

## 7.1.8 PROPOSED SALE OF COUNCIL LAND TO SUBURBAN RAIL LOOP AUTHORITY – PART OF 22-32 O’SULLIVAN ROAD AND PART OF RAILWAY PARADE NORTH, GLEN WAVERLEY

<b>Responsible Manager:</b>	Mark Gibson, Manager Property and City Design
<b>Responsible Director:</b>	Peter Panagakos, Director City Development

### RECOMMENDATION

#### That Council

- 1) Notes that the Suburban Rail Loop Authority (SRLA) has progressed planning (including community consultation) for its multi-level car park to be constructed on part of the Euneva West Car Park which comprises land owned by Victorian Rail Track land being Reserve 1 on PS440062W and two parcels of Council land being a 671m2 area of Railway Parade North (Road Reserve Land) and a 661m2 area of Lot 3 on PS440062W (Freehold Land). (Development Site).
- 2) Notes that the SRLA proposes to construct a multi-level car park to comply with its commitment pursuant to an environmental performance requirement (EPR. B5) of its Environmental Effect Statement to provide effective replacement car spaces in the Glen Waverley Activity Centre due to its acquisition of the Glendale Street East and West car parks and the car spaces on Glendale Street.
- 3) Notes that the SRLA has advised that it is not their intention to divest the Glendale Street East and West car parks and Glendale Street prior to 1 October 2025, save for divesting a portion of the south-west corner of the Glendale Street West car park prior to 1 October 2025, which the SRLA require for inclusion in the re-alignment and re-construction of Myrtle Street. SRLA is required to consult with Council regarding the Myrtle Street re-alignment works and will be responsible for ensuring the remaining part of the Glendale Street West car park remains available for public use by addressing any line marking, alternative access and/or physical works required to ensure such continued use until the eventual divestment.
- 4) Notes that as a result of ongoing negotiation between Council and the SRLA for the purchase of the Road Reserve Land and Freehold Land (Council Land) referred to in item 1 above, in addition to SRLA paying an agreed purchase price for the Council Land, the SRLA has agreed to provide Council with 390 spaces in the new multi-level car park for a term of approximately 10 years, for public use and free of charge (including no cost to Council for outgoing, electricity etc), commencing from the date the new multi-level car park becomes operational (estimated to be early 2026). An agreement pursuant to Section 173 of the Planning & Environment Act 1987 will be entered into to be registered on the title to the Development Site.

- 5) Notes that in addition to point 4 above, SRLA has provided an option to Council to consider (in lieu of receiving the purchase price for the Council Land in cash) having the 390 car spaces publicly available for up to a further 6 years and 6 months, being a total of 16 years and 6 months noting however that this option includes the requirement of Council to pay its proportion of outgoings (electricity etc) for the full duration.
- 6) Resolves in respect to points 4 and 5 above to write to the SRLA and advise that Council does not intend to take up any such option for a further period of 6 years and 6 months on the basis that the SRLA's new multi-level car park is operational prior to Council's car parking spaces in the Glendale Street East and West car parks and on Glendale Street not being available due to being required to facilitate the SRLA station box construction. Further noting that the additional car spaces at the Bogong Avenue car park will be operational and there will be a net increase of car parking in the Glen Waverley Activity Centre when the two car parks are completed.
- 7) Resolves that the funds received from the sale of the Council Land to the SRLA be directed to further offset Councils expenditure on the Bogong multi-level car park extension currently under construction.
- 8) Notes that with regards to the Road Reserve Land referred to in item 1 above, that Council at its meeting on 26 April 2023, agreed to progress the sale of the land from the Road to the SRLA including (inter alia):
  - i) authorising the CEO (or her delegate) to negotiate the land value and terms with the SRLA prior to publishing a notice of road discontinuance in the Victoria Government Gazette; and
  - ii) subject to finalising terms, prepare and execute all documents required in connection with, and to give effect to, the discontinuance of the Road and transfer of the land to the SRLA.
- 9) Pursuant to Section 116(1)(c) of the Local Government Act 2020, authorises the CEO (or her delegate) to finalise the terms of a Contract of Sale with the SRLA (or its nominee who must be a public entity) for the sale of the Freehold Land referred to in item 1 above subject to the following terms and conditions (which terms and conditions also apply to the sale of the Road Reserve Land which Council has previously resolved at its 26 April 2023 meeting (with certain conditions) to transfer to the SRLA ):
  - a) SRLA providing evidence that it has a binding agreement/ownership or control of the land owned by Victorian Rail Track (VicTrack) adjoining the Council Land so as to ensure that the VicTrack parcel of land does not become land-locked.
  - b) Having satisfied a) above, entering into a contract for the sale of the Council Land for the agreed market value.

