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## Surf Coast Shire Special Council Meeting

Tuesday, 3 October 2023 at 6pm

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CR PATTISON: Hello. Good evening. Sorry, Jake, do we have people that are waiting outside? We might wait until everyone can come in. I'll just wait a couple of minutes. Five people, okay. We'll just wait for them to come in.

Alright, we'll get started. I was just waiting for the last few people to come in. So good evening, everybody, and welcome to our Special Council Meeting. I'm Mayor Liz Pattison and it's a pleasure to welcome everyone here tonight. The purpose of this special meeting tonight is to consider matters relating to the proposed discontinuance of road and sale of land, being Cypress Lane Torquay and a portion of Reserve No. 3 and thanks to the community for your engagement and the amount of effort you have all put in.

This meeting is also being live streamed, so a big welcome to those tuning in online, and of course a welcome to my fellow Councillors, including Councillor Wellington, who is joining us online tonight. Live captioning will accompany the live stream of this meeting. We hope that this assists those who may have hearing difficulties.

The Surf Coast Shire local government area spans the traditional lands of the Wadawurrung people and the Gulidjan and Gadubanud peoples of the Maar Nation. The main Council offices in Torquay are on Wadawurrung country. The Wadawurrung people have nurtured and protected these lands and waterways for thousands of generations and I am so grateful that we are here today and living and working in such a beautiful part of the world. The Surf Coast Shire Council is committed to walking with the traditional owners of these lands on a journey of genuine reconciliation.

I would like to acknowledge that here in Torquay in the main Council office we are gathered on Wadawurrung country. I pay my respects to Elders past, present and emerging. We also wish to acknowledge the traditional owners of the lands on which each person is attending and acknowledge any Aboriginal or Torres Strait Islander people that are part of the meeting tonight.

And now we move on to the agenda for tonight. So the process for the meeting, for this Council meeting, is that it operates under our Governance Rules, which include the following procedures. During the meeting, the mover of a motion or any amendment may speak for a maximum of 5 minutes to open the debate and then a further 2 minutes to make a closing statement. Any other Councillor, including the seconder, may speak to a motion for no more than 3 minutes.

I ask that members of the gallery avoid using mobile phones during the meeting as this can be distracting for Councillors as well as other members of

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the gallery. I also note that any unauthorised recording of the meeting is prohibited under our Governance Rules. However, you can access a copy of the official recording on our website after the meeting.

As part of our Governance Rules, we have a pledge and I'd now like to recite the pledge as a sign of our commitment. "As Councillors we carry out our responsibilities with diligence and integrity and make fair decisions of lasting value for the wellbeing of our community and environment."

Apologies - Councillors, I don't believe we have any apologies for tonight's meeting. We have Councillor Barker Zooming in - thanks, Councillor Barker - and it's my understanding that Councillor Wellington will be joining us as well online. I did make certain that all Councillors were able to be present for this meeting as it's an important meeting and it's out of our normal schedule, so I'm hopeful that they will be on when it comes to addressing the matters that are on our agenda tonight.

Declarations of conflicts of interest - if a Councillor or an officer has a conflict of interest, they must declare it now and do so again just prior to the item being discussed. The Councillor or officer will be requested to leave chambers or if they're online they'll be placed by the host into a virtual waiting room while the matter is being considered. Once the matter is resolved, the Councillor or officer will be returned to the meeting. Are there any declarations of conflicts of interest in relation to the agenda tonight? No? If any conflicts arise during the meeting, please make sure to let me know.

We now have our public question time and there's been a lot of questions that have come through from you all, so thank you. Members of the public who wish to ask a question to Council are able to submit their written questions in accordance with the Governance Rules and we have 13 community members who have put questions forward, so we have a total of 23 questions to address tonight.

So we will now move through those questions. There's a number of you that will read them out yourself, but if not I'll read the question and then either myself or Robyn, our CEO, or other officers will respond as appropriately. So our first question is from Jackie Schulze from Torquay and it's in relation to Cypress Lane and I've got here that Jackie isn't attending, but if she is let me - if you're here, Jackie, and would like - just hold on a second. No worries. That's just our Governance.

So I'll read out Jackie's question: "Why do we need this here? Deep Creek and the area surrounding and my children", who are 4 and 2 years old, "call it the

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farm. We love this spot and the nature and space it provides. The boys climb trees and play near the river and open spaces. This was always supposed to be a low-density area and with the other retirement space going on in Briody and Grossman's, I feel this will completely wreck this area and its charm."

So I'll read the second question also: "What is the impact this will have on the wildlife and creek bed? I feel this is such a beautiful natural habitat for our wildlife and the pollution a development like this will cause will be devastating. Please keep this as natural as possible and if housing needs to be there, at least make it large open blocks that suit this area."

So as you will know, Councillors, we are considering the topic around Cypress Lane and part of allotment 3 for sale tonight, so when the questions relate specifically to around that matter, it's appropriate that our CEO, Robyn, responds to those questions. So this question I'll pass on to our CEO to respond.

MS ROBYN SEYMOUR: Thank you, Mayor Pattison. Thank you for your questions, Jackie. In answer to your first question, we understand the enjoyment people experience along Deep Creek. If Council determines to discontinue the road and sell the land, the open spaces along Deep Creek will remain open to the public for your use and your enjoyment. The 2021 census indicates that by 2041 the population in Torquay aged 60 and over will be more than double and as a community, we need to consider how we can accommodate a growing, ageing population.

Like most locations, Surf Coast Shire is experiencing a housing affordability crisis and increasing housing supply for people of this age cohort can play a role in addressing this. This site is appropriately located for a retirement village with ready access to facilities, infrastructure and services. More information on the site is in the report presented at the Council meeting on 22 August 2023 from paragraph 103 onwards.

And Jackie, in relation to your second question, an assessment of the potential impacts on Deep Creek was also undertaken and is set out in the August Council report. There will be no vegetation removal or other works being undertaken within the creek corridor. The conditions are provided to ensure the protection of Deep Creek both during and after construction as well as ongoing monitoring of stormwater impacts. But thanks again for your questions.

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CR PATTISON: The next question is from Claire Osborne. Claire, I think you were going to be in person. Oh, great. Thanks, Claire. Did you want to come up and read your question? Thank you.

MS CLAIRE OSBORNE: Good evening, Councillors and everyone here. So I'll just go ahead and read these. My first question, accompanied by a couple of statements, is that in the case of Cypress Lane you have collectively considered the decision to sell land and some of you have decided that it would be an appropriate action to do so. Too often have I heard statements to reflect that in Torquay particularly we are so limited by land availability. What consideration and forward planning has taken place towards future land purchases to offset the proposed loss to community to ensure continued availability of public land is maintained?

MS ROBYN SEYMOUR: Thanks, Claire, for coming in and also for asking your first question. In deciding whether to sell Cypress Lane, Council has to weigh up the best balance of outcomes for the broader community, including access to accommodation for the future. Cypress Lane is currently servicing a single dwelling which is owned by the proposed purchaser.

Regarding the availability of public land 24-hour access through the proposed development between Coombes Road and Deep Creek, this will be made available to the community under the current planning permit conditions and will be maintained at the landowners' cost. The report therefore finds no significant loss of access to open space for the community due to the proposed discontinuance and sale.

MS CLAIRE OSBORNE: Sorry, so I'm not sure that I heard a response about consideration around future purchase of land. So we're selling land potentially, but has planning gone into place to ensure that the land will be accrued back by community? I know you're saying that it will continue to be accessible by community, but I guess I'm just making sure the question is answered.

MS ROBYN SEYMOUR: So in relation to purchasing additional land to offset this, there's no plan for us to do this and from Council perspective, by selling the land it is still providing that access to the community through the planning permit, there's still provision for access to the community to move between Deep Creek and Coombes Road.

MS CLAIRE OSBORNE: Yes.

CR PATTISON: I'll get you to ask your second question, if that's alright, Claire. We've got 23 questions to get through tonight.

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MS CLAIRE OSBORNE: Oh, sorry. I just wanted to make sure it got answered, though, that's all. Alright. So my second question is that a conservation overlay was placed over Grasstree Park Reserve, which meant that the cleared land previously dedicated as a future recreation zone in conservation zone D of the reserve cannot be used, but is rather being revegetated with indigenous species of plants. This is an open space which could be used for community recreation ovals - stop that, please, William - which would interconnect beautifully with the conservation areas in A, B and C. Having frequented both spaces, I compare the patch of clear grass and some haphazard trees to the area adjoining the creek in Cypress Lane. Has a full flora and fauna report been commissioned for this space as has been done for Grasstree Park to ensure educated decision making and why is it more important to conserve a cleared grass area than it is to conserve public land in area adjoining a creek bed which has far more nature and wildlife inhabiting it.

