possible but relatively unlikely – the doctrine has fallen out of favour in Australia since 2003,⁹⁰ and the Council’s legal representatives are not aware of any example of such a case ever having been brought in a Victorian court in respect of a planning decision, despite the prevalence of such practices by many councils.
 - c. From a practical perspective, such a process can have benefits in fostering transparency and engagement in public decision-making, but it can also become problematic if it gives rise to false expectations within the community that any kind of third party notification and review rights may exist when they do not.
 - d. The proposed DPO schedule as drafted seems to anticipate, or at least leave open, that the consultation process will be managed by the developer rather than by the responsible authority.

If that were the chosen mechanism, then each of the potential issues averted to above would be far less likely to arise.
 - e. The inclusion of such a process should by no means be seen to lessen the care and scrutiny required of the amendment in light of the fact that if it proceeds, this Advisory Committee process will in all likelihood be the first and last opportunity

⁸⁷ *Planning Guidelines for Conversion of Golf Course Land to Other Purposes* (DELWP, June 2020) at pp 9 and 12.

⁸⁸ PPN23: *Applying the Incorporated Plan and Development Plan Overlays* (November 2018) at p 2.

⁸⁹ See, eg, *Minister for Immigration and Ethnic Affairs v Teoh* [1995] HCA 20, (1995) 183 CLR 273.

⁹⁰ *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* [2003] HCA 6, (2003) 214 CLR 1.

for third parties to have any formal rights of participation in the planning approval process.

CONCLUSIONS

318. For all the reasons discussed, the Council seeks recommendations from the Committee to the effect that:
- a. the Framework Plan be finalised subject to appropriate changes; and
 - b. proposed Amendment C125 to the Manningham Planning Scheme not proceed until further work is undertaken to resolve the issues identified in these submissions.

23 February 2021

Daniel Robinson

Counsel for Manningham City Council
Instructed by Harwood Andrews

10.2 Youth Advisory Committee

File Number: IN21/129
Responsible Director: Director City Planning and Community
Attachments: Nil

EXECUTIVE SUMMARY

At the Council meeting of 23 February 2021, several new advisory committees were proposed including a Youth Advisory Committee, with a view to gathering the youth voice to inform Council decision making, and to provide input into strategies and policies.

There is also a desire to ensure that all advisory committees have a strong strategic alignment with the priorities of the Council Plan and Healthy City Strategy.

The nature of young people and their interests mean that engagement and participation by them in a meaningful and fulfilling way will need to be considerate of their specific needs. Advice from other Councils who have formed Youth Advisory Committees indicates that consulting with young people at the outset helps make an advisory committee more relevant and attractive to young people, and ultimately successful.

The scope of the committee, the term of appointment and membership all must be tailored to meet the needs of the young people themselves in order to be effective. It is important therefore that young people are asked about how they would prefer to participate.

It is proposed that a series of youth focus groups and forums (consulting with a broad cross section of young people) be held over the next few months. The consultation would seek feedback directly from young people about the way an advisory committee could be successfully set up so that young people could provide feedback on Council's priorities, provide information about local youth issues and gain skills and experience along the way. Young people who have nominated to be part of Council's Community Panel will be invited to participate in the consultation.

Councillors would have the opportunity to participate in the consultative forums and hear directly from young people about their views for youth participation in an ongoing Youth Advisory Committee.

A further report would then be prepared for Council regarding the Terms of Reference and scope of a new Youth Advisory Committee in mid-2021 following the consultation and finalisation of the Council Plan and Healthy City Strategy.

1. RECOMMENDATION

That Council:

- A. Note that officers will initiate a series of youth focus groups/forums to consult with a broad range of young people about the most effective ways of engaging them, the structure of a Youth Advisory Committee and scope of the group;**

- B. **Will invite any interested Councillors to participate in the focus groups/forums;**
- C. **Officers will report back to Council at the conclusion of the consultative process with recommendations for the most effective way of initiating a new Youth Advisory Committee; and**
- D. **Notes the strategic priorities of the Council Plan and Healthy City Strategy once finalised will guide some of the issues, agenda and priorities for a new Youth Advisory Committee.**

2. BACKGROUND

Current youth consultative mechanisms:

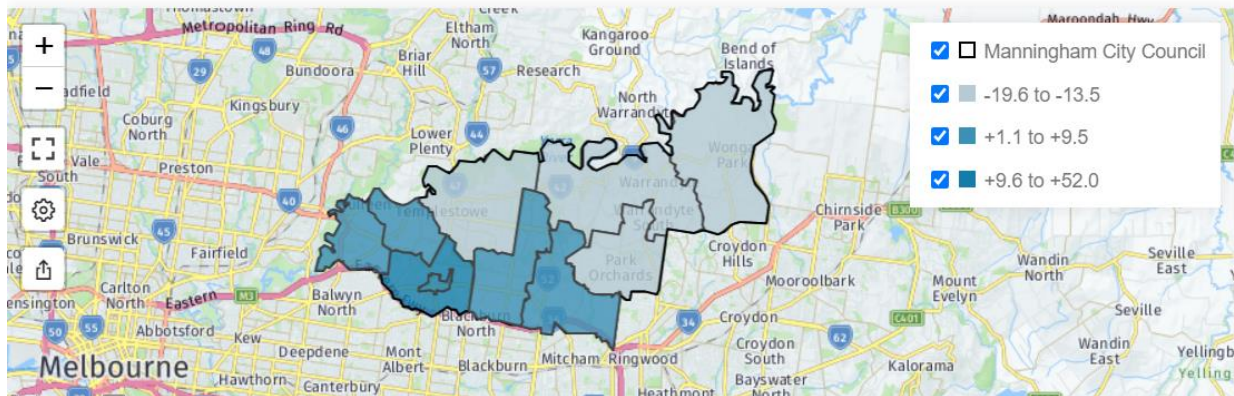
- 2.1 **Youth Advisory Council (YAC)** - For more than six years, Manningham Youth Services has convened a Youth Advisory Council (YAC) that, each year, seeks participation by up to 15 young people to form a group that considers local youth needs and develops an annual project. Youth workers facilitate the discussions and goal setting, and provide the necessary mentoring to assist the group work through the processes required to develop and deliver priority actions. Members of the group are called upon from time to time to assist in civic participation opportunities. The judging of the Manningham Civic Awards for example has involved a member of the YAC and another YAC member has been involved in youth staff selection panels. The YAC has also organised public events.
- 2.2 **Youth Coordinator input** - In 2019, Council entered into a contract with EACH (Eastern Access Community Health) to operate Manningham Youth Services on behalf of Council for a period of up to 5 years. The Coordinator of the service spends part of their time within the Civic Offices and participates in internal discussions, consultations and provides expert advice regarding youth issues.
- 2.3 **Manningham Youth Forums** – There have been youth forums that involve young people within Manningham to discuss issues affecting and concerning young people, and to provide feedback on Council priorities. The last one of these forums involving school students was in 2018 and involved 200 students.
- 2.4 The forum identified a list of areas of concern to young people namely:
 - **Mental health** – including bullying, social anxiety, depression
 - **Body image** – an issue identified by both boys and girls
 - **Cultural issues** – discrimination, bullying, feeling different, cultural expectations
 - **LGBTIQA+ issues** - acceptance, family, information, mental health
 - **Loneliness/isolation**
 - **Lack of feeling connected** with others who understand them, either at home, school or both
 - **Engagement** with work or school, homework and study pressures