- c) **The SRLA, entering into a Section 173 Agreement pursuant to the Planning & Environment Act 1987, with Council, to be registered on the title to the Development Site which will provide that, SRLA as Owner will do the following:**
- i) the Owner (SRLA) will procure the construction of a replacement car park in compliance with EPR B5 and consistent with its planning approval, including footpaths along Railway Parade North and Euneva Avenue;**
  - ii) the Owner agrees that it will not divest the Glendale Street East and West carparks and Glendale Street under section 134(1)(b) of the Major Transport Projects Facilitation Act 2009 prior to 1 October 2025, save for the divestment of land in the south-western corner of 31-39 Montclair Avenue, generally consistent with the plan shown in Image 2 of this report, for the purpose of works associated with the realignment of Myrtle Street which may be undertaken prior to 1 October 2025. The Owner will consult with Council in relation to the Myrtle Street works (including the provision of a second access point to the Glendale Street West Car Park as necessary at its cost and to the satisfaction of Council);**
  - iii) the Owner agrees not to occupy the Glendale East and West carparks and Glendale Street for station box construction purposes until it has reached practical completion of the replacement car park or has provided commensurate offset car parks in accordance with EPR B5, unless otherwise agreed in writing with Council;**
  - iv) the Owner of the Land must at all times during the operation of the section 173 agreement, make publicly available, at no charge, at least 390 car parking spaces in the new multi-deck car park.**
  - v) car parking spaces are to be allocated in accordance with an agreed plan with the principle that the 390 publicly available car parking spaces will be located lower than any other form of car parking, such as commuter car parking;**
  - vi) Council will not be obligated to contribute to outgoings or other charges in respect of the management and maintenance of the 390 car parking spaces or the car park building;**
  - vii) Council will be entitled to exercise its enforcement powers in relation to car parking restrictions in the public car parking spaces, including erection of signs limiting parking to a specified time period and levying fines or other charges in respect of breach of such restrictions;**
  - viii) prior to the public opening of the footpaths along Railway Parade North and Euneva Avenue the Owner agrees to formalise the footpaths as public thoroughfares for the life of the replacement car park by entering into a legal instrument (with Council's cooperation where necessary, acting reasonably).**
  - ix) prior to commencing works that require hoardings at the northern boundary of the Consolidated Land (which includes the VicTrack owned land), the Owner will, at its own cost, design and carry out appropriate line-marking works to the existing surface car park immediately to the north of the replacement car park (Lot 3 on Plan of Subdivision 440062W) for safe vehicular circulation purposes to MCC's satisfaction acting reasonably.**

**10) Notes that in order to facilitate delivery of the new multi-level car park, for the purposes of carrying out site mobilization and early works, that the SRLA will seek an Early Works Licence from Council for access to the Council Land comprised in the Development Site and that the**

terms of this Early Works Licence will be finalised as part of the Contract of Sale for the sale of the Council Land.

- 11) Authorise the CEO (or her delegate) to sign and affix the common seal of Council (as required) to all documentation required to effect the sale of the Council Land to the SRLA.