MS ROBYN SEYMOUR: A flora and fauna assessment was undertaken for the site subject to the planning application and that was detailed in the report in August. So if you wanted to have a look at that, there's some information in that report. There will be no vegetation removal or other works being undertaken within the creek corridor. An assessment of the potential impacts on the Deep Creek environs was also undertaken and is set out in the report considered at the Council meeting on 22 August 2023. The report concluded that there would be no adverse impacts on the creek as a result of the development.

MS CLAIRE OSBORNE: Thank you very much for your time.

CR PATTISON: Thanks, Claire. The next question is from Damian Goss, from Torquay, and once again around the sale of public land. Damian, are you here? No. I'll read Damian's question. That's alright, there's no one coming in for a while, Claire, so she can sit there if she wants. Is selling public land to a developer who will no doubt profit from the development in the best interests of the people of the Surf Coast Shire who own and use this land? I'll pass that to our CEO.

MS ROBYN SEYMOUR: Thank you for your question, Damian. As I mentioned earlier, in deciding whether to sell the land, Council must consider the broad community needs. It's considered that the use of the land as a retirement village will help address housing availability pressure and will contribute to housing affordability. 24-hour access through the proposed development from Coombes Road to Deep Creek will be made available to the community under

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the current planning permit conditions and will be maintained at the landowners' cost. Thanks for your interest and your question, Damian.

CR PATTISON: Our next question is from Lindy Cameron. I don't think Lindy is here tonight, but if she is, I'll just leave an opportunity for her to come up. No. I'll read Lindy's question, and once again it's around the sale of public land. So Lindy has two questions. The first one is, "If sold, what suitable land is Council providing for replacement public open space as per section 20(4) of the SD Act?" And the second question, "Why are Councillors bending to pressure from developers rather than what their constituents want?" And I'll pass that question to our CEO.

MS ROBYN SEYMOUR: Thank you for your questions, Lindy. Section 20(4) it relates to the public open space within the meaning of the Subdivision Act. So this is a bit technical. The reserve portion is within the low-density residential zone and is not zoned public open space. The permit has been granted to remove the reservation status of the reserve portion under section 24A of the Subdivision Act. Under section 24A(5), once the reservation status is removed, the reserve portion would become a single lot on the plan and would no longer form part of the reserve. Section 24A(8) requires that the net sale proceeds must be applied for specified recreational or cultural purposes. All net sale proceeds from the reserve portion would be paid to the public open space reserve to be used specifically for future open space initiatives.

And in relation to your second question, I would suggest that Councillors are not bending to pressure, but have considered and approved the planning application in August giving full weight to the details of the application. As previously mentioned, in determining whether to sell the land, Council will consider the overall economic, social and environmental impacts of the application. The consideration of whether to sell the land will need to weigh up competing interests and Council will need to consider whether, on balance, the benefits of the sale provide the best overall outcomes in the long term. But thanks for your questions, Lindy.

CR PATTISON: The next question is from Darcey Kelleher. No, Darcey's not here? I'll read Darcey's question. Once again, it's around the sale of public land. "Why was the land to be sold gifted to the shire?" And the second question, "Has an economic cost benefit analysis been undertaken to determine the effects of importing a large ageing population into the Surf Coast?"

MS ROBYN SEYMOUR: Thank you for your questions, Darcey. The report details how the land was vested in Council. Council took over ownership of the

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land at the request of the body corporate, who no longer wish to manage the maintenance and renewal obligations of common infrastructure and no longer wish to be responsible for the public liability over the open spaces. Council agreed to take over the cost of maintaining the land and accepted liability for the land in exchange for the land being vested in Council.

In relation to your second question, as previously discussed, the recommendation to sell the land is based on many considerations, including the growing needs of Torquay's population of people aged 60 and older. It's difficult to determine the likelihood of a sale of independent living units in a retirement village resulting in migration by importing a large ageing population and this is not a prerequisite legislative or policy consideration as part of this decision, but given we have quite a significant ageing population, there is a need for this sort of accommodation to meet our community needs. But thank you for your questions, Darcey.

CR PATTISON: Our next questions are from Vic Rippon. I'll read Vic's question: "If Council make the disappointing decision to sell the public land, can Council guarantee that all revenue raised from the land sale will go directly towards restoration of Deep Creek?" I'll pass that on to our CEO.

MS ROBYN SEYMOUR: Thank you, Vic. The net sale proceeds from the reserve portion would be paid into our open space reserve, which is allocated and spent on future open space initiatives. This may be in other locations depending on need and all net sale proceeds from Cypress Lane will be paid into our unallocated cash reserve. Thanks again, Vic.

CR PATTISON: Our next question is from Mark Matthews and I believe Mark is here tonight.

MR MARK MATTHEWS: Thanks, Madam Mayor. In the Special Council Meeting agenda document at 2.3 there's a detailed report where shire officers are recommending that Council sell the public land required by the developer. The report identifies some aspects of community engagement process and addresses issues raised by community submissions in attachment 4. Through paragraphs 17 to 29, the report attempts to justify the demand for the proposed retirement village through a demographic analysis of ABS census data relating to non-private dwellings. At para 21.8 the report states, "As the population grows to 8,827" - and I presume this is of a particular age demographic - "if the demand remains the same, Torquay would require capacity for 818 non-private dwellings."



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My primary question is why has the shire's officer report focused on non-private dwellings? The ABS website states that non-private dwellings are establishments which provide a communal type of accommodation such as hotel, motel, boarding house. On the other hand, it states units in "Retirement village (self-contained)" are classified as private dwellings". "Non-private dwellings" are not retirement villages and are not what the developer is proposing to build. How does this part of the report justify the demand?

CR PATTISON: Thank you. I'll pass this on to our CEO.

MS ROBYN SEYMOUR: Thanks for your questions, Mark, and it's a really good pick-up. I can confirm that the words "which includes retirement village living" in the table on page 29 of the report were included in error and should have been omitted, as you've rightly pointed out. However, there is a range of information used to assess this need. Census data shows that there is an ageing population and the report considered on 22 August detailed Council's planning scheme policies on housing needs and identifies that the ageing population will increase from 3,901 people to over 8,000 by 2041, and I'd refer you to paragraphs 86 to 90 and 103 to 107 of the 22 August report, which talks about housing need and diversity.

A range of data is included in the August report confirming there is a public need for housing to accommodate the growth in ageing community members. Council's Age Friendly Strategy of 2020-2024 shows that by 2036 Surf Coast Shire will experience an increase of 84% in the population aged 60 and above. The market assessment referred to in the report shows that by 2036, 340 dwellings will be needed to house people within Torquay aged 65 and above.

Furthermore, the data shows there is growing demand for diversity of housing options, including non-private and private dwellings. The provision of private dwellings in the form of retirement village units provides greater diversity of housing stock to allow people to age in place according to their individual needs.

MR MARK MATTHEWS: So I'm just wondering which parts of the report are accurate and which parts aren't. If there are some errors there, it's a little bit hard for us to understand, especially if we need to go back to a report provided in a previous meeting for a previous motion. So I just find that particularly hard to understand. Thank you.

I'll go on to question 2. In para 25 of attachment 4, the report states that Council require as part of the sale process - they're recommending a section 173 with three conditions: that the land must be developed in accordance with

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the planning permit 21/0333, which was approved at the August meeting; all accommodation units on the land must be used as housing for people 55 years or older or people with a disability; and the third condition, one in every ten of the accommodation units must be occupied by at least one resident eligible for a Commonwealth pensioner concession card. How does Council propose to monitor and enforce these section 173 conditions and what will Council do if the developer ignores any of these conditions?

MS ROBYN SEYMOUR: Thank you. So there's really three parts to your question. So in relation to monitoring and enforcement, Council would conduct checks as each stage of the development is sold and settled, so proof of identification would be required to confirm dates of birth and copies of pensioner concession cards or evidence of compliance with various established Commonwealth asset income and medical tests would need to be provided to satisfy the requirements. The section 173 agreements are enforced under the Planning and Environment Act and Council has recourse in VCAT to ensure compliance.

MR MARK MATTHEWS: So after the fact, after someone has invested all of their savings to buy a unit and they're the person that tips the number over the edge, it's not terribly practical to do it after the fact.

CR PATTISON: If we just let the CEO - there's a bit more to respond.

MS ROBYN SEYMOUR: And then in relation to the second part of your question, if the landowner does not comply with the requirements of the section 173 agreement, Council would manage compliance and enforcement under the Planning and Environment Act in the usual manner.

In relation to the third part of your question, this is a different scenario from the example used at the Esplanade, Torquay. The original 2004 Esplanade permit did not require a 173 agreement to be registered on the title regarding the continued use of the land as a retirement village. This permit was not the subject of land sales from Council and the option to include the 173 requirement in the contract of sale was not available.

The developer of the Wyndham resort obtained an alternative permit for the land to allow the residential development as this use was also supported under the planning scheme. In relation to this current proposal at Coombes Road and Cypress Lane, the proposed 173 agreement includes a requirement that the land will only be developed as a retirement village in accordance with the planning permit which provides additional assurances that the use of the land will not be amended, so it provides greater surety around the use of the land

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in relation to the retirement village with the 173 agreement in place. But thank you for your questions.