Manningham Youth Population

2.5 From 2020 to 2030, Manningham’s youth population is forecasted to grow by 979 persons (4.2%)

Population and age structure map - persons aged 12 to 25 years

Manningham City Council, 2020 to 2030 percent change



Area	2020		2030		change between 2020 to 2030	
	Number	%	Number	%	Number	%
City of Manningham	23,531	17.9	24,510	17.0	+979	+4.2
Bulleen	2,074	16.8	2,270	16.8	+197	+9.5
Doncaster Hill	1,093	21.0	1,661	17.6	+568	+52.0
Doncaster Balance	3,822	17.6	4,304	17.1	+482	+12.6
Doncaster East	5,871	17.9	5,979	17.3	+109	+1.8
Donvale	2,347	17.1	2,407	16.9	+60	+2.5
Park Orchards - Ringwood North	1,069	23.6	860	19.2	-209	-19.6
Templestowe	2,995	17.3	2,913	16.3	-82	-2.7
Templestowe Lower	2,346	15.8	2,397	15.7	+51	+2.2
Warrandyte - Warrandyte South	1,225	20.2	1,059	17.4	-166	-13.5
Wonga Park	690	21.4	659	20.1	-31	-4.5

2.6 The area with the greatest increase in persons aged 12 to 25 years between 2020 and 2030 is forecasted to around Doncaster. Conversely, Park Orchards – Ringwood North, Warrandyte and Wonga Park are projected to experience a decrease of 406 persons aged 12 to 25 years. (the working definition of ‘youth’ is acknowledged as 12 to 25 years)

2.7 In 2016, the last Census year, 209 Manningham residents identified as Aboriginal or Torres Strait Islander, half of who were aged 25 years or under.

- 2.8 With regards to young people aged 12 to 17 years in 2016, 21.3% were born overseas compared with 17.6% for Greater Melbourne, and 32.9% spoke a language other than English at home compared with 26.5% for Greater Melbourne.

3. DISCUSSION / ISSUE

- 3.1 The purpose of a Youth Advisory Committee is to consult with young people about Council's plans and strategies, as well as to seek views on issues that affect young people and feed this back to Council to influence decision making and priority setting.
- 3.2 Most Councils have some kind of consultative committee with young people, with participants usually aged between 16 and 25 years. Some of these committees have Councillors and service providers as active participants, while others have only young people and youth staff. Only a small number of committees have participants aged under 16 years.
- 3.3 There are a number of common themes emerging from the benchmarking. Successful Youth Advisory Committees elsewhere have these features:
- 3.3.1 **Consultation:** Consulting with young people about the scope and focus of the committee before it is set up is critical to success. In other successful models, young people were consulted about how often meetings should be, how they should be structured and what the agenda should include. This was seen as an inclusive way to ensure the model was successful and met the needs of the young people as well as meeting Council's needs. This consultation was undertaken before a committee was set up.
- 3.3.2 **Agenda:** Young people prefer an agenda that is based around issues that can be dealt with in a specific meeting -e.g. one meeting is based around climate change and the next meeting has a focus on mental health. Committee structures need to be tailored to meet the needs of young people and may not mirror other formal advisory committee formats.
- 3.3.3 **Duration:** Young people's participation is usually for 12 months with an option to extend to 2 years. 12 months is the usual time that a young person will commit, as things change rapidly from year to year in a young person's life. The school year is often the term of a Committee member.
- 3.3.4 **Focus:** The meetings have a development focus – that is, the experience of being on a committee is a learning experience for the young person and should be structured to allow young people to gain knowledge from the process. Youth Development Workers are usually included in the meetings. Many young people are inexperienced in committee structures and would benefit from some guidance from a youth worker regarding expectations, conduct, and follow up actions.
- 3.3.5 **Safety:** All child safeguarding measure need to be in place – Working with Children checks and police checks are mandatory for all participants over 18 years of age. Parental consent is required for participants under 16 years.

3.3.6 **Age:** The most usual age range for youth participation is 16 years to 25 years. This is because young people at that age have clear motivation for joining a committee and can have a well-rounded interest in their communities and local issues. Younger participants can be included but need more support for the experience to be meaningful.

3.3.7 **Diversity:** Diversity amongst the participants will need to be encouraged to ensure a good cross-section of young people's interests are captured. This could include school students, those in the workforce, international students, young people from CALD backgrounds, LGBTIQ+ representation, amongst others and could be considered in the selection process.