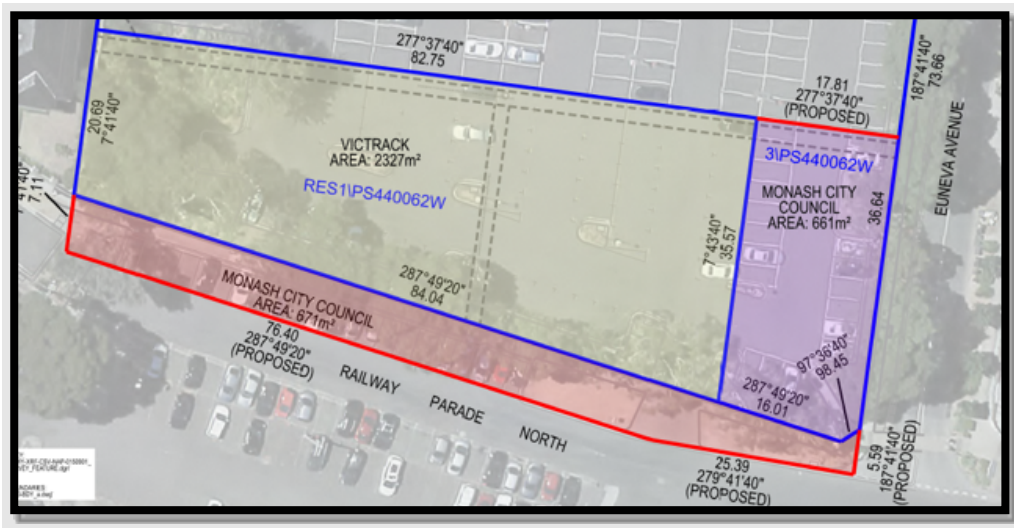
## INTRODUCTION

This report provides Council with an update on the status of negotiations with the Suburban Rail Loop Authority (SRLA) regarding the sale of Council land comprised in or adjacent to the Euneva West Car Park that is to be included in the development area for the SRLA's proposed multi-level car park (**the Project**). The Development Site for the Project is shown in Image 1 below being the land bordered with the blue outline plus the red area. Image 1 also shows the Council land comprised within the Development Site being:

1. A 671m<sup>2</sup> parcel of Railway Parade North adjacent to the southern boundary of the Euneva West car park (**Road Reserve Land**) shown coloured red; and
2. A 661m<sup>2</sup> parcel of the Euneva West car park being part of Lot 3 on Plan of Subdivision 440062W and shown coloured purple (**Freehold Land**).

Collectively referred to as "**Council Land**" for the purposes of this report.

**Image 1: Project Development Site**



## COUNCIL PLAN STRATEGIC OBJECTIVES

### Sustainable City

Ensure an economically, socially, and environmentally sustainable municipality. Prioritise sustainable transport options, including walking/ cycling paths and public transport.

### Enhanced Places

Improve public spaces and local employment by revitalising our employment hubs, activity centres and neighbourhood shops.

Prioritisation of pedestrians and active transport over vehicles. Explore and facilitate major projects to transform Monash.

## **Good Governance**

Ensure a financially, socially and environmentally sustainable organisation.

## **BACKGROUND**

### Previous Council Reports

Previous reports to Council on 31 January 2023 and 26 April 2023 discussed the SRLA's Project and in particular, the SRLA's request for Council to use its statutory powers to remove the road status from the Road Reserve Land so that it can be included in the Project.

The previous reports did not discuss the sale of the Freehold Land as the focus of those reports at that time was on completing the statutory procedures for the road discontinuance. In the meantime, officers continued negotiations with the SRLA on the commercial terms (binding agreement) relating to the number and term of public car spaces to be provided to Council free of charge in the Project.

In addition, confirmation from the SRLA was also required regarding the SRLA reaching agreement with Victorian Rail Track (VicTrack) regarding the SRLA purchasing the VicTrack land also upon which the Project will be delivered. The VicTrack land is also identified in image 1 above. This agreement is required to avoid the situation where the VicTrack land is rendered land-locked due to sale of the Council Land to the SRLA.

More recently, a report to Council on 19 December 2023 – Suburban Rail Loop Project Update – mentions the Euneva West Multi-Level Car Park and its purpose to offset the permanent parking removed by the SRLA East Project from Council's Glendale Street Car Parks and the commuter car parks owned by VicTrack. The report also mentioned:

- That *"Council is still working through the commercial terms with SRLA prior to selling the relevant Council Land for this project;*
- *Public consultation by SRLA for the car park began on 20 November through to 19 December...; and*
- *Likely construction on the new car park is Q1 2024 with a two-year construction period. "*

### 26 April 2023 Council Report

Council will recall that this report was from the Section 223 Committee established by Council to hear and consider submissions to the proposal to remove the road status from the Road Reserve Land and once discontinued selling the land to the SRLA, conditional upon reaching agreement with the SRLA on the terms of sale (as referred to above).