CR PATTISON: And just for those listening, there was another section which Mark didn't read out which related to the Wyndham and the correlation between the two, just so that if you weren't following the response, that was where the other response came from. So thank you, Mark, for taking the time to provide those questions to us.

Karan Dawson, are you present tonight? No. Karan's question is also around the sale of public land. "My question is for Councillors Bodsworth, Stapleton, Allen, Patterson and Gazzard, not for the CEO to respond to. Please, Councillors, in your own words and not some script prepared for you by a Council officer, according to the Local Government Act you are required to come to all meetings with an open mind and not have a fixed view as to how you will vote. If you have made up your mind how you will vote, you must declare it to the meeting. So I ask you now to go on the record and declare if you have already made up your mind to follow the recommendations from Council officers to sell Cypress Lane or will you take into account the views of the community before you make a decision?"

I'll respond to each of Karan's questions separately. So thank you, Karan, for your question and you are correct in stating that all Councillors should come to the chamber with an open mind and we do, I do. Councillors should listen to all matters raised during debate and we do and consider these matters when determining how they will vote. Obviously I can't talk on behalf of all my fellow Councillors, but if you listen to our meetings, you'll understand that Councillors put a lot of effort into the matters that they speak on and there's quite an engaged conversation and debate that happens throughout our Council meetings, so I think that reflects those values.

Also, at the beginning of the meeting I ask Councillors to declare any conflicts of interest and I gave an opportunity for all Councillors to raise any conflicts of interest that they had and none were raised. And I'm not aware of any conduct by any of our Councillors which gives rise to administrative bias, as your question suggests. However, I will remind Councillors of their responsibility to make known any matters which preclude them from making a decision which compromises the integrity of the decision making process. So that's in response to Karan's first question.

For the second question, "If Council sell this land to the developers despite this land's importance to the animals, birds, flora and the community, in the interests of the wider community, will Councillors Allen, Patterson, Stapleton,

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Bodsworth, Gazzard, Hodge, Schonfelder, Barker and Wellington explain in their own words and not words prepared by Council officers how they will respond to a potential lawsuit from the remaining members of the body corporate who gifted the land to Council to be used as access from Cypress Lane to Deep Creek as green space?"

So once again, thanks for the question. I'm sure you can appreciate that Councillors are really limited in their ability to comment on matters which are coming for a decision in the chamber tonight, which is why our CEO has responded to the majority of matters that have come before us in the public questions. Although we are not aware of what grounds potential future litigation could be brought upon, Council has established processes in place for dealing with legal matters and any such matter would be addressed accordingly. In any event, such legal action would be between the relevant party and Council and not against Councillors specifically. Once again, thanks for your question, Karan.

Our next question is from Darren Noyes-Brown. Did you want to come up and read your question, Darren?

MR DARREN NOYES-BROWN: G'day, everyone. Thanks for the opportunity. Even though there is only one house built on Cypress Lane, nearby residents observe approximately 50 people per day walking or riding along the land that is proposed to be sold, so that's people coming from outside those 10 lots from Coombes Road, et cetera. How can Council justify statements that this land is not needed and not able to produce any document to be able to back up such statements?

CR PATTISON: I'll pass this to our CEO.

MS ROBYN SEYMOUR: Thanks, Darren, for your question. As I mentioned previously, the community will still have 24-hour access between Coombes Road and Deep Creek through the retirement village and the sale would not result in that loss of access.

CR PATTISON: Did you want to read your second question?

MR DARREN NOYES-BROWN: Yeah, okay. What guarantee can Council give that they won't agree to any request from the developer of Cypress Lane to remove or cancel the section 173 agreement that Council is proposing?

MS ROBYN SEYMOUR: So part of - I mean, a lot of the responses to tonight's questions have been really talking to the need of having accommodation to

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support people ageing in place and the purpose of the retirement village and the intention of setting up the 173 agreement is to ensure that we have added controls to ensure that that purpose is there in perpetuity. That's probably the - and so that's the intention, that Council is putting the 173 agreement in place to ensure and provide greater surety around the establishment of that land being used for the intention of a retirement village, as opposed to being used for any other purpose.

MR DARREN NOYES-BROWN: But my understanding is that the developer can come back to the Council afterwards and ask them to remove it and the Council can say yes if they want to. What guarantees is what I'm asking about do we have that Council won't agree to that?

MS ROBYN SEYMOUR: Well, that's - in terms of what's needed in relation to Surf Coast, we see and the organisation has put forward in its support of the planning application the need of a retirement village and that is the purpose for which Council has supported and made the decision to support the planning permit. So it isn't our intention to move away from the purpose of the retirement village.

MR DARREN NOYES-BROWN: Okay.

CR PATTISON: Thanks, Darren.

MR DARREN NOYES-BROWN: Thank you.

CR PATTISON: Thank you. Our next question is from Claudia Edwards.

MS CLAUDIA EDWARDS: Hi, Councillors and Mayor and thank you to those of you who have responded to emails that I've sent. I appreciate the time that you've taken and the thought that's gone into them.

My question pertains to the process in terms of decision making by Council. Given that there has been a VCAT appeal submitted, why wouldn't the decision around the discontinuance and sale of land be postponed until the VCAT outcome is known? Additionally, what is Council's knowledge and understanding around the process of this land being gifted to Council and the rationale for this by the body corporate? Surely this was with the understanding that Council would preserve, care for and maintain this as public land and therefore selling the land to private developers primarily for the developers to profit from this represents a breach of trust by the Council.

CR PATTISON: Thanks for your question, Claudia.

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MS ROBYN SEYMOUR: Thanks for your question, Claudia. As detailed in the report, any contracts of sale would be ended if permit 21/0333 is amended due to the application to VCAT or submission of the permit holder. Settlement will not occur until after the VCAT outcome is known.

In relation to your second question, as previously discussed and as detailed also in the report, Council took over ownership of the land at the request of the body corporate, who no longer wished to manage the maintenance and renewal obligations of the common infrastructure and no longer wished to be responsible for the public liability over the open spaces. Council agreed to take over the cost of maintaining the land and accepted liability of the land in exchange for the land being vested in Council.

The land was vested in Council under section 32 of the Subdivision Act and became the property of Council subject only to the conditions contained in that legislation. Any implied conditions of the body corporate as to the future use of the land became void as this would be contrary to the legislation.

MS CLAUDIA EDWARDS: I appreciate that the body corporate initiated that and that Council took over responsibilities for them, but I also - I feel that implied in that there was a degree of trust in the Council and what they would use the land for and that they weren't - it wasn't - the Council profited from that act by the body corporate, which isn't necessarily conveyed in that response. But I hear what you're saying.

CR PATTISON: Thanks, Claudia.

MS CLAUDIA EDWARDS: Thank you.

CR PATTISON: Our next questions are from Britt Oellering. Britt, I don't think you're here tonight? No. I'll read Brit's question: "Currently the land at Cypress Lane is able to be used and enjoyed by all people of all ages. This proposed high-density facility is being built for the exclusive purpose of selling to people over 55 years old. I'm a 45-year-old mother of two children and while I cannot foresee myself making a negative financial decision and wanting to live in a high density development next to a highway with no aged care or medical facilities on site and on a sloping block, I will in fact be eligible to live in one of these high density apartments in 10 years' time. However, as I will have a 17-year-old and a 14-year-old in my care at that time, this precludes me from this housing at 55.

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Yes, our population is ageing, as humans do. The maternal age is also rising, which will make this style of housing unsuitable for more people. In 2021, 29% of births were to a mother aged over 35 years of age, so they could have at least one child under the age of 20 when they become eligible for this style of housing. Why would Council sell this land which can be currently accessed and enjoyed by everyone person in Torquay for it to be developed into something that can only be accessed by a restricted portion of the community?"

I'll also read out the second question: "When the developer has stated that this land is not required to proceed with this high density development and the surrounding houses are so negatively affected and the impact on surrounding wildlife is so harsh and there is such a strong backlash from members of the public due to history and intention of this land which was originally gifted to Council, why exactly is it a good idea to sell this to the developer?"

MS ROBYN SEYMOUR: Thank you, Britt, for your questions. All land sales are considered under Council sale, exchange or transfer of Council land policy. Among the considerations, Council must assess land sales with the intention of securing the best balance of social, financial and other outcomes for the community. Currently there is only a single dwelling amongst the existing 10 lots. The development provides an opportunity to increase total housing supply and add to the variety of housing choices within Torquay. By increasing overall supply, it's considered that the proposal would improve access to affordable residential accommodation, which is an acknowledged need at a state and a national level.

In response to your second question, if Council does not approve the sale, the permit holder may seek to amend permit 21/0333 externally through the VCAT or make an alternate permit application which may result in less favourable amenity outcomes to the community.

