

# Minutes

Meeting of Council

Tuesday 3 October 2023

Surf Coast Shire Civic Office

Council Chambers

1 Merrijig Drive, Torquay, Victoria 3228

Commenced at 6:00 pm

**Council:**

Cr Liz Pattison (Mayor)  
Cr Gary Allen  
Cr Paul Barker  
Cr Mike Bodsworth  
Cr Kate Gazzard  
Cr Rose Hodge  
Cr Adrian Schonfelder  
Cr Libby Stapleton  
Cr Heather Wellington

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# 1 Procedural Matters

## 1.1 Present

Cr Liz Pattison (Mayor)  
Cr Gary Allen  
Cr Paul Barker  
Cr Mike Bodsworth  
Cr Kate Gazzard  
Cr Rose Hodge  
Cr Adrian Schonfelder  
Cr Libby Stapleton  
Cr Heather Wellington

Chief Executive Officer - Robyn Seymour  
General Manager Placemaking and Environment - Chris Pike  
General Manager Community Life - Gail Gatt  
Acting General Manager Strategy and Effectiveness - Damian Waight  
Acting Executive Manager - Strategic Projects and Partnerships - Darryn Chiller  
Manager Integrity and Governance - Jake Brown  
Senior Lawyer - Heidi Mellar  
Governance Officer - Stacey Ylstra

## 1.2 Opening

**Cr Pattison opened the meeting.**

The Surf Coast Shire local government area spans the traditional lands of the Wadawurrung People and the Gulidjan and Gadubanud Peoples of the Eastern Maar. The main Council offices in Torquay are on Wadawurrung Country. We wish to acknowledge the Traditional Owners of the lands on which each person is attending or viewing this meeting today, and pay respect to Elders past and present. Council also acknowledges other First Nations People that may be attending the meeting today.

## 1.3 Pledge

**Cr Pattison recited the pledge.**

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.

## 1.4 Apologies

Nil.

## 1.5 Conflicts of Interest

Nil.

**Cr Wellington joined the meeting at 6:08 pm.**

## 1.6 Public Question Time

### Question 1 - Jackie Schulze - Torquay

Why do we need this here?

Deep Creek and the area surrounding and my children and ai (4 and 2 years) call it the 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 in on Briody and Grossman's I feel this will completely wreck this area and its charm.

### Question 2 - Jackie Schulze – Torquay

What is the impact this will this 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 at natural as possible and if housing needs to be there at least make it large open blocks that suit this area!

### Answer provided by CEO

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.

Thanks again for your questions.

### Question 1 - Claire Osborne - Torquay

In the case of Cypress Lane, you have collectively considered the decision to sell land, and some of you, have decided 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 this proposed loss to the community to ensure continued availability of public land is maintained?

**Answer provided by CEO**

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.

**Further to Question 1- Claire Osborne – Torquay**

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.

**Answer provided by CEO**

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.

**Question 2 - Claire Osborne - Torquay**

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 rather is being re-vegetated with indigenous species of plants.

This is an open space which could be used for community recreation ovals and which would interconnect beautifully with the conservations spaces in areas 'A,B and C'.

Having frequented both spaces, I compare a patch of cleared grass and some haphazard trees to the area adjoining the creek in Cypress Lane.

Has a flora & fauna report been commissioned for this space as it has been 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 as public land, an area adjoining a creek bed which has far more nature and wildlife inhabiting it?

**Answer provided by CEO**

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.

**Question 1 - Damian Goss - Torquay**

Is selling PUBLIC land to a developer who will no doubt profit from the development in the best interest of the people of the Surf Coast Shire who own and use this land?

**Answer provided by CEO**

Thank you for your question, Damian.

As I mentioned in earlier responses, in deciding whether to sell the land, Council must consider broad community needs. It is 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 the current planning permit conditions and will be maintained at the landowners' cost.

Thank you again for your interest and question, Damian.

**Question 1 - Lindy Cameron - Torquay**

If sold what suitable land is council providing for replacement public open space as per section 20 (4) of the SD act?