The outcome of that meeting was that Council resolved to accept the Committee's recommendations as follows:

*“That Council:*

- 1. Receives this report from the Committee established by Council pursuant to Section 223 of the Local Government Act 1989 (S.223 Committee) to hear and consider any submissions received to Council’s public notice in respect of the proposal to discontinue a 671m2 parcel of Railway Parade North, Glen Waverley as shown hatched in Attachment 1 to this report being part of the Road on LP13583 contained in certificate of title volume 6527 folio 374 (Road) and selling the land from the Road to the Suburban Rail Loop Authority (SRLA) conditional upon reaching agreement with the SRLA on the terms of sale for the land.*
- 2. Notes that the S.223 Committee met as scheduled at 6:30 pm on Tuesday 14 March 2023 in the Council Chambers, however the committee decided to defer consideration of the matter until 6:30 pm on Tuesday 11 April 2023, having accepted a late submission from Victorian Rail Track (VicTrack) in order to be able to consider it prior to making a recommendation to Council on the matter. VicTrack’s submission was subsequently withdrawn meaning there were no valid submissions to consider.*

- 3. Accepts the S.223 Committee’s recommendation as follows:*

*“That Council proceed with the discontinuance of the Road and the transfer of the discontinued Road to the SRLA (or its nominee), conditional upon:*

- a. Council and the Suburban Rail Loop Authority (SRLA) entering into a binding contract for the sale of the land; and*
  - b. SRLA (or its nominee) entering into a binding agreement to purchase the adjoining land owned by Victorian Rail Track, unless Victorian Rail Track will retain that land and be nominated by SRLA as purchaser of the discontinued Road.”*
- 4. Notes the response from Yarra Valley Water and Council’s Engineering Department regarding requirement for an easement to protect existing assets and that the plan to be used for the road discontinuance has been updated to reflect this (refer Attachment 2).*
  - 5. Pursuant to clause 3 of Schedule 10 to the Local Government Act 1989, authorise the CEO (or her delegate) to:*
    - a. negotiate with SRLA to sell the discontinued Road to SRLA for its market value as determined by and independent valuer and such other terms as reasonably agreed between the parties; and*
    - b. subject to Council entering into a binding agreement with SRLA to sell the discontinued Road to the SRLA (or its nominee) and the SRLA (or its nominee) entering into a binding agreement to purchase the adjoining land owned by Victorian Rail Track (unless SRLA has confirmed in writing that Victorian Rail Track will retain ownership of its adjoining land and be nominated as purchaser of the discontinued Road by SRLA):*
      - i. publish a Notice of Road Discontinuance in the Victorian Government Gazette (using the Title Plan in Attachment 2) pursuant to Clause 3(a) of Schedule 10 of the Local*

*Government Act 1989 noting Council’s decision to discontinue the Road and retain or sell the land to the SRLA (or its nominee); and*

- ii. prepare and execute all documents required in connection with, and to give effect to, the discontinuance of the Road and transfer of the land to the SRLA (or its nominee), or the retention of the land if Council and the SRLA are unable to reach an agreement regarding the sale of that land to the SRLA.”*

Having completed the statutory procedures pursuant to clause 3 of Schedule 10 to the Local Government Act 1989, officers progressed negotiations with the SRLA as per items 3(a) and 5(a) above.

## DISCUSSION

Since the 26 April 2023 report, officers have met on numerous occasions with representatives of the SRLA to negotiate the commercial terms for the sale of the Council Land to the SRLA for the purposes of the Project.

The SRLA is keen for Council to progress the sale of the Council Land. This is in part due to the SRLA’s timeframes to commence its Main Works (building station and tunnel) in 2026. The SRLA Project must be completed by early 2026 in order for the SRLA to meet its commitment for no net loss of car parking due to its acquisition of Council’s at-grade car parks at Glendale Street East and West and Glendale Street. This commitment can be found in the SRL East Environmental Management Framework at EPR B.5 shown below.

B5	<b>Provide effective replacement of car parking spaces in Glen Waverley</b>	SRL station at Glen Waverley	Design Construction
In consultation with the City of Monash, replace the car parking spaces lost due to the Project in the Glendale Street carparks and nearby on-street parking, to provide continued support to traders and visitors within the Glen Waverley Activity Centre.			

As at December 2023, negotiations on the terms (and options) had progressed to a point to enable Council consider the sale of the Council Land to the SRLA.

## Options

Two options have been presented by the SRLA for Council consideration, being:

1. Council receives market value (cash settlement) of the Council Land plus a 10 year free term for 390 public car spaces to be located on the lower levels of the Project with no requirement to pay any outgoings (eg. electricity etc); or
2. In lieu of Council receiving the market value (cash settlement) of the Council Land, a 10 year free term for 390 public car spaces plus an additional 6 years and 6 months. This option also includes the requirement of Council to pay its proportion of outgoings (electricity etc) for the full duration of 16 years, 6 months.