CR PATTISON: We now move on to our second-last lot of questions. Ron Lowe - Ron, I don't think you're here tonight. No. "My question tonight is about public consultation. You have consulted the public and the result of that was overwhelming with 200 submissions against selling Cypress Lane and 3A Blackwattle Mews and 2 for. It seems to me that you have no community support to move forward with the sale, so why is tonight's motion to sell the land rather than rescinding any former motions passed in relation to the sale of the land in question?" And that's the one question that Ron has decided to put forward tonight.

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MS ROBYN SEYMOUR: Thank you, Ron. Councillors have considered the feedback provided through the engagement process. Councillors also assessed other considerations in making the decision at the August Council meeting and will do so again tonight in deciding whether or not to sell the land. Council will be considering, along with the community feedback, whether on balance the sale of land would provide the best outcome for the broader community today and into the future. Thanks for your question.

CR PATTISON: And our last questions are from Matt Crowe. I don't think Matt is here tonight - no. His first question: "Has there been any study into what positive impact this sort of development will have on the current housing crisis and how this sort of development will address the shortage in housing for existing Surf Coast residents?" And the second question is: "What assurances can the Council give that this sale and development will benefit the local community and provide facilities to service current Surf Coast residents?"

MS ROBYN SEYMOUR: Thanks, Matt. Council considered the planning application at the Council meeting on 22 August 2023 and resolved to support the proposal. As part of the assessment, the need for a retirement village was considered and more detail about this can be found in the August Council report from paragraph 103 onwards. This section details the need to respond to housing supply and affordability issues.

And in relation to your second question, as previously mentioned, all net sale proceeds from the reserve portion would be paid into our public open space reserve. All net sale proceeds from Cypress Lane would be paid into our unallocated cash reserve. The open space reserve requires that funds are used exclusively for open space projects. The unallocated cash reserve enables funding for a broad range of projects or services of value to our community. Money allocated to the reserve can only be spent on those purposes. Thanks for your questions, Matt.

CR PATTISON: So that brings our public question time to an end and we'll now move on to the reports for the Council meeting. So first up we have an additional business item, which is the receipt of a petition. So as the meeting was set out just to consider the sale of the two portions of land, we have an additional item that we need to consider bringing this petition.

So the purpose of this report is to enable us to consider an item which has not been specified on the Council meeting notice, being the petition which is listed next in our agenda. As this is a special meeting, we first need to resolve to consider any extra business. So do I have a mover of a motion? Councillor Allen - is that as per the recommendation?



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CR ALLEN: As per the recommendation, Mayor.

CR PATTISON: Councillor Wellington, are you wanting to second that? Yes, okay. And did you want to --

CR ALLEN: No, thanks, Mayor.

CR PATTISON: Is this procedural - sorry, yes. Did you wish to speak to the motion, Councillor Wellington? It is more of a procedural type.

CR WELLINGTON: No, thanks, Mayor.

CR PATTISON: We'll now put the motion to the vote. And all those in favour and all those opposed. So unfortunately - I'm not sure if Councillor Barker understands if we don't get a full majority vote, we can't receive the petition. Governance, did you have something you'd like to say?

OFFICER: Yes, through you, Mayor, as per the Governance Rules, for Council to consider the additional business, all Councillors need to support the motion to hear the business. So we'd need a unanimous vote from all Councillors.

CR PATTISON: Okay.

CR WELLINGTON: Can I change my decision to not speak, Mayor Pattison, please?

CR PATTISON: We've already put the motion to the vote, Councillor Wellington.

CR WELLINGTON: I was hoping I could persuade Councillor Barker to change his mind.

CR PATTISON: Can we just pause --

CR SCHONFELDER: Mayor, I was just going to propose to put the motion again. Is that possible?

CR PATTISON: Oh, we'll just - let's just pause the - can we pause the Council meeting for one moment and I'll just confer with Governance.

Sorry about that little pause. I just wanted to clarify a couple of things.

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So I just wanted to confirm that Councillor Barker is happy with that decision based on the current arrangements if we don't get a unanimous vote, we won't be considering the petition and I just wanted to clarify that --

CR BARKER: I can change my vote for getting it on the table.

CR PATTISON: It's because it's just to get it on to the table. So we'll just put the motion to the vote again as per the recommendation moved by Councillor Allen and seconded by Councillor Wellington. All those in favour in purely considering the petition? And the motion is carried unanimously. Thank you.

I will now move on to the next item of business, which is around receipt of the petition. So this is so that we can table the petition that the community has put forward.

So the purpose of this report is to receive the petition requesting that Council say no to the sale of public land Cypress Lane, Torquay. And do I have a mover of a motion? Councillor Wellington - is that as per the recommendation? Yes. And do I have a seconder? Councillor Bodsworth. Once again, this is more of a procedural motion, but would you like to speak to the motion, Councillor Wellington?

CR WELLINGTON: Well, very briefly I'd like to say I think it's so important we put such an emphasis on community engagement that we really - and it's difficult for the community to understand all the rules and the Governance Rules that we abide by and I think we have to be very, very flexible in the way that we receive petitions or other submissions and we have to acknowledge that there will be some times it will be challenging for people to follow the rules, but I think this is a really important matter and what's important to us is that we hear the community, not the format and whether it complies with whether they put their petition in. So I'm very happy to move that motion.

CR PATTISON: Thank you. Councillor Bodsworth, did you wish to speak?

CR BODSWORTH: I agree.

CR PATTISON: Thanks. Any other Councillors? Councillor Barker?

CR BARKER: I've been part of a petition before that precluded me from voting on matters before. The effort that I went to was not super significant, but I think important. If we've got rules in place, we should follow them.

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The fact that there's non-conforming is the reason that I'm opposed to accepting the petition. The amount of numbers in such a short time do highlight that there is significant community opposition to the future agenda item. It's not to say that I'm opposed to the petition, but in future I would hope that if we are going to have certain conditions and rules on how we accept petitions, the community can follow those rules so that we don't need to keep making exemptions and bending the rules which essentially makes the rules null and void.

CR PATTISON: Thank you. Councillor Wellington, did you have any closing statements? No.

CR WELLINGTON: No, other than to say I actually accept Councillor Barker's point that we probably do need to change the rules and our Governance Rules could deal with a thorough revamp and this could be one part of it. I accept what he says absolutely, but I'd still like to accept the petition.

CR PATTISON: We'll now put the motion to the vote. All those in favour. And all those opposed. And the motion is carried 8-1.

We now move on to the proposed sale of land and the discontinuance of the road Cypress Lane and portion of Reserve No. 3 in Torquay. The purpose of this report is to advise Council of the outcome of the community engagement and seek Council approval of the proposed discontinuance of the road and the property sales of Cypress Lane and a portion of land known as Reserve No. 3. We have a recommendation. Do I have a mover of a motion? Councillor Allen - is that as per the recommendation?

CR ALLEN: As per the recommendation, Mayor.

CR PATTISON: And do I have a seconder? Councillor Bodsworth. Councillor Allen, would you like to speak to the motion?

CR ALLEN: Thanks, Mayor. The effect of accepting this recommendation is for Cypress Lane to discontinue as a road and along with the reserve portion detailed in the recommendation be sold to the abutting landowner, being the permit holder of planning permit 21/0333, whom I will subsequently refer to as "the developer".

I have decided to support the motion as I believe that the benefits to the Torquay community significantly outweigh the costs. The projected population growth of people aged 60 and above in Torquay will, from 2021 to 2041, increase from 3,901 to an estimated 8,827.

With limits placed on outward expansion to protect farming land and other declared distinctive areas, the inevitable solution to increasing the supply of land for housing and accommodation will come from densification within existing township boundaries. The sale of Cypress land and the reserve portion to the developer will permit the construction of 196 independent living units, thus partially satisfying the projected need for additional diverse dwellings to a targeted ageing group within the community within that same 20-year period.

Conditions on the use and development of the consolidated land are to be incorporated into the contract of sale, which would be an addition to the conditions contained in permit 21/0333. They are: the contract for the sale will cease should the developer cause the permit to be amended at VCAT; the developer must consolidate Cypress Lane and Reserve No. 3 with the land that is the subject of planning permit 21/0333; that the developer must enter into a section 173 agreement requiring that the development will be to house people over 55 years or over or people with a disability, with 1 in every 10 units required to be occupied by at least one resident eligible for a Commonwealth pension card at each stage of the development. Overwhelmingly, the people who receive this card are holders of an aged pension, carers pension, or receive the disability allowance. These conditions ensure that the development will benefit retirees and people with disabilities, allowing existing Torquay residents increased options if they wish to age in place, being a tangible way to help achieve our housing goal in the Age Friendly Strategy. The development is within easy walking distance of shops, medical facilities and the proposed aquatic and community hospital precincts.

The sale of the land at market value Cypress Lane net over \$1.5 million into accumulated unallocated cash reserve to fund approved shire projects and the sale of the portion of Reserve No. 3 will inject net \$475,000,00 into public open spaces for the approved amenity of the wider community. Currently they are on our books with a written down value in the order of \$140,000, which is a liability as we must maintain and renew these assets.