**Question 2 - Lindy Cameron - Torquay**

Why are councillors bending to pressure from developers rather than what their constituents want?

**Answer provided by CEO**

Thank you for your questions, Lindy.

Section 20(4) relates to public open space within the meaning of the Subdivision Act. 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.

**Question 1 - Darcey Kelleher - Bellbrae**

Why was the land to be sold, gifted to the Shire?

**Question 2 - Darcey Kelleher - Bellbrae**

Has an economic cost benefit analysis been undertaken to determine the effects of importing a large ageing population into the Surf Coast?

**Answer provided by CEO**

Thank you for your questions, Darcey.

The report details how the land was vested in Council. 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 common infrastructure and no longer wished to be responsible for 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.

**Question 1 - Vic Rippon - Torquay**

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?

**Answer provided by CEO**

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.

### **Question 1 - Mark Mathews - Torquay**

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."

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?

### **Answer provided by CEO**

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.



**Further to Question 1 – Mark Matthews – Torquay**

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.

**Question 2 - Mark Mathews - Torquay**

In para 25 of Attachment 4, the report states.....

It is recommended that Council require, as part of the sale process, an agreement under section 173 of the *Planning and Environment Act 1987* (Vic) to be registered on the consolidated land to require that:

- a. the land must only be developed in accordance with planning permit 21/0333;
- b. all accommodation units on the land must be used as housing for people 55 years or older or people with a disability; and
- c. 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?

Please provide details on what Council will do if the developer ignores any of these conditions?

What is to stop this developer doing what he did back in 2008 when he was granted a permit for a retirement village on the site behind the Wyndham (formerly Zeally Bay Caravan Park) and then forced council to allow him to sell privately to anyone, declaring "The retirement units were too expensive for retirees, and no one wanted to buy them"?

**Answer provided by CEO**

Thank you. So, there's really three parts to your question.

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.

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

#### **Question 1 - Karan Dawson - Torquay**

My question is for Councillors Bodsworth, Stapleton, Allen, Pattinson 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 recorded 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.

#### **Answer provided by Mayor**

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.

#### **Question 2 - Karan Dawson - Torquay**

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, Pattinson, Stapleton, 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 law suit 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.

**Answer provided by Mayor**

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.

Thank you for your questions, Karan.

**Question 1 - Darren Noyes-Brown - Torquay**

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. How can Council justify statements that this and is not needed and not be able to produce any document to be able to back up such statements?

**Answer provided by CEO**

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.

**Question 2 - Darren Noyes-Brown - Torquay**

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?

**Answer provided by CEO**

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 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 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.

**Further to Question 2 - Darren Noyes-Brown - Torquay**

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?

**Answer provided by CEO**

Well, 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.

**Question 1 - Claudia Edwards - Torquay**

My question pertains to 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?

**Question 2 - Claudia Edwards - Torquay**

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.

**Answer provided by CEO**

Thank you for your questions, 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.

**Further to Question 2 - Claudia Edwards -Torquay**

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.

**Question 1 - Britt Oellering - Torquay**

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 45yo 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 ten years' time. However, as i will have a 17yo and 14yo in my care at that time, this precludes me from this housing at 55.

Yes, our population is aging, 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 35years 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 be accessed and enjoyed by every person in Torquay, for it to be developed into something that can only be accessed by a restricted portion of the community?

**Question 2 - Britt Oellering - Torquay**

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 the history and intention of this land which was originally gifted to council.

Why exactly is it a good idea to sell it to this developer?

**Answer provided by CEO**

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.

**Question 1 - Ron Lowe - Torquay**

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. 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 past in relation to the sale of the land in question.

**Answer provided by CEO**

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.

**Question 1 - Matt Crowe - Torquay**

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?

**Question 2 - Matt Crowe - Torquay**

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?

**Answer provided by CEO**

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.