- 3.1 It is suggested that a series of consultative forums are held with a cross-section of young people to scope the specific details of how a Youth Advisory Committee could be set up for success.
- 3.2 The target age range is 16 to 25 years. A diverse range of young people would be invited to participate in the consultation, and the final membership will also reflect diversity of participation.
- 3.3 Consultation would include:
- Young people who have nominated to be considered for the Community Panel and current members of the Youth Advisory Council (operated by Manningham Youth Services)
 - Secondary school students
 - University level students including international students
 - Young people who are employed, in trades or TAFE, or not otherwise in the employment or education systems
- 3.4 These forums can be organised by officers, with Councillors invited to attend.
- 3.5 These forums could be completed by mid-2021, around the same time that the Council Plan and Healthy City Strategy are in the final stages of completion. The priorities of these documents could inform the agenda of the Youth Advisory Committee.
- 3.6 Officers would bring back to Council a fleshed-out proposal of the scope and format for the Youth Advisory Committee, including Terms of Reference, details of proposed membership and selection process and the ways that the committee would communicate with Council.
- 3.7 This allows young people to be genuinely engaged in developing the structure of the committee, to have the best chance of success.

4. COUNCIL PLAN / STRATEGY

- 4.1 Facilitating engagement with young people is aligned with the key priorities of the Council Plan and Healthy City Strategy.

5. IMPACTS AND IMPLICATIONS

- 5.1 Manningham Youth Services (operated by EACH under a service contract with Council) has the capacity to support the consultation process and the preferred means of engaging the Youth Advisory Committee.
- 5.2 Experience in other Councils has demonstrated the importance of consulting with young people regarding the details of how a Youth Advisory Committee operates. The formality of a Council Advisory Committee, may need to be modified to meet the specific needs of young people. It is therefore important that in establishing a new Advisory Committee, there is a defined focus, clear scope and representative membership.
- 5.3 The current Youth Advisory Council would continue to operate, comprising of participants of Manningham Youth Services, with their focus remaining on projects and events. The group may also have some representatives who would be interested in joining a Youth Advisory Committee.

6. IMPLEMENTATION**6.1 Finance / Resource Implications**

Manningham Youth Services will support enhanced engagement with young people from within their current resources.

6.2 Communication and Engagement

The process of inviting young people to be part of consultative forums could commence straight away.

Councillors would be invited to observe and listen, and where appropriate, be involved in the discussion with young people.

6.3 Timelines

Planning – March 2021

Forums commence – April/May 2021

Proposal to Council for Youth Advisory Committee including information gathered at the forums and all details of Terms of Reference, membership, member selection etc. – June/July 2021

Recruitment of members – August 2021.

7. DECLARATIONS OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any general or material conflict of interest in this matter.

10.3 Proposal to enter into new Community Partnership Grants

File Number: IN21/139
Responsible Director: Director City Planning and Community
Attachments: Nil

EXECUTIVE SUMMARY

The Community Partnership Grants are open to any community based not-for-profit organisation who deliver programs and initiatives that support Manningham residents.

It is proposed to align the Community Partnership Grants to the priorities identified in Council's strategic documents: the 2021-2025 Council Plan and 2021-2025 Healthy City Strategy, and advertise the grant program in September 2021 with new agreements to commence in January 2022.

This will mean there is a six month period between the end of the current partnership agreements and new agreements. It is proposed that Council enter into new short term agreements (as outlined in this report) with existing partner organisations already receiving community partnership funding to enable delivery of programs and activities similar to those in the current agreements.

Following adoption of the Council Plan and Healthy City Strategy, a further report will be presented to Council to consider the priority outcomes that will inform the next iteration of the Community Partnership grant program. These will also be informed by the Community Grants Policy that was endorsed by Council in August 2020.

1. RECOMMENDATION

That Council:

- A. Resolves to defer the next round of the Community Partnership Grant Program in order to align the program with priority outcomes contained in the 2021-2025 Council Plan and Healthy City Strategy (to be endorsed in June 2021) and the Community Grants Policy, endorsed by Council in August 2020;**
- B. Notes that, by deferring the next round of the Community Partnership Grant Program to align with these strategic documents, new programs and activities will not be eligible for funding until 1 January 2022;**
- C. Having regards to this delay, endorses the development of new Community Partnership funding agreements with ten (10) existing partner organisations as described in Table 1 of this report;**
- D. Authorises officers to execute these new funding agreements on the same terms and conditions as the current agreements; and**
- E. Notes that, following adoption of the 2021-2025 Council Plan and Healthy City Strategy, a report will be presented to Council on proposed Priority Outcomes that will inform the 2021 Community Partnership Grant Guidelines.**

2. BACKGROUND

- 2.1 Council's Community Grant Program provides funding to not-for-profit community groups and organisations to deliver activities that strengthen and support communities that live, work, study and recreate in Manningham.
- 2.2 Following the 2019 Grants Program, Council requested an internal review of the Policy with the intention of:
- Better understanding historical allocations;
 - Improved alignment of grant applications with Council priorities;
 - Improving access to Council's grants program for community organisations; and
 - Clarifying the assessment process for future grants programs.
- 2.3 Following this review, the Community Grants Program Policy (Attachment 1) was adopted by Council in August 2020 and contains information relevant to Council's grant program including:
- 2.3.1 **Multi-year grants** - Community Partnership Grants (up to four years and capped at \$50,000 p.a. to a maximum of \$200,000 over four years);
- 2.3.2 **Annual Grants**, including:
- Community Development Grants (annual up to \$20,000)
 - Arts and Culture Grants (annual up to \$20,000)
 - Festivals and Events (annual up to \$20,000)
- 2.3.3 **Small Grants** - assessed up to three times a year and include:
- Community Strengthening (up to \$3,000)
 - Equipment Grants (matched funding up to \$1,500).
- 2.4 The annual grant streams opened on 8 February 2021 and close on 15 March 2021. The Small Grants program also open on 8 February 2021 and will remain open all year, with regular grant assessments in May, August and November 2021.