Concessions were agreed to after consultations with the developer and the planning officers, all made in the original permit application, the matter of stormwater, its collection, treatment and runoff into Deep Creek, 24-hour pedestrian access allowing access to the wider community, landscape plans, generous boundary setbacks. The plans include recycled water, no gas and solar panels. The clubhouse height was reduced from four storeys to a combination of three and two storeys.

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All of these will be placed in jeopardy if we fail to sell the land, with the developer able to go back to the drawing board and submit a new application, and this in a new climate of the State Government having gazetted last week the ability to take housing developments of 15 million and over out of the hands of local planners and they have declared preference to solve our housing crisis through increased densification and reducing VCAT red tape.

There are costs associated with accepting this motion to the amenity of the existing landowners next to the development and to the residents to the south of Deep Creek.

CR WELLINGTON: I move for an extension of time, Mayor Pattison.

CR PATTISON: Yes, that's accepted.

CR ALLEN: Thank you.

CR WELLINGTON: I'm sorry?

CR PATTISON: Yes, that's been - I can just grant that. It doesn't need to be vote on.

CR ALLEN: Thank you. There will be significant community dissatisfaction and perhaps a fear that this may be the thin edge of the wedge to the character of Torquay. However, I believe that because of the location, there is little danger to the neighbourhood character of the historic parts of the township and over the period the planners have gained these concessions. If we go back to a new planning permit, you may end up with higher density, fewer setbacks and higher height, exactly the opposite to what residents want. I think the officers have done a magnificent job to look after the residents of the community.

CR PATTISON: Thank you. Councillor Bodsworth, would you like to speak?

CR BODSWORTH: Thanks, Mayor. I'm going to start by saying that I support the proposed sale of land and the development itself. I acknowledge that it's a contentious proposal and thank those who've shared their perspectives. Some of the objections that we've heard are valid. Some are not and are based on misrepresentations and misunderstandings that have been corrected but continue to be promoted.

The proposed development will provide independent retirement living in a location offering high accessibility and liveability. The housing it offers will free

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up family housing elsewhere on the coast, as was the case with our family home in Anglesea when the previous owner moved to Kithbrook.

It will enable a significant number of people to live a happy, healthy, relatively affordable, socially connected and sustainable life without dependence on cars, bearing in mind the household cost of car ownership is now over \$500 per week and the societal cost of car use around 20 cents per kilometre.

Incorporating the road and reserve land will allow the central accommodation hub building to be set back from all sides of the site, reducing its visual impact and maximising its accessibility. It will also enable the site to be planned and designed optimally, providing the best balance of outcomes for residents, neighbours, nature, landscape and the general community. Public access to and from the Deep Creek reserve will be retained and the creek reserve itself will stay as is. Based on investigations to date, I believe detrimental ecological and stormwater impacts are unlikely. As we've heard, sale proceeds would go to open space and social infrastructure purposes.

A decision to not sell the land would probably result in a revised plan that leaves Cypress Lane as is. Given the Victorian Housing Statement and Development Facilitation Program emphasis on fast tracking planning approvals for higher density housing developments, I think a revised plan would probably propose higher building heights and density and probably not come to Council for a decision being decided at state level.

The choice is not between this development and no development. It's between this option and a different one, probably more intensive. It's important to recognise that the Torquay DAL, Victorian Housing Statement and Development Facilitation Program all point towards greater housing density and increased building heights in central areas close to facilities and services both in Melbourne and in regional towns. This proposal aligns closely with those documents' emphasis on the benefits of higher density, like reduced suburban sprawl, healthier and more affordable lifestyles, increased housing diversity, higher social connectedness and a more cohesive civic society, reduced car dependency, higher public and active transport mode share and more compact built environments with space for nature and recreation in between. I'm sorry to disappoint --

CR WELLINGTON: I move for an extension of time, Mayor Pattison.

CR PATTISON: Yes, that's fine. I'll grant that.

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CR BODSWORTH: Thanks, Councillor Wellington. I'm sorry to disappoint objectors hoping for a different decision, but my decision is to support the land sale and development.

And can I just finish by saying that having heard a lot of objections and a lot of heartfelt input from a lot of you in the room and others, I do find it hard to sort of lay out those reasons for going against your wishes, but I'm taking the proposal on its merits. I don't love everything about it, but I'm taking the proposal as it comes to us on its merits and I support the sale of the land and the development.

CR PATTISON: Thank you, Councillor Bodsworth. Would any other Councillors wish to speak? Councillor Hodge?

CR HODGE: Thank you, Mayor. At the last meeting in September I voted against the retirement village because a lot of the overarching strategic documents we had was this was an area of minimal change and I still agree with it, I was concerned about the amenity of the area and the amenity that's already there for the people that live there. So when I looked at this one, again we were in that area of minimal change and this is not a minimal change of selling land, so I will be voting against it.

Why I'm doing that is even last week at our Lorne meeting we talked about our Council plan and one of our strategies is strategy 3, which is "facilitate the provision of social infrastructure and open space to enable healthy lifestyles" and this precedent if we sold this land, it hasn't been done before.

I've asked officers, and I thank them for the work, that they've gone through the records and we have sold parts of land for connecting footpaths and perhaps an added road, but we have never sold open space like this and I certainly don't want my name as part of that precedent on this. You know, the precedent - it's on the wrong side of history. I really think that open space should be protected. This was a low res area and I intend to foreshadow a motion if this is lost after this that we put aside the land and don't sell it.

I thank all the submitters that have put submissions in, and we've had over 120 and it's been very passionate, and we have had a lot of robust discussion behind the scenes for and against and I've listened to, you know, a lot of discussion and I can tell you the Councillors have got a lot of passion for where they're going on their vote, but my vote will certainly be against this recommendation.

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It's only the first step. This land will be developed. No matter what we can do, you know there will be development on it. But I'm not going to vote on what might happen at VCAT, what might happen with the planning. I've got to look at the principles in front of me now and what I'm going to vote on tonight.

So I won't be voting for this recommendation and I hope other Councillors don't as well and remembering that open space, we've never done it to a developer at this size level and I don't see why we should start it in Torquay in this area now. It should be left in an area of minimal change and hopefully (inaudible).

(Applause)

CR HODGE: Thank you.

CR PATTISON: Thanks, Councillor Hodge. Would any other Councillors like to speak to the motion? Councillor Wellington?

CR WELLINGTON: Thanks. Look, I didn't hear the last bit of Councillor Hodge's speech there. If you can just hold the clock for a moment. So I'm hoping that the technology will survive and that we'll get to hear everybody because it's a really important debate. I've got a couple of points to make initially, well I'll put them as questions really.

CR PATTISON: So were you wanting us to repeat Councillor Hodge's last comments? I just missed what you were seeking.

CR WELLINGTON: Well, I missed that last little bit. I just wanted to make that point. I'm not sure what was said.

CR HODGE: I can't remember what it was.

CR PATTISON: Rose was speaking from the heart, so she doesn't have notes. Sorry. You might have to watch it on the recording.

CR HODGE: I was seeking another motion, Councillor Wellington, if this is lost that we vote on the land not for sale.

CR PATTISON: Did you hear that part?

CR WELLINGTON: Yes, I did. That's fine.

CR PATTISON: Okay, great.



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CR WELLINGTON: Look, I'll just put a question at the beginning. We talk about the requirement of 10% of people on pensioner concession cards, yes, at each stage of the development and I was just querying what that means because development means the building stage and if it's intended to mean for the life of this project, which might be 50 years, we have 10% of people who are eligible for a pensioner concession card, then that's not quite what it says at the moment, in my view. What it says is at each stage of the development and the development is usually concluded --

CR PATTISON: I'll pass your question on to our CEO.

CR WELLINGTON: So if I can just explain. The development is usually concluded at the point that the planning permit is complied with in terms of the works and so I don't think that - if that's intended to go beyond that, it's not adequately worded in my view.

CR PATTISON: I'll pass that question on to our CEO.

MS ROBYN SEYMOUR: Thanks for the question, Councillor Wellington. The intention is it would be, yes, as each stage is built, but also then that because it will be built into the 173 agreement, there has to be - that requirement needs to be complied with for the life of the retirement village and so there are mechanisms to enforce that if it's necessary. But because it will be in the 173 agreement, it will be part of the requirement of the retirement village operation.

CR WELLINGTON: If I could just - I don't agree with that and I think that the Council should take advice on it because what it says at the moment is the 173 agreement will include a requirement for 10% of houses to be, you know, for potentially people with low incomes at each stage of the development and beyond that - and that's what the 173 agreement is going to say, so you can't enforce an agreement in 50 years' time if it's actually related only to the development.

So I don't know if there's anyone there that can give advice on that, but I think that that needs to be thought about by Councillors because these retirement villages will change over. People will die --

CR PATTISON: So if I can just clarify - I understand your question. I was just having a look at the recommendation as before us and it doesn't talk about the development - item 4.5, "that the permit holder must enter into an agreement in accordance with section 173 of the Planning and Environment Act to be

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registered on the consolidated land requiring that", and it's dot point 4.5.3, "one in every ten of the accommodation units must be occupied by at least one resident eligible for a Commonwealth pensioner concession card". So it doesn't talk about of the development during the development phase. It talks about in perpetuity.