## 2 Reports

### 2.1 Additional Business to be Transacted - Receipt of Petition

<b>Council Plan</b>	<b>Theme Seven - Accountable and Viable Council</b> Strategy 19 - Improve Council's credibility as a trusted decision maker through meaningful engagement.
<b>Author's Title:</b>	Coordinator Governance
<b>General Manager:</b>	Damian Waight, Acting General Manager Strategy and Effectiveness
<b>Division:</b>	Strategy and Effectiveness
<b>Department:</b>	Integrity and Governance
<b>Attachments:</b>	Nil

#### Purpose

1. The purpose of this report is to facilitate the transaction of business at this meeting which has not been specified on the Council meeting notice.

#### Background

2. This meeting has been called in accordance with Rule 14 of Council's Governance Rules (Council meetings not scheduled by Council resolution). In accordance with Rule 14.6, where a Council meeting is called under this section, only the business specified in the Council meeting notice may be transacted at the meeting, unless all Councillors are present and unanimously agree by resolution to deal with a matter not specified on the Council meeting notice.
3. A petition has been submitted, and is presented at agenda item 2.2. As this petition directly relates to the item on the agenda, officers consider it appropriate for the petition to be tabled at this meeting, however the process described in Rule 14.6, as detailed above, will need to be followed in order for the petition to be considered at this meeting.

#### Recommendation

That Council:

1. Agrees, in accordance with Rule 14.6 of its Governance Rules, to consider item 2.2 on this Council Meeting agenda.
2. Notes that in order for agenda item 2.2 to be considered, all Councillors must be present at this meeting, and this resolution must be carried unanimously.

### **Council Resolution**

#### **Moved Cr Allen, Seconded Cr Wellington**

That Council:

1. Agrees, in accordance with Rule 14.6 of its Governance Rules, to consider item 2.2 on this Council Meeting agenda.
2. Notes that in order for agenda item 2.2 to be considered, all Councillors must be present at this meeting, and this resolution must be carried unanimously.

CARRIED 9|0

<b>For</b>	<b>Against</b>	<b>Abstained</b>
Cr Allen Cr Barker Cr Bodsworth Cr Gazzard Cr Hodge Cr Pattison Cr Schonfelder Cr Stapleton Cr Wellington	Nil	Nil



## 2.2 Receipt of Petition - 'Say No To Sale of Public Land – Cypress Lane, Torquay'

### Council Plan

### Theme Seven - Accountable and Viable Council

Strategy 19 - Improve Council's credibility as a trusted decision maker through meaningful engagement.

### Author's Title:

Coordinator Governance

### General Manager:

Damian Waight, Acting General Manager Strategy and Effectiveness

### Division:

Strategy and Effectiveness

### Department:

Integrity and Governance

### Attachments:

1. 2023-10-03 Petition to Surf Coast Shire Council - Say No To Sale Of Public Land - Cypress Lane, Torq [2.2.1 - 16 pages]

### Purpose

1. The purpose of this report is to receive the petition requesting that Council 'Say No To Sale of Public Land – Cypress Lane, Torquay'. As this petition has been presented to Council in a format which does not conform with Council's Governance Rules, if Council accepts this petition, it will also need to resolve to accept the petition in a non-conforming format.
2. The petition consists of 782 signatures, and a redacted copy is provided with this report (**Attachment 1**). Councillors have also been provided with an unredacted copy of the petition.
3. It is noted that Council's ability to consider this item is subject to the outcome of agenda item 2.1 of this Council meeting agenda.

### Background

4. In accordance with Rule 23.2, petitions which do not meet the definition of a petition under the Governance Rules will only be accepted if Council so resolves. The definition includes a requirement that the petition be '*signed or electronically endorsed by at least 10 people whose names and physical addresses also appear, and on which each page of the petition bears the wording of the whole petition*'. This rule is designed to ensure that petitions are signed by individuals who are fully informed of content of the petition, and to verify that there has been no duplication. The petition as attached to this report (**Attachment 1**) does not comply with the above requirements, however officers have recommended that Council resolves to accept the petition in the interest of facilitating public participation in democratic process. Officers have assessed the petition and consider that it was completed in good faith, and any risks associated with non-conformity are low.
5. As this petition relates to an item of business on this Council meeting agenda, if Council resolves to receive this petition, it must then consider the petition as part of its deliberations on that agenda item (item 2.3). As such, officers do not intend to bring a further report to Council with recommendations relating to this petition.