3. DISCUSSION / ISSUE

- 3.1 The priority outcomes that inform the Community Partnership Grants are to be aligned to the 2021-2025 Council Plan and 2021-2025 Healthy City Strategy, both of which are due to be adopted by Council in June 2021.
- 3.2 To enable alignment with these key strategic documents, it is proposed to seek applications via the Community Partnership Grants program in September 2021, with agreements to commence in January 2022 for a period of up to four years.
- 3.3 This will align the program with the four-year Council term and the strategic documents that identify priorities for this term.
- 3.4 This realignment will result in a gap of six months between the current agreements ending 30 June 2021 and the new program commencing from 1 January 2022.

- 3.5 To ensure Council is able to support existing community partners, it is proposed that Council enters into new short term agreements with the current Community Partnership Grant recipients for a period identified in Table 1 below.
- 3.6 The objectives contained in the new funding agreements would broadly align with the current objectives. The extent of funding would align with the current Community Grants Program Policy which identifies a maximum of \$50,000 per annum.
- 3.7 It is proposed that each organisation would receive 50% of the previous year's funding, with the same terms and conditions as the previous agreement. The exception to this is the Warrandyte Festival, which would receive a full allocation to allow the festival to proceed in March 2022. (see 3.9 below)
- 3.8 The proposed agreements, period and allocation is listed below:

Community Partnership Grants 2021 short Term agreements			
Organisation Name	Program Title	Proposed Funding Allocation	Term
Pines Learning	Community Engagement	\$25,000.00	1 July 2021 - 31 December 2021
Park Orchards Community House & Learning Centre Inc	Park Orchards Community House & Learning Centre Incorporated	\$25,000.00	1 July 2021 - 31 December 2021
Warrandyte Neighbourhood House	Warrandyte Neighbourhood House Programs	\$25,000.00	1 July 2021 - 31 December 2021
Wonga Park Community Cottage	Wonga Park Community Cottage Programs.	\$25,000.00	1 July 2021 - 31 December 2021
Living and Learning at Ajani Inc	Connecting Communities at Living and Learning at Ajani Inc	\$25,000.00	1 July 2021 - 31 December 2021
Warrandyte Festival (refer notes below)	Warrandyte Festival	\$50,000.00	1 July 2021 - 31 March 2022
Kevin Heinze Grow	Using nature as a supportive environment	\$25,000.00	1 July 2021 - 31 December 2021
Access Health and Community	Parent Child Mother Goose program - Connecting families and linking with the local community	\$14,447.00	1 July 2021 - 31 December 2021
Eastern Community Legal Centre	ECLC community partnership program	\$15,000.00	1 July 2021 - 31 December 2021

	across Manningham		
Doncaster Community Care and Counselling Centre Inc. (Doncare)	Provision of multi-disciplinary services to support children in crisis	\$15,000.00	1 July 2021 - 31 December 2021

Table 1: Proposed Community Partnership grant funding

- 3.9 The majority of these new agreements will contain deliverables that are consistent with the current funding agreements and provide a continuation of services while Council identifies its new funding priorities.

Warrandyte Festival

- 3.10 Due to the timing of this event proposed for March 2022 and the need for the organising committee to plan for the event with certainty, it is proposed that Council offers the maximum funding permitted under the Policy.
- 3.11 Similarly, because the event falls outside the nominal end date for the remaining agreements, (31 December 2021) it is proposed that Council will enter into an agreement with the Festival until the end of March 2022 to ensure that the event is completed within the term of the funding agreement.
- 3.12 It is understood that by entering into this new agreement, the Warrandyte Festival will not be able to apply for additional funding for the 2022 event as part of the Partnership Grants program, opening in September 2021. This nine month agreement will not preclude the event organisers from seeking Council support for festivals in 2023 and beyond.

Heide Museum of Modern Art

- 3.13 Heide Museum of Modern Art received a community partnership grant for the period 2019-21, to offer free visitation to Manningham residents. The Museum has been materially affected by the COVID pandemic and, through no fault of its own, was not able to deliver on the outcome proposed in the funding agreement in 2020.
- 3.14 Rather than entering into a new funding agreement for a six month period, it is proposed that officers works with Heide management with a view to delivering the actions contained in the funding and service agreement during the period 1 July – 31 December 2021.

4. COUNCIL PLAN / STRATEGY

- 4.1 The Community Grant Program Policy 2020-2024 is aligned with the key priorities of the Council Plan and Healthy City Strategy.
- 4.2 The key action areas contained in the Healthy City Strategy will inform the program objectives for all community grants programs, but in particular the major Community Partnership Grants.

5. IMPACTS AND IMPLICATIONS

- 5.1 Aligning the Community Partnership Grant to the same cycle followed by the Council Plan and Healthy City Strategy ensures that the key priorities of Council and the community are being met within the longer term grant programs.
- 5.2 The gap caused by the realignment will be mitigated through entering into short term agreements with incumbent organisations to continue to deliver programs and activities that support and benefit the Manningham community.
- 5.3 By entering into new funding agreements with existing community partners, Council recognises that organisations not already receiving partnership grant funding will not have access to funding via this program until 1 January 2022.

6. IMPLEMENTATION

Finance / Resource Implications

- 6.1 The Community Grant Program is resourced through Council's annual operating budget.
- 6.2 Subject to budget considerations, the approach proposed in this report will ensure that Council's overall funding of organisations through community grants remains at the same levels.

Communication and Engagement

- 6.3 Consultation with the existing Community Partnership Grant recipients regarding these new agreements has commenced. Subject Council endorsing the priority outcomes later this year, Council would then communicate with key organisations as part of the grants process, commencing August 2021.