So I think we've responded to that question. Would you like to speak to the motion now, Councillor Wellington?

CR WELLINGTON: Well, I'd perhaps like to move an amendment to that portion of the motion to say that "for the duration of the provision of the business as a retirement village at least one in every ten of the accommodation units must be occupied".

CR PATTISON: We'll just pause there if that's what - because we just put forward that amendment and then we put it to the vote with our Councillors. So we'll just wait and pause for Governance to put it on the screen so that all Councillors are aware of the amendment that you're proposing.

CR WELLINGTON: "That for the duration of the use of the land as a retirement village".

CR PATTISON: Councillor Wellington, can you see that on the screen there? Is that as per your request?

CR WELLINGTON: No, that's not - at the beginning of 4.5.3 it should start off by saying --

CR PATTISON: "For the duration".

CR WELLINGTON: "That for the duration of the use of the land as a retirement village" comma - yes, thank you.

CR PATTISON: Great, okay. As per our Governance Rules, we need a seconder for this amendment. Do I have a seconder? Councillor Barker. And Councillor Wellington, would you like to speak to that amendment?

CR WELLINGTON: Thanks very much. I just think that it needs to be clear that what we're talking about - I think in the body of the text it talked about at each stage of the development. It doesn't specify a timeframe there at all in terms of the permit, although you could argue as the CEO has that the permit sort of applies ongoing to the site. But I think that that makes it clear that this is an ongoing requirement so that at every stage where there is a new stage

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built, one in ten people have to be eligible for the pensioner concession card, but that that requirement continues for the duration that the retirement village operates on that site.

CR PATTISON: Thank you. Councillor Barker, would you like to speak?

CR BARKER: No, thanks.

CR PATTISON: Would any other Councillors like to speak to the amendment?

CR GAZZARD: Could I ask a question?

CR PATTISON: Councillor Gazzard.

CR GAZZARD: The duration of the use of land implies that it might not always be used as a retirement village, but my understanding is it can only be a retirement village for that kind of density on low residential zoning land, is that correct? Like will it always have to be a retirement village?

MS ROBYN SEYMOUR: So the decision for the retirement - the planning permit decision was predicated on it being used as a retirement village. The 173 agreement will bake that in as a requirement that it can be - that the land must be used as a 173 agreement. The only way that could be changed is if the 173 agreement was changed.

CR WELLINGTON: Can I ask a question about that?

CR PATTISON: Yes, Councillor Wellington.

CR WELLINGTON: I don't think it says that either. I think it says that the agreement - the section 173 says that the land must only be developed in accordance with planning permit. It doesn't say it must only be used and, you know, presumably there would be planning implications if somebody tried to change for a different use. But that section 173 only refers to the development and after the thing is developed, what are you going to do if they change the use?

MS ROBYN SEYMOUR: So the intention of - sorry, Mayor.

CR PATTISON: That's alright.

MS ROBYN SEYMOUR: The intention of the 173 agreement is to specify as part of that the use is for a retirement village of which within that as per item 4.5.3

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that one in every ten of the accommodation units must be occupied by at least one resident eligible for a Commonwealth pensioner concession card.

CR PATTISON: So just to clarify, we're talking now around the permits around the sale of land, not around the permit for the retirement village. I'll pass this on to Manager Pike.

MR CHRIS PIKE: Thanks, Mayor.

CR WELLINGTON: I'll clarify that. Sorry, can I just ask a question on that?

CR PATTISON: I think Mr Pike will have some better ability to clarify, so I'll pass it on to Mr Pike.

MR CHRIS PIKE: Through you, Mayor, I was just going to supplement the CEO's response by making the point that a change of use would require a planning permit application for a different use.

CR PATTISON: Yes, so that's separate to the - the 173 around pensioners and the like is separate to a permit for the retirement village and change of use. Once again, today we're talking about the sale of land and the conditions around the sale of land. The permit was voted on at our August Council meeting. They're separate matters.

Would anyone else like to speak to the amendment? Councillor Stapleton?

CR STAPLETON: Yes, just a question initially. I don't object to, I guess, the concept of including it. I don't think it's necessary to add it. But my question is from an officers' perspective, does adding that statement to the 173 agreement change anything about the 173 agreement that we need to be aware of as Councillors before we make a decision?

CR PATTISON: No. We'll pass that over to our Legal.

OFFICER: Through you, Mayor, there would be no legal or - from our point of view, that amendment would be acceptable.

CR PATTISON: Thank you. Would any other Councillors like to speak to the amendment? Councillor Allen?

CR ALLEN: I'm happy to support the amendment and I thank Councillor Wellington for trying to strengthen the use of one in ten units for people with disability.

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CR PATTISON: Thank you. Councillor Wellington, do you have any closing remarks?

CR WELLINGTON: No. Can I just ask one more question? I haven't got the previous permit available to me, but can someone confirm that the previous permit or that the permit that we're talking about, 21/0333, is for both the use and development of the retirement village and that use as a retirement village - that any - that there is no other use that that accommodation could be put to in that zone other than as a retirement village? Is that what the use and development - I thought the use and development permit was permissive of a retirement village, but didn't necessarily prohibit other uses, but I haven't got --

CR PATTISON: I feel like we're straying from the point that we're trying to amend this motion, so I think it's time to move to the vote. All those in favour of the amendment. And the motion is carried unanimously. So we'll now move back to the substantive discussion with those words included. So Councillor Wellington, did you still wish to speak to the substantive motion?

CR WELLINGTON: Yes. Okay. So thanks for that very much. Thanks to Councillors for supporting that. What we've talked about mostly tonight has been the actual development of planning permit, which was all approved at the last meeting, and really what we're talking about tonight is about the sale of public land and from my perspective, this is my absolutely firm position, sale of any public land is never acceptable unless there's a very clear and unique public benefit that can't be achieved through other means. Public land is precious. No matter where it's located, it is absolutely precious. I simply cannot understand how providing public land to a private developer to ensure the availability for profit of private dwellings in Torquay addresses a public interest. It doesn't. It addresses a private interest.

My question - and the public interest has been put forward as being oh, but we might have a worse development there if we don't do that. Well, that is just - you know, you look at each development would be looked at under the Planning Scheme, whether it's by the State Government, whether it's by us, and people will be accountable for their decisions. You cannot make the decision that it's in the public interest not to reject a development because we might get a worse one in the future.

My question now is which other open spaces parks are at risk of sale to developers in Torquay or in the hinterland so that they can build more houses, more retirement villages or other forms of private development? There will be

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enormous demand for public land on that basis and how do we decide which ones to sell? So this is a terrible precedent.

In terms of the 10% of people being eligible for a pensioner concession card, there's no discussion of what that means in the report, but a pensioner concession card, according to Mr Google, even those receiving the minimum amount of \$52 pension per fortnight for singles or \$78 per fortnight for couples, so that's people with quite significant independent income, will be entitled to hold a pensioner concession card. You don't have to be a full pensioner to hold a pensioner concession card.

And if this has been conceptualised somehow by Council as some form of social housing, I'm sorry, but it's not. It's not - a lot of people manage their assets and their income in order to get a part pension and they're not people who one would traditionally consider should be requiring social housing. This is not social housing. It's not affordable housing in that sense. That is not an adequate sort of public interest put forward in my view at all.

In terms of section 173 agreements, a number of people from the community have raised this, they can be changed by agreement. Even if they're not changed, whoever is going to enforce this and how will it be enforced? It will require the disclosure of private information by private individuals. Is our planning department going to take inspections of occupant finances at a retirement village of 196 units to check?

This is just - it's unbelievable that this would happen for the next 30 or 40 years. I have enough trouble getting simple things enforced, honestly, because of priorities. I cannot imagine how this could ever be enforced in any meaningful way. In my view, the decision about the planning permit --

CR PATTISON: Sorry, Councillor Gazzard has just requested an extension of time for Councillor Wellington.

CR WELLINGTON: Thank you. I didn't hear that. Thanks, Councillor Gazzard. The provision of provisional approval by this Council really contaminates this decision. The fact that we've already approved the planning permit pre decides this decision in my view and I think that's really very unfortunate.

We're selling on the land park two acres of land. That will enable 20 to 30 units to be developed, by my calculation, or perhaps more, and the gain on a land valuation of \$1.55 million will be absolutely enormous. So the public has a piece of land that it really values but isn't really valuable - able to be valued in monetary terms. The developer is going to get some land that's going to be

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enormously valuable for progressing this development and the public is not getting the benefit of that. You can buy 2 acres in rural residential land in Torquay for \$1.55 million already. It just doesn't happen to be from this location where the developer bought up all the other properties and has effectively extinguished the public market for this land. I think that we should be putting a price on this that's much more significant than \$1.55 million.