**Recommendation**

That Council, in accordance with its Governance Rules:

1. Receives the petition requesting that Council ‘Say no to sale of public land – Cypress Lane, Torquay’.
2. Receives the petition in a non-conforming format.
3. Agrees, as required under Rule 23.4, to consider this petition as part of its deliberations on agenda item 2.3 of this Council meeting agenda.
4. Notifies the lead petitioner of this resolution.

**Council Resolution**

**Moved Cr Wellington, Seconded Cr Bodsworth**

That Council, in accordance with its Governance Rules:

1. Receives the petition requesting that Council ‘Say no to sale of public land – Cypress Lane, Torquay’.
2. Receives the petition in a non-conforming format.
3. Agrees, as required under Rule 23.4, to consider this petition as part of its deliberations on agenda item 2.3 of this Council meeting agenda.
4. Notifies the lead petitioner of this resolution.

CARRIED 8|1

<b>For</b>	<b>Against</b>	<b>Abstained</b>
Cr Allen Cr Bodsworth Cr Gazzard Cr Hodge Cr Pattison Cr Schonfelder Cr Stapleton Cr Wellington	Cr Barker	Nil

## Say No To Sale Of Public Land – Cypress Lane, Torquay

The petitioners, whose details appear below, draw to the attention of Surf Coast Shire Council concerns about the potential sale of Public Land (Cypress Lane road reserve and part of Reserve Number 3) associated with the proposed Cypress Lane development.

Surf Coast Shire Council has given notice to grant a permit for a 3 storey, 196 unit development in the Low density Residential Zone of Cypress Lane, Torquay. The proposal is located upon, and is reliant upon, the above mentioned public land that is owned by Council.

Our concerns and objections include,

- The land which was donated by community members to Council should not be sold to developers for commercial gain,
- Does not follow the spirit of why this land was created by the original subdividers, ie semi self-sufficient living on large rural lots and connection to nature along Deep Creek,
- Many people use the public land for recreating, ie dog walking, bike riding, connecting with the green space and environmental values of Deep Creek,
- The community wants more green space, not less, and
- Loss of wildlife corridor and habitat for numerous species.

The sale of the public land will pave the way forward for the development to proceed. The development is problematic for the following reasons;

- Breaches the objectives of the Surf Coast Statement of Planning Policy (SPP). These objectives are binding on Council,
- At odds with the requirements of the Minimal Change area in the SPP, ie the site is to remain low density residential, continue to provide a transition between the urban and rural landscapes and is unsuitable for providing future housing growth,
- Makes a mockery of the Statement of Planning Policy which the Council endorsed in August 2022, sending a message that the Distinctive Area & Landscape process and the outcome of the SPP can be ignored,
- Does not comply with the requirements of the Low Density Residential Zone in the Planning Scheme. This is the wrong location for the proposed density and height,
- Does not fit the context of the character and amenity of the surrounding land, which is predominantly single storey dwellings on one acre lots, and
- Increased stormwater runoff into Deep Creek and associated impacts.

There isn't much time before Councilors vote on this at their next meeting on 3rd October 2023, so please sign this petition to request Surf Coast Shire Council to vote against the public land sale.

Thank you.