This report recommends that Council accepts Option 1, and uses the money received from the land sale to further offset its costs for the additions currently being undertaken at the Bogong Avenue car park.

### **Free Term**

For the SRLA to meet the above commitment B5, the displaced car spaces from the Glendale Street East and West car parks and on Glendale Street must be provided in the Project for the full duration of the design and construction period of the Main Works which is estimated to last 10 years from the date of commencement of works (including testing and commissioning).

The offer of 390 car spaces are made up of those spaces to be lost at the Glendale Street East and West car parks and on Glendale Street, as well as covering the 36 car spaces in the Euneva Avenue multi deck car park that were lost when part of the first floor was converted to office space.

In early discussions with the SRLA, Council had sought a consideration of securing car spaces in the Project beyond the initial 10 year free term. A possible consideration could have been utilising the funds to be received from the SRLA for the purchase of the Council Land to essentially purchase additional car parks for a longer term beyond the 10 year free term.

Option 1 is recommended based on the following considerations:

- With the construction works to extend the Bogong Avenue car park having commenced and given that Bogong and the new multi-level car park will both be completed prior to the SRLA occupying the Glendale Street car parks it is not considered that an additional 6 years and 6 months is worthwhile and Council could use the funds to be derived from the sale of the Council Land to further offset its expenditure toward the extension to the Bogong Avenue car park.
- Although the 390 car spaces would be lost from Council control beyond the 10 year period, they will, together with additional commuter car spaces, still be available for public use/visitors to the Glen Waverley Activity Centre so they are not lost spaces. The overall capacity of the car park will not reduce once it is constructed and operational.
- There will be an overall net increase in parking numbers across the Glen Waverley Activity Centre by the time the SRLA main works commence.
- There are other commitments over and above EPR B.5 relating to car parking management that the SRLA and/or its contractors are required to meet. They include the requirement for the SRLA's main works contractor to consult with Council as part of the preparation of Transport Management Plans and Construction Parking Management Plans which means that consideration to disruption to car parking during the main works and post construction of the Project must be managed.

### **Post Settlement Obligations (Section 173 Agreement)**

With either option, aside from a final sale price (market value), there are matters that Council needs to secure as part of the sale of the Council Land, as well as the SRLA meeting their



obligations under the EPR and its planning approval. These other matters will form terms in an agreement pursuant to Section 173 of the Planning and Environment Act 1987, between Council and the SRLA, which is to be registered on the title to the Development Site.

The terms are listed in the recommendation to this report at item 9(c)(i)- (ix).

The terms adequately address Council's requirements regarding car park provision during construction of the new Project, car parking provision upon completion of the Project (ie. 390 spaces for 10 years) as well as attending to works required on the northern section of the Euneva Car Park (such as line-marking and ensuring continued access) and also providing a second access point to the Glendale West Car park when part of the site is divested by the SRLA for the Myrtle Street re-alignment works.

Other matters of importance include:

#### **Owner of the Development Site**

The SRLA has confirmed that it will be the purchaser of the Council Land and that they are progressing an agreement with VicTrack to this effect meaning that the SRLA will be the owner of the Development Site.

#### **Plan of Subdivision**

The Development Site for the Project will be created by a plan of subdivision which will consolidate the various land parcels together and also create the new footpath. The Section 173 Agreement will be registered on the certificate of title for the Development Site and Council will be the Responsible Authority.