Timelines:

- 6.4 Subject to Council's endorsement, the following dates will apply:

March 2021:	Council endorses new short term Community Partnership Grants as outlined in this report
July 2021	Following adoption of the new Council Plan and Healthy City Strategy, the Community Partnership Grant Guidelines be presented to Council for adoption
August 2021	Community Partnership Grant applications open
October 2021	Assessment of the Community Partnership Grant applications are undertaken
November 2021	Recommended Community Partnership Grants are presented to Council for adoption
January 2022	New Community Partnership Grants commence

7. DECLARATIONS OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any general or material conflict of interest in this matter.

11 CITY SERVICES

There are no City Services reports.

12 SHARED SERVICES

There are no Shared Services reports.

13 CHIEF EXECUTIVE OFFICER

13.1 Determination of Mayoral and Councillor Allowances

File Number: IN21/141
Responsible Director: Chief Executive Officer
Attachments: 1 Submissions - Mayoral and Councillor Allowances [↓](#)

EXECUTIVE SUMMARY

Mayors and councillors are entitled to receive an allowance while performing their duties as an elected official. Pursuant to section 39 of the Local Government Act 2020 (LGA 2020), allowances for the Mayor, Deputy Mayor and Councillors are provided in accordance with a Determination of the Victorian Independent Remuneration Tribunal under the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019.

Despite the repeal of the allowance provisions under the Local Government Act 1989 (LGA 1989), those sections of the LGA 1989 continue to apply in respect of allowances until such time as the first Determination is made by the Victorian Independent Remuneration Tribunal. Accordingly, Council is required to review and determine the level of mayoral and councillor allowances within the period of 6 months after a general election or by the next 30 June, whichever is later. A person has a right to make a submission under section 223 of the LGA 1989 in respect of a review of allowances.

This report provides an overview of the statutory process undertaken to date to determine the level of allowance and proposes to set the allowances in accordance with the recommendation.

1. RECOMMENDATION

That Council, having complied with sections 74 and 223 of the *Local Government Act 1989*, set:

- **a mayoral allowance of \$100,434 plus a 9.5% equivalent superannuation guarantee contribution, and**
- **a councillor allowance of \$31,444 plus a 9.5% equivalent superannuation guarantee contribution.**

2. BACKGROUND

- 2.1 Mayors and councillors are entitled to receive remuneration in the form of an allowance while performing their duties as an elected official.
- 2.2 As outlined in the executive summary, until such time as the *Victorian Independent Remuneration Tribunal* makes its first determination on allowances, the provisions of the LGA 1989 continue to apply in respect of the review and determination of mayoral and councillor allowances. Therefore councils are required to undertake a review of allowances in accordance with section 74 of the LGA 1989.

- 2.3 Section 74 requires a Council to review and determine the level of allowance within the period of 6 months after a general election or by the next 30 June, whichever is later. The allowance set will remain in effect for the full term of the Council being 2020-2024 subject to an annual review by the Minister for Local Government or a Determination by the Victorian *Independent Remuneration Tribunal*.
- 2.4 Under the LGA 1989 the Victorian Government sets the upper and lower limits for all allowances paid to the mayor and councillors by Order in Council. At least once every year, the Minister reviews the limits and ranges of mayoral and councillor allowances. The review must have regard to movements in salaries of executives within the meaning of the *Public Administration Act 2004*. Council must increase its mayoral and councillor allowances in accordance with the adjustment factor.
- 2.5 The allowance range for a category 3 Council, approved by the Minister and effective from 1 December 2019 is:
- Mayor: up to \$100,434 per annum
 - Councillor: \$13,123 - \$31,444 per annum
- 2.6 There is also a legislative requirement for an amount equivalent to the superannuation guarantee under Commonwealth taxation legislation (currently 9.5%) to be paid in addition to the allowance.
- 2.7 Any review of mayoral and councillor allowances must involve public consultation under section 223 of the LGA 1989.

3. DISCUSSION / ISSUE

- 3.1 In reviewing allowances, a Council may determine to either retain its current allowances or vary them to a different amount within the range and limit applicable to Category 3.
- 3.2 In determining allowances, consideration should be given to the scale and increasing complexity in the roles of both the mayor and councillors. Workloads continue to increase in line with the city's growth and the provision of suitable allowances enables those committed to civic leadership to better inform their choices about public service, their careers and financial future whilst balancing family and public life.
- 3.3 A review of Councils in the eastern region (Knox, Monash, Whitehorse and Yarra Ranges) and neighbouring category 3 Council's (Banyule and Boroondara) shows that like Councils have set their allowances at the top end of the range set by the Victorian government. This reflects the significant value and role of councillors in providing leadership and representing the varied interests of its diverse community.
- 3.4 The duties of a councillor demand time, energy and commitment with many reducing their time in paid employment to meet the demands of the role. While an allowance helps in part to compensate councillors, it does not reflect the actual value of the time and commitment they contribute to the role and the community.

- 3.5 At the Council meeting held on 28 January 2021, Council resolved to give notice regarding the setting of mayoral and councillor allowances for the 2020-2024 Council term and invite submissions from the community.
- 3.6 In accordance with section 223 of the LGA 1989, Council commenced community consultation on 1 February 2021 with a notice published in The Age newspaper and on Council's website and social media inviting submissions from the community on the proposed allowances. Submissions were open for 28 days and closed on 1 March 2021. During this period there were 292 unique visitors to Council's website to view the information about the review and determination of allowances.
- 3.7 At the conclusion of the submissions process, 2 submissions had been received from the community. A copy of the de-identified submissions are included at attachment 1.
- 3.8 One submitter requested to be heard in support of their submission. A committee of councillors was convened on 9 March 2021 to hear submissions. Due to unforeseen technical issues on the part of the submitter, they were unable to join the meeting as planned and instead submitted a written statement in support of their submission. After reading the statement, the meeting closed for councillors to consider all submissions.
- 3.9 The key tenet of the submissions is that in the current economic climate it is both unnecessary and inappropriate for allowances to be set as proposed. Further, it was surmised that councillor workloads had reduced over the past 12 months as a result of the various covid restrictions in place.
- 3.10 As outlined in the Executive Summary to this report, Council is legally obliged to undertake a review of their allowances following a general election. Whilst it is acknowledged that the process in the LGA 1989 is not perfect with the Council determining its own allowances, it is the current legal framework in place. The LGA 2020 seeks to resolve this tension through the introduction of an independent review process.
- 3.11 The proposed allowance brings Manningham in line with other metropolitan category 3 councils and is reflective of the significant time and commitment required to undertake the role of mayor and councillor. Taking on this role often means sacrificing earnings and superannuation to represent the views of the community.
- 3.12 The legislative and leadership role of the Mayor and the additional time commitment required of the role is acknowledged in the higher allowance set by the Victorian government.
- 3.13 Over the past 12 months the Mayor and councillors have adapted to new ways of working and engaging with their community in light of covid restrictions. Physical meetings have been replaced by virtual meetings and councillors have continued to engage and support their communities in new ways. The Council has also made a significant financial investment in supporting the community through these challenging times.
- 3.14 Having considered the submissions received, it is recommended that the proposed allowances be supported.