I think the reasons for supporting this motion are extremely weak. It's not true that Cypress Lane is no longer required for use by the public. It is irrelevant that the applicant can make an alternative application. Bring it on I say. That is not a valid plan consideration. It should be looked at on its merits and that is not a public benefit from the sale of the public asset.

It requires - a public benefit requires much more than showing that a development will support a private housing market in a tight housing market. It is not our purpose as a Council to provide public land for the benefit of a private developer. I think this will turn out to be one of the worst decisions this Council has made and I strongly object to this proposal. I will not support it.

(Applause)

CR PATTISON: Would any other Councillors like to speak to the motion?  
Councillor Barker?

CR BARKER: Thanks, Mayor. There's a large amount of consideration that I've given to this item and there's a number of different ways that I could go based on the weighting of different elements. So, firstly, I'd like to apologise to members of the community I've not yet been able to get back to, but I have heard your position, so thank you for sharing those, but it goes back to the idea of shared responsibility of public land and if you look at it philosophically, shared responsibility is no responsibility and that's how we've got to this position now.

We've also got a conflict of rights where a developer wants to do what they want with their land, which I support in principle, but with the sale of the land potentially being sold for far less than what I think it's worth as what Councillor Wellington highlighted, it's got a very, very narrow benefit and a very, very low cost in my perspective, but this is derived from zoning. So we've got zoning implications that devalue this land relative to what I would say is the actual value.

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Then we've got some of the community feedback such as some straw man arguments like access to Deep Creek which can be achieved through Jetti Lane or further west and the echidnas, like sure it touches the heart strings, but I don't think there's a proliferation of echidnas in that area and if you're going to use any sort of argument against government, it needs to be rock solid.

I'm still undecided as to which way I go because, in principle, I'd love to sell off all public land, but we don't live in an environment where we are living in a truly free market where price points and market forces are allowed to dictate an effective or more accurate value on sale.

Then you've got some other elements like the affordable housing option and a whole bunch of other issues where increasing the density is actually going to help people long term. If we keep tying up land, it's just going to make the property prices in Torquay go through the roof and everywhere else. If we allow development to occur at a higher density than what has been proposed for 21/0333, then we can have an outcome where we can have more people sharing this beautiful area that we live in.

CR PATTISON: Sorry, Councillor Barker, I'll just give you an extension of time.

CR BARKER: Thanks, Mayor. I can see the public have a very strong view on this, but we've also got people that, through their own means, have bought up all the land and now want to do something with it.

Sorry, but this is such a huge decision that we're making that has been highlighted, there's no precedent for it, and to give each Councillor a matter of minutes to articulate the rationale for their decision I think is not appropriate, but it is what it is.

There's just too much happening here and as has been highlighted before, there's some issues in the officers' reports. The community hasn't been brought along the journey to what I would say is accurate. We've got a lot of misunderstanding that is still perpetuating. I don't think misunderstanding of the community should delay development of privately owned land, but if we've got a situation where there is no precedent for selling open space and it's not in a truly free market condition, that's a significant weighting to me not supporting the motion. I'm happy to hear positions from other Councillors. I'm still undecided, but we'll find out when it comes time to vote which way I'm going.

CR PATTISON: Thanks, Councillor Barker, for your honesty. Any other Councillors? Councillor Stapleton?



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CR STAPLETON: Thanks, Mayor. So Councillors, regardless of whether or not you support the development of a retirement village at Cypress Lane, you must be aware of the risk tonight if we reject the sale of Cypress Lane and portion of reserve.

So let's be clear about the likely consequences of rejecting this sale. It is expected or highly likely that the developer would submit a new application direct to the Planning Minister and completely bypass Council. We know from the State Government's recent statement on housing and planning that they have an appetite to fast track developments that exceed \$15 million in value and offer 10% affordable accommodation. Cypress Lane meets this criteria.

Our officers have worked so hard over the last number of years to negotiate the best possible outcome for this development, resulting in setbacks and height restrictions that may not be achieved if the Planning Minister is the decision maker. Currently we have some controls by putting in place restrictions attached to the sale of the land ensuring accommodation for seniors, pensioners and disabled people is included. This opportunity could be lost if we don't pass this motion tonight.

I'm suggesting that we support this sale because it achieves the best possible outcome based on the proposed application and the housing needs of our community. I know many won't see it that way, but I'm not someone who is pro development for the sake of it. We are in a housing crisis. We have an ageing population and we need to be able to accommodate them in the community that many of them have spent much of their lives in.

It is very likely that rejecting this sale will result in a different development which is much less desirable for the community. And yes, the sale of Cypress Lane might allow 20 to 30 units to be built by the developer on that space, as calculated by Councillor Wellington, but without the use of Cypress Lane, it's highly likely that the developer will want to fit them elsewhere on the site, which is possibly going to result in a new plan with those units located on a fourth storey or much closer to the boundaries of the site. Is this a risk that you're willing to take?

I've given great consideration to this issue over the past couple of years and I really do appreciate all the feedback that we've received from residents, but I'm also mindful of the predicament that we find ourselves in. We have a rare opportunity to influence the outcome of what will be a significant development in Torquay. This window is rapidly closing.

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There is, and no doubt will continue to be, some community dissatisfaction if we proceed with the sale. Council has an obligation to consider the needs of its entire community. Supporting adequate housing is in the public interest and is of public benefit and our Age Friendly Strategy requires us to increase options for people to age well in place.

CR PATTISON: Councillor Stapleton, I'll just put forward a bit more extra time for you.

CR STAPLETON: Thank you, Mayor. From the emails I've received, and I know this has been addressed previously in public questions, but there is still some misunderstanding in the community about how this land was obtained. So I would like to reiterate that the correspondence in relation to Cypress Lane does show it was not gifted to Council. Rather, the body corporate requested Council take ownership of the land due to their concerns about public liability issues and the land being accessed by members of the general public and the suggestion that Council is profiting from the sale also ignores the fact that any income earned from the sale would go into the unallocated cash reserve, which means it will ultimately be reinvested to deliver other important services and infrastructure for the community.

We know that access to Deep Creek will be maintained. Council is not selling Deep Creek Reserve. And I've said previously, I didn't come on to Council with a view that we needed more dense development, but here we find ourselves in the middle of a housing crisis with an ageing population and with a lack of diverse accommodation options for people in our community.

As Councillors, we have an obligation to make decisions that are in the best interests of the whole community for the long term and I believe that the sale of Cypress Lane provides the best possible outcome given the specifics of this situation and location. Let's not lose the opportunity to have some influence over how this development unfolds. Thank you.

CR PATTISON: Thank you, Councillor Stapleton. Would any other Councillors wish to speak? Councillor Schonfelder.

CR SCHONFELDER: Mayor, I'd like to take this opportunity to thank the local residents of Torquay for their emails and for their calls and text messages and I hope they're alright in relation to this issue. It's very emotive and we're talking about their own homes and where they live and the amenity of the area of where they live, and when I stood for Council, I campaigned on preserving amenity and with the Surf Coast there was a saying about not killing the goose

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that lays the golden egg. We live in a very unique environment and we don't want to have negative impacts if possible on that.

I won't reiterate what other colleagues have said tonight, but I will say that I do agree largely with what Councillor Hodge has said and I know previously it's been said about whether as a Council we have learnt from the past in relation to the Karaaf and also the fact that the Deep Creek is unique as an environment and it's been mentioned about echidna populations there, and I know that in hindsight in Torquay and Jan Juc there would have been larger nature strips allowed and as far as development along unique assets and natural features such as a creek larger setbacks would have been allowed.

I'm convinced that members of the public here tonight are not opposed to having retirement villages, they're not opposed to having higher density in suitable locations, but this location is inappropriate for the density of this proposed development and I cannot support the sale of this public land and road. I did have an open mind about this issue, but I just feel as though it would be a mistake.

And I don't think we should believe that if another planning application was made that that would necessarily be approved. I believe the State Government and VCAT are mindful of how unique our environment is here in the Surf Coast.

And I will also mention that after the last Council meeting in Lorne last week when I was driving out of Lorne ironically an echidna walked across the road and I stopped and waited for the echidna to cross the road and the habitat of the natural fauna is also very important and it's a balancing act and we've got to get this balancing act right when it comes to development. Thank you, Mayor.

CR PATTISON: Thank you.

(Applause)

CR PATTISON: Councillor Gazzard?

CR GAZZARD: Thank you. This is a really difficult decision. It's complex and it's emotional and in response to Karan's question, I hadn't made a decision. I've had additional briefings, I've read proposals, applications, listened to and read submissions, the petitions and public questions and now my fellow Councillors, so thank you.

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I've thought really long and hard about it and mainly what is my role as a Councillor and I think that includes community representation. It also includes interpreting and implementing planning schemes, policies, considering public amenity, housing and accommodation and environmental impact and also decision making for our community and what is the right decision, what is a good decision, what is research or evidence based, what might be a challenging or unpopular decision. It's really - I can see both sides of the argument and it is really challenging.