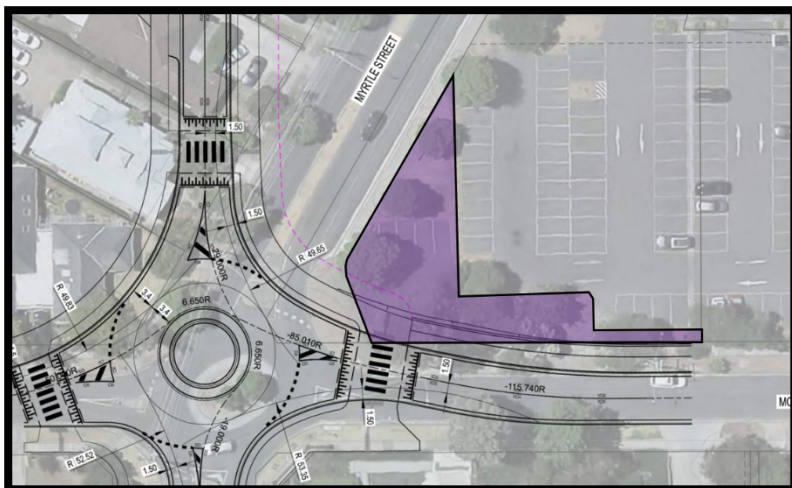
#### **Early Access Licence**

In order to facilitate delivery of the new multi-level car park, the SRLA require early access to the Council Land for the purpose of carrying out the site mobilisation and early works component for the Project. In this regard, the SRLA will seek an Early Access Licence from Council. The Early Access Licence will commence 14 business days after the date that SRLA gives Council notice that access is required to commence construction of the works. A condition of the Early Access Licence includes a requirement that the SRLA attend to any works (such as line-marking) on the northern part of the Euneva West Car Park to ensure its ongoing safe operation during the early works.

#### **Myrtle Street re-alignment works**

The above commitments extend to the Myrtle Street re-alignment works which is expected to commence in September this year. An area of the Glendale Street West car park is required to be included in these works and is shown coloured purple in image 2 below. This means that this area of the car park will be divested from Council earlier than 1 October 2025 when the rest of the Glendale Street West and Glendale Street East and Glendale Street will be divested.

***Image 2 – Divestment Area - part of Glendale Street West car park***



## **Sale of Council Land**

- **Road Reserve Land**

Council has already resolved to progress the sale of the Road Reserve Land subject to reaching satisfactory terms with the SRLA (Council report of 26 April 2023). However, Council has not made any such decisions regarding the sale of the Freehold Land.

- **Freehold Land**

With regards to the Freehold Land, given the SRLA is a public body, Council is able to utilise its powers pursuant to Section 116 of the Local Government Act 2020 to transfer the Freehold Land to the SRLA without the need to publicly advertise Council’s intention to do so (Section 116(3)). S116 is provided below:

### **116 Transfer, exchange or lease of land without consideration**

- (1) A Council's powers to transfer, exchange or lease any land include the power to do so with or without consideration to:
  - (a) the Crown; or
  - (b) a Minister; or
  - (c) any public body; or
  - (d) the trustees appointed under any Act to be held on trust for public or municipal purposes; or
  - (e) a public hospital within the meaning of the Health Services Act 1988 or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society.
- (2) Any transfer, exchange or lease under this section is valid in law and equity.
- (3) Sections 114 and 115 do not apply to any transfer, exchange or lease under this section to a person or body specified in subsection (1).

By acting in accordance with Section 116(1)(c) and (3), Council does not have to publish a notice of its intention to sell the Council Land to the SRLA. A Council resolution is all that is required.

Utilising this section of the Local Government Act 2020 is considered appropriate in this instance given the public interest to not delay commencement of construction of the SRLA Project and also noting that the SRLA has attended to community consultation on the SRLA Project (November 2023).

## **FINANCIAL IMPLICATIONS**

Council can expect to receive market value for the sale of the Council Land to the SRLA at no less than the market valuation determined by Council's valuer.

## **POLICY IMPLICATIONS**

There are no policy implications to this report.

## **CONSULTATION**

Community consultation on the sale of the Freehold Land is not required. By acting in accordance with Section 116(1)(c), Council can rely on Section 116(3) which states that Section 114 does not apply (restriction on power to sell or exchange land) meaning no public consultation is required in respect of the sale of the Freehold Land.

Consultation on the Road Reserve Land has been completed in accordance with Council's statutory obligations pursuant to Section 223 of the Local Government Act 1989. No further consultation regarding the Road Reserve Land is required.

## **SOCIAL IMPLICATIONS**

There are no social implications to this report.

## **HUMAN RIGHTS CONSIDERATIONS**

There are no human rights implications to this report.

## **GENDER IMPACT ASSESSMENT**

A GIA was not completed because this agenda item is not a 'policy', 'program' or 'service'.

## **CONCLUSION**

The terms for the sale of the Council Land, including provision of long-term public car parking to be provided by the Project have reached a satisfactory position. This report recommends that Council proceed with the sale and transfer of the Council Land in accordance with the recommendations of this report.



**ATTACHMENT LIST**

Nil