4. COUNCIL PLAN / STRATEGY

The provision of mayoral and councillor allowances supports elected representatives in the performance of their role which entails contributing to the strategic direction of the Council through the development and review of key strategic documents including the Council Plan.

5. IMPACTS AND IMPLICATIONS

5.1 Finance / Resource Implications

Current mayoral and councillor allowances are set at:

- Mayor: \$81,204 per annum (plus 9.5% equivalent superannuation guarantee)
- Councillor: \$10,914 - \$26,245 per annum (plus 9.5% equivalent superannuation guarantee)

An increase in allowances to the maximum allowable in category 3 would see an annual increase as follows:

- Mayor: \$19,230 (plus 9.5% equivalent superannuation guarantee)
- Councillor: \$5,199 (plus 9.5% equivalent superannuation guarantee)

The financial impact of increasing the allowance (plus 9.5% superannuation) effective from 23 March 2021 until the end of the financial year is approximately \$16,500. This can be accommodated within existing resources.

5.2 Communication and Engagement

Section 74(4) of the Act provides that a person has a right to make a submission under section 223 of the Act in respect of a review of allowances. The submissions process is outlined in section 3 of this report.

6. DECLARATIONS OF CONFLICT OF INTEREST

No Officers involved in the preparation of this report have any general or material conflict of interest in this matter.

SUBMISSION 1

Dear Andrew,

I am pleased that the Manningham Councillors have asked for comments from the public in relation to the increase in the allowances for the mayor and councillors and trust they will consider the opinions given.

I was surprised by the enormous jump (about \$20,000 for the mayor) and have always thought that was far too much and unjustifiable for a part time job. The councillors' increase is more modest but still not warranted.

In the situation we currently find ourselves with many of our residents having lost their jobs I feel it would be morally wrong for councillors to vote themselves an increase. Many in our community have been facing tough economic times (losing their jobs, taking pay cuts etc) for almost a year and will be making greater demands on council resources. As self-funded retirees our income was greatly reduced in 2020 and will continue to drop.

At the moment and for the foreseeable future councillors' workload has been further reduced as meetings and events, which they should attend, are cancelled. It has been my observation that councillors choose not to attend events or accept and then don't turn up!

I believe it would be morally responsible for councillors to defer any increase in their allowances until the economy has recovered. In fact, it would be prudent for them to take a drop in allowance, as a mark of respect for the difficult times residents are facing.

I would ask you to take this submission into consideration. I look forward to hearing back from you and the councillors of their stance.

I would also like to personally present my case, if it is safe.

Yours sincerely,

SUBMISSION 2

-----Original Message-----

From:

Sent: Saturday, 27 February 2021 10:23 PM

To: Manningham <Manningham@manningham.vic.gov.au>

Subject: Allowances

I don't think this is necessary in this environment.

Maybe the mayor but certainly not the councillor's.

Let's do a productivity assessment on the councillors on hrs worked and what was achieved.

Also make it mandatory that they live in the area they are supposed to represent, not just own a rental.

Cheers

13.2 Informal Meetings of Councillors

File Number:	IN21/96
Responsible Director:	Chief Executive Officer
Attachments:	<ol style="list-style-type: none">1 Advisory Committee Discussion - 15 February 2021 ↓2 Healthy City Advisory Councillor Meeting - 17 February 2021 ↓3 Tullamore Ward Statutory Planning - 17 February 2021 ↓4 Councillor Only Time - 23 February 2021 ↓5 Strategic Briefing Session - 2 March 2021 ↓6 Councillor Only Time - 2 March 2021 ↓7 Tullamore Ward Meeting - 3 March 2021 ↓8 Waldau Ward Meeting- 3 March 2021 ↓9 Consultation Meeting - 4 March 2021 ↓10 Submissions Hearing Mayoral and Councillor Allowances - 9 March 2021 ↓11 Strategic Briefing Session - 9 March 2021 ↓

EXECUTIVE SUMMARY

Chapter 6, sub rule 1 of the Governance Rules adopted by Council on 25 August 2020, requires a record of each meeting that constitutes an Informal Meeting of Councillors to be reported to Council and those records are to be incorporated into the minutes of the Council Meeting.

RECOMMENDATION

That Council note the Informal Meetings of Councillors for the following meetings and that the records be incorporated into the minutes of this Council meeting:

- **Advisory Committee Discussion 15 February 2021**
- **Healthy City Advisory Councillor Meeting –17 February 2021**
- **Tullamore Ward Statutory Planning - 17 February 2021**
- **Councillor Only Time – 23 February 2021**
- **Strategic Briefing Session - 2 March 2021**
- **Councillor Only Time - 2 March 2021**
- **Tullamore Ward Meeting - 3 March 2021**
- **Waldau Ward Meeting - 3 March 2021**
- **Consultation Meeting - 4 March 2021**
- **Submissions Hearing Mayoral and Councillor Allowances - 9 March 2021**
- **Strategic Briefing Session - 9 March 2021**

1. BACKGROUND

- 1.1 In accordance with section 60 of the Local Government Act 2020, Council adopted its Governance Rules (Rules) on 25 August 2020 with the Rules coming into effect from 1 September 2020.