It's not about what I think, it's about what is best for the community, and in this instance the community has spoken and I will listen to what the community have said and I will be voting against the proposal of sale of the land.

I do warn the community that we may end up with a worse outcome depending on, you know, the likelihood of the development. It will be developed, it will probably go ahead. The lane will not look the same. The echidnas might not want to live there anymore with a development all around it.

But the - yeah, I acknowledge that the Council officers have done an immense amount of work in this and I believe are really trying to get the best outcome for the community and have the community's best interests at heart. We know we have a housing crisis and many competing priorities to balance, but it's evident that Cypress Lane is an important and precious place to the Torquay residents.

I respect my fellow Councillors who are looking at the large scale and net benefit for our community as a whole who are being pragmatic and practical. This is a difficult decision, particularly when it's an unpopular decision, but it's not about good guys or bad guys, it's about what we think is best for the community.

I will note that whether the land was gifted or not, we could argue that we're all on stolen land. Can you imagine if your whole continent was stolen from you? But we're looking at this through a purely human lens and there is a need to consider the non-human life which we --

CR PATTISON: I grant Councillor Gazzard some extra time.

CR GAZZARD: Thank you. They don't get a voice in this chamber. So thank you to the community who are advocating for the Pardalotes, the black cockatoos, the Gang-gang Cockatoos, the Blue-winged Parrots and the other

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animals that call Cypress Lane their home. In the words of The Lorax, "I speak for the trees, I speak for the trees, as the trees have no tongues." Thank you.

(Applause)

CR PATTISON: Councillor Allen, do you have any closing remarks?

CR ALLEN: Yes, thank you, Mayor. Thanks to technology, Councillor Bodsworth reminded me by SMS to make the point that we should be reminded that this land is private land. It was private land owned privately and vested in the Council and sold on the market and bought on the free market by a developer.

Now, it's never really been about social housing. It's been about increasing the supply of housing that takes the pressure off the Torquay residents, to take pressure off house prices rising. Now, residents complain when their rates go up. Their rates are going up because their house prices are going up. We're trying to attempt to modify that increase in house prices. We're trying to provide opportunities for the broader community to have access to housing.

I'm sympathetic to the animals, but all the people who've bought and currently have properties in that area, that affected the animals, that affected the trees. We seem to forget about that. It seems to be it's alright for me, but bugger you, Jack.

So I believe it's difficult and I can only assume that the developer - this may not be the case, but I assume the developer will be quite happy if this motion is lost. Now, I don't think I'll be around to come back and say, "I told you so", I think I'll probably be dead by the time it's developed, but please think about what you wish for. Think about what you wish for because you may get exactly the opposite. Thank you.

CR PATTISON: Thank you. We'll now put the motion to the vote. All those in favour of the motion. And all those opposed. And the motion is opposed. Councillor Hodge, you've foreshadowed an alternate?

CR HODGE: I have. Can Governance put that up on the board, please, so everyone can read it? The crux of it is point 2, "does not approve the road discontinuance of the 8,800 metres, does not approve the sale of Cypress Lane". That's basically what the two points are saying. Please, it will be up there.

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CR WELLINGTON: Mayor Pattison, can I ask that we have a non-red line version as well or instead of because it's really --

CR PATTISON: Yes, Governance will get on to that now. We'll just pause for a moment while Governance gets the clearer version on the screen for us.

So Councillor Hodge has moved the motion as per what's on the screen. Councillor Wellington, you'd like to second that motion? Councillor Hodge, would you like to speak to the motion?

CR HODGE: Well, I think we could reverse all our decisions and talks that we've just done.

Look, I hope this is accepted now by Councillors. Even the ones that voted for the sale, they can relook at it now to see where the majority is going. I'm really pleased that we haven't set a precedent, especially - I don't want my name in a precedent like that because it's the history of the area that people do remember. We've heard about the submitters, remembering about the Brodie family and the land and all that. But I really do think that it is important, remembering it is an area that under the strategic documents that we had was minimal change and I really do think that this is all part of it.

Again, if it goes to VCAT, if it goes to the Planning Minister, you know, they do listen to the community. They will look at density, they will do things that the community will want, but you will get building on it. But it mightn't be that bad. We're looking at the worst outcomes and I don't think that's right. I think we should be looking at what the community does. We know our community responds and reacts and is very literate when they talk to government officers and I'm sure the Planning Minister will listen to such good submitters that we've heard they will hear as well.

So I'm looking forward to moving on with this, but with this land still in our possession and working with the community and the developer, you know, he can come back. I'm not against development there, but I want not that density and the selling of the land, which I think went against all - went against my morals because I don't want that precedent in my name.

So thank you, Councillors, for voting against this and as I said, what's really good about this Council, there's no malice. We'll move on and work together for the next step of where we're going with you or the State Government or VCAT. So please, Councillors, consider where your name is going with this second chance of not selling the land, listening to the community, and we'll

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work with what we get in the future and help the community along the way. So please, I say pass these recommendations. Thank you.

CR PATTISON: Thank you. Councillor Wellington, would you like to speak?

CR WELLINGTON: Thank you. I do find myself in a very surprising position of agreeing almost completely with what Councillor Hodge has said, actually.

CR HODGE: There's a time for everything.

CR WELLINGTON: There is indeed. Look, I can't really overemphasise the importance I think we should be putting on public open space. It is public open space. We own that and we shouldn't be pushed into selling public open space because somebody wants to develop a very attractive private development, or some may think it's attractive, other's may not. I didn't actually think it was that attractive and I didn't support it.

But regardless of that, you know, the logic of saying we need to sell some land because somebody is going to use it to build housing is just - I can't see that it's defensible at all. I'm really pleased that - I'm very pleased that this has been rejected tonight. I really thank the community. People have put a huge amount of effort. I know the time it takes for people to read and understand all of these - you know, the complex regulatory framework behind these sorts of proposals. It really takes a lot of community effort and people do it because they love their community and their environment and I'm really, really glad we're supporting them in this tonight. Thank you.

CR PATTISON: Thank you. Any other Councillors? Councillor Gazzard?

CR GAZZARD: Thank you. I'll support Councillor Hodge's motion, thank you, and I'd just like to congratulate the community on all the work and mobilising everyone, so well done.

CR PATTISON: Any other Councillors? Councillor Allen?

CR ALLEN: Look, I'll support the motion because it is a motion of Council which I will support. But I just say in doing that have we been listening to what the Government has been saying in the last month about land for housing and development, have we been listening, and what's going to happen in rural townships? Have we been listening? It will go - my understanding is it will go for decision by the State Government and they have an agenda. They've been talking about that agenda for a month. Lovely, we've got the public open space of the road and people can wander past with the echidnas

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on the public open space and look at the four-storey building that they're walking past.

CR PATTISON: Would any other Councillors like to speak?

CR SCHONFELDER: I'd just briefly like to say that the creek is of very high significance and I feel as though that makes a difference in relation to this location. I would reiterate that many if not everyone present tonight would support the need for retirement villages and the possible need for higher density in other areas. Thank you, Mayor.

(Applause)

CR PATTISON: Do you have any closing remarks, Councillor Hodge? Sorry, Councillor Barker?

CR BARKER: Yes, as has been highlighted by a number of Councillors, there's certain segments of the gallery here that are quite happy right now, others maybe not so, but every decision is a tradeoff, short term and long term. So whilst some might be happy short term, others might be disappointed short term. The long-term outcomes might be quite different. And as Councillor Allen has highlighted, in the distant future perceptions on the matter might change, but we'll wait and see what the State Government has to do and say about that.

CR PATTISON: Any closing remarks, Councillor Hodge?

CR HODGE: Yes, look, just very quickly, I'll go back to our Council plan. We had 1,200 people do surveys and speak to us and out of that, I'll say it again, strategy 3 was "to facilitate the provision of social infrastructure, open space and to enable healthy lifestyles". There was never a mention of selling anything anywhere.

So thank you, Councillors, if you do change your mind for this and I really appreciate the debate that we've had tonight. Again, I stress that, you know, I'm glad we're not - we've got to look at the principles in front of us now and the people in front of us now. When it comes at VCAT or when it comes through the Planning Minister, as I said before, then that could be another battlefield, but as I said, you know, bring it on, as Councillor Gazzard said, and we'll do our best that we can. So thank you all the Councillors.

And, look, I know the planners, they have worked very hard on this and our officers do work hard, they've tried to answer all our questions and as I said,





National Disability Award winner  
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it's been really robust, but there's no malice in it. We just want to do our best. We've got differing opinions and that's what democracy is and I hope you've seen it in debate tonight. Thank you.

CR PATTISON: We'll now put the motion to the vote. All those in favour. All those opposed. You're opposing? Okay. And the motion is carried 6-3.

So that brings our meeting to an end as there are no other items of business. Thank you. And the time is 7.50. Thank you.

THE MEETING CONCLUDED AT 7.50PM