1.2 Chapter 6, sub rule 1 of the Rules requires the Chief Executive Officer to ensure a summary of matters discussed at an informal meeting is tabled at the next convenient Council meeting and recorded in the minutes of that meeting.

1.3 An Informal Meeting of Councillors is a meeting that:

- is scheduled or planned for the purpose of discussing the business of Council or briefing 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.

2. DISCUSSION / ISSUE

2.1 Summaries of the following informal meetings are attached to this report:

- Advisory Committee Discussion 15 February 2021
- Healthy City Advisory Councillor Meeting –17 February 2021
- Tullamore Ward Statutory Planning - 17 February 2021
- Councillor Only Time – 23 February 2021
- Strategic Briefing Session - 2 March 2021
- Councillor Only Time - 2 March 2021
- Tullamore Ward Meeting - 3 March 2021
- Waldau Ward Meeting - 3 March 2021
- Consultation Meeting - 4 March 2021
- Submissions Hearing Mayoral and Councillor Allowances - 9 March 2021
- Strategic Briefing Session - 9 March 2021

3. DECLARATIONS OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any general or material conflict of interest in this matter.

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Advisory Committees Discussion		
Date:	Monday, 15 February 2021	Time Opened:	11.30 am
		Time Closed:	12.00 pm
Location:	Via Teams		
Councillors Present:	Cr Tomas Lightbody		
Officers Present:	Lee Robson		
Apologies:			
Items discussed:	1. Discussion regarding potential new advisory committees		

CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Healthy City Advisory Committee		
Date:	Wednesday, 17 February 2021	Time Opened:	3 pm
		Time Closed:	5 pm
Location:	Online via Zoom		
Councillors Present:	Cr Andrew Conlon		
Officers Present:	Angelo Kourambas, Justin Hanrahan, Bronwyn Morphett, Barb Ryan, Janae Hendrey, Emily Qing		
Apologies:	Nil		
Items discussed:	1. Acknowledgement of Country and Introductions		
	2. Plan 21+ update		
	3. Healthy City Strategy Evaluation and Model Review Reports		
	4. Healthy City Strategy priority health issue and cohort discussion		
	5. A strategy for equality – womens sexual and reproductive health in Melbourne's East 2020-2025		

CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Statutory Planning Tullamore Ward Councillor Meeting		
Date:	Wednesday, 17 February 2021	Time Opened:	2:00 pm
		Time Closed:	2:30 pm
Location:	Zoom Meeting		
Councillors Present:	Cr Deirdre Diamante		
Officers Present:	Fiona Troise & Niall Sheehy		
Apologies:	Nil		
Items discussed:	<ol style="list-style-type: none"> 1. 23 Hanke Road, Doncaster 2. 394 Manningham Road, Doncaster 3. 8 Winters Way, Doncaster 4. 49 Rathmullen Quadrant, Doncaster 		
CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Councillor Only Time		
Date:	Tuesday, 23 February 2021	Time Opened:	05: 00 pm
		Time Closed:	06: 00 pm
Location:	Koonung Room		
Councillors Present:	Mayor Cr Conlon Deputy Mayor Cr Chen Cr Diamante Cr Gough Cr Kleinert Cr Lange Cr Lightbody Cr L.Mayne Cr S.Mayne		
Officers Present:	CEO- Andrew Day Director- Rachele Quattrochi		
Apologies:	Nil		
Items discussed:	1. Rieschiecks Reserve Pavillion		

CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Strategic Briefing Session		
Date:	Tuesday, 2 March 2021	Time Opened:	7:07 pm
		Time Closed:	10:21 pm
Location:	Council Chambers, Manningham Civic Centre		
Councillors Present:	Cr Andrew Conlon (Mayor), Cr Anna Chen, Cr Deirdre Diamante, Cr Geoff Gough, Cr Michelle Kleinert, Cr Carli Lange, Cr Tomas Lightbody, Cr Laura Mayne, Cr Stephen Mayne		
Officers Present:	Andrew Day, Chief Executive Officer Angelo Kourambas, Director City Planning & Community Philip Lee, Director Shared Services Rachelle Quattrocchi, Director City Services Andrew McMaster, Corporate Counsel and Group Manager Governance & Risk Kerryn Paterson, Group Manager People and Communications		
	Other Officers in Attendance Kim Tran, Governance Officer Heather Callahan, Coordinator Recreation Rob Morton, Recreation Planner Michelle Zemancheff, Arts and Culture Lead, Economic & Community Wellbeing Helen Napier, Manager City Amenity Dragutin Lijovic, Coordinator, Waste Services Jon Gorst, Chief Financial Officer Jude Whelan Manager Communications Emily Qing, Community, Engagement and Research Advisor		
Apologies:	Nil		
Items discussed:	1. Sports Pricing Policy 2. Manningham Art Collection and Public Art Policies 3. Waste Management Overview 4. Budget Discussion – Rates, Fees & Charges 5. Deliberative Engagement Panel Update		
CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Councillor Only Time		
Date:	Tuesday, 2 March 2021	Time Opened:	06: 00 pm
		Time Closed:	07: 00 pm
Location:	Koonung Room		
Councillors Present:	Mayor Cr Conlon Deputy Mayor Cr Chen Cr Diamante Cr Gough Cr Kleinert Cr Lange Cr Lightbody Cr L.Mayne Cr S.Mayne		
Officers Present:	CEO- Andrew Day		
Apologies:	Nil		
Items discussed:	1. Next steps for Rieschiecks 2. SBS purpose & principles		

CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Statutory Planning Tullamore Ward Councillor Meeting		
Date:	Wednesday, 3 March 2021	Time Opened:	2:00 pm
		Time Closed:	2:45 pm
Location:	Zoom Meeting		
Councillors Present:	Cr Deirdre Diamante		
Officers Present:	Fiona Troise		
Apologies:	Nil		
Items discussed:	<ol style="list-style-type: none"> 1. Draft Apartment Guidelines 2. 394 Manningham Road, Doncaster 3. 8 Winters Way, Doncaster 4. 49 Rathmullen Quadrant, Doncaster 5. 809 Elgar Road, Doncaster 		
CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Statutory Planning Waldau Ward Councillor Meeting		
Date:	Wednesday, 3 March 2021	Time Opened:	12:00 pm
		Time Closed:	12:15 pm
Location:	Councillor Lounge/Zoom		
Councillors Present:	Cr Anna Chen		
Officers Present:	Fiona Troise & Niall Sheehy		
Apologies:	Nil		
Items discussed:	<ol style="list-style-type: none"> 1. 70-72 George Street, DONCASTER EAST 2. 18 The Grange, TEMPLESTOWE 		

CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Consultation Meeting		
Date:	Thursday, 4 March 2021	Time Opened:	6:00 pm
		Time Closed:	7:00 pm
Location:	Online (Zoom)		
Councillors Present:	Councillor Andrew Conlon (Mayor) – Currawong Ward Councillor Anna Chen (Deputy Mayor) – Waldau Ward Councillor Carli Lange – Yarra Ward Councillor Deirdre Diamante – Tullamore Ward Councillor Geoff Gough – Bolin Ward Councillor Laura Mayne – Schramms Ward Councillor Michelle Kleinert – Westerfolds Ward Councillor Stephen Mayne – Ruffey Ward Councillor Tomas Lightbody – Manna Ward		
Officers Present:	Daniel Yu, Coordinator Statutory Planning Michelle West, Town Planner		
Apologies:			
Items discussed:	1. Planning application PLA20/0143 – Templestowe Hotel, 23-29 Parker Street Templestowe Lower		

CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Submissions Hearing- Mayoral and Councillor Allowances		
Date:	Tuesday, 9 March 2021	Time Opened:	7:04 pm
		Time Closed:	7:20 pm
Location:	Council Chambers, Manningham Civic Centre		
Councillors Present:	Cr Andrew Conlon (Mayor), Cr Anna Chen (Deputy Mayor), Cr Deirdre Diamante, Cr Geoff Gough, Cr Michelle Kleinert, Cr Carli Lange (online), Cr Tomas Lightbody, Cr Laura Mayne, Cr Stephen Mayne		
Officers Present:	Andrew Day, Chief Executive Officer Angelo Kourambas, Director City Planning & Community Philip Lee, Director Shared Services Rachelle Quattrocchi, Director City Services Andrew McMaster, Corporate Counsel and Group Manager Governance & Risk Kerryn Paterson, Group Manager People and Communications Carrie Bruce, Senior Governance Advisor		
Apologies:	Nil		
Items discussed:	1. Mayoral and Councillor Allowance Submissions		
CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

Informal Meeting of Councillors

Chapter 6, Sub rule 1 of the Governance Rules 2020



MEETING DETAILS			
Meeting Name:	Strategic Briefing Session		
Date:	Tuesday, 9 March 2021	Time Opened:	7:30 pm
		Time Closed:	10:22 pm
Location:	Council Chambers, Manningham Civic Centre		
Councillors Present:	Cr Andrew Conlon (Mayor), Cr Anna Chen (Deputy Mayor), Cr Deirdre Diamante, Cr Geoff Gough, Cr Michelle Kleinert, Cr Carli Lange (online), Cr Tomas Lightbody, Cr Laura Mayne, Cr Stephen Mayne		
Officers Present:	<p>Andrew Day, Chief Executive Officer Angelo Kourambas, Director City Planning & Community Rachelle Quattrocchi, Director City Services Andrew McMaster, Corporate Counsel and Group Manager Governance & Risk Kerryn Paterson, Group Manager People and Communications</p> <p>Other Officers in Attendance Carrie Bruce, Senior Governance Advisor Frank Vassilacos, Manager Integrated Planning Gabrielle O'Halloran, Senior Strategic Planner Ben Middleton, Management Consultant Justin Hanrahan, Manager Economic and Community Wellbeing Lee Robson, Group Manager Community Programs Jude Whelan, Manager Communications</p>		
Apologies:	Nil		
Items discussed:	<ol style="list-style-type: none"> 1. Yarra Valley Country Club - Proposed Open Space Options 2. Manningham State Emergency Services (SES) Unit (Sensitive/Confidential) 3. Healthy City Strategy Evaluation Report 2017-2021 and proposed Healthy City Strategy Framework 2021-2025 4. Community Partnership Grants 5. Youth Advisory Committee 6. Manningham Matters - deferred 7. Tackling Ageism Together: EveryAGE Counts in Melbourne's East 		
CONFLICT OF INTEREST DISCLOSURES			
Were there any conflict of interest disclosures by Councillors?		No	
Councillor	Item	Left meeting for Item (Y/N)	Time Left / Time Returned

13.3 Documents for Sealing

File Number: IN21/138
Responsible Director: Chief Executive Officer
Attachments:

EXECUTIVE SUMMARY

The following documents are submitted for signing and sealing by Council.

1. RECOMMENDATION

That the following documents be signed and sealed:

**Consent to Build Over an Easement
Agreement under Section 173 of the Planning and Environment Act 1987
Council and C & L Developments (VIC) Pty Ltd
102 Rose Street, Lower Templestowe**

2. BACKGROUND

The Council's common seal must only be used on the authority of the Council or the Chief Executive Officer under delegation from the Council. An authorising Council resolution is required in relation to the document listed in the recommendation section of this report.

3. DECLARATIONS OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any general or material conflict of interest in this matter.

14 URGENT BUSINESS

15 COUNCILLORS' QUESTION TIME

16 CONFIDENTIAL REPORTS

There are no Confidential reports.