Name	City	State	Postal Code	Country	Signed On
			3004	Australia	24/09/2023
			3228	Australia	24/09/2023
			3228	Australia	24/09/2023
			6000	Australia	24/09/2023
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			3228	Australia	24/09/2023
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		3188	Australia	27/09/2023
		3228	Australia	27/09/2023
		2011	Australia	27/09/2023
		3228	Australia	27/09/2023
		3001	Australia	27/09/2023
		3228	Australia	27/09/2023
		3228	Australia	27/09/2023
			Australia	27/09/2023
		4551	Australia	27/09/2023
		3000	Australia	27/09/2023
		6164	Australia	27/09/2023
		3220	Australia	27/09/2023
		3228	Australia	27/09/2023
		3000	Australia	27/09/2023
		3228	Australia	27/09/2023
		3001	Australia	27/09/2023

	3228	Australia	27/09/2023
	3001	Australia	27/09/2023
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	3228	Australia	27/09/2023
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	3001	Australia	27/09/2023
	3228	Australia	27/09/2023
	3001	Australia	27/09/2023
	3228	Australia	27/09/2023
	3004	Australia	27/09/2023
	3450	Australia	27/09/2023
	2299	Australia	27/09/2023
	3001	Australia	27/09/2023
	2221	Australia	27/09/2023
	3001	Australia	27/09/2023
	3228	Australia	27/09/2023
	3004	Australia	27/09/2023
	3053	Australia	27/09/2023
	3218	Australia	27/09/2023
	3000	Australia	27/09/2023
	322	Australia	27/09/2023
	3001	Australia	27/09/2023
	3442	Australia	27/09/2023
	3046	Australia	27/09/2023
	3228	Australia	27/09/2023
	3004	Australia	27/09/2023
	3001	Australia	27/09/2023
	2010	Australia	27/09/2023
	3001	Australia	27/09/2023
	3001	Australia	27/09/2023
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	3001	Australia	27/09/2023
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	3004	Australia	27/09/2023
	3001	Australia	27/09/2023
	3741	Australia	27/09/2023
	4207	Australia	27/09/2023
	2216	Australia	27/09/2023
	3228	Australia	27/09/2023
	2299	Australia	27/09/2023
	3228	Australia	27/09/2023
	2234	Australia	27/09/2023
	3220	Australia	27/09/2023
	3004	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3216	Australia	27/09/2023
	3228	Australia	27/09/2023
	3055	Australia	27/09/2023
	3001	Australia	27/09/2023
	3136	Australia	27/09/2023
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	3001	Australia	27/09/2023
	3001	Australia	27/09/2023
	3228	Australia	27/09/2023
	3219	Australia	27/09/2023

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	3228	Australia	27/09/2023
	3004	Australia	27/09/2023
	3040	Australia	27/09/2023
	3000	Australia	27/09/2023
	810	Australia	27/09/2023
	4207	Australia	27/09/2023
		Australia	27/09/2023
	3001	Australia	27/09/2023
	3228	Australia	27/09/2023
	2121	Australia	27/09/2023
	3004	Australia	27/09/2023
	2539	Australia	27/09/2023
	3228	Australia	27/09/2023
	3001	Australia	27/09/2023
	3053	Australia	27/09/2023
	3001	Australia	27/09/2023
	4000	Australia	27/09/2023
	3228	Australia	27/09/2023
	5000	Australia	27/09/2023
	3000	Australia	27/09/2023
	3220	Australia	27/09/2023
	3001	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	5000	Australia	27/09/2023
		Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3000	Australia	27/09/2023
	3004	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3227	Australia	27/09/2023
	3001	Australia	27/09/2023
	3219	Australia	27/09/2023
	3113	Australia	27/09/2023
	3226	Australia	27/09/2023
	6000	Australia	27/09/2023
	3228	Australia	27/09/2023
	2450	Australia	27/09/2023
	3004	Australia	27/09/2023
	2046	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
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	3228	Australia	27/09/2023
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	3228	Australia	27/09/2023
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	3000	Australia	27/09/2023

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	3228	Australia	27/09/2023
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	3228	Australia	27/09/2023
		Australia	27/09/2023
	3222	Australia	27/09/2023
	3228	Australia	27/09/2023
	3001	Australia	27/09/2023
	5073	Australia	27/09/2023
	3000	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3056	Australia	27/09/2023
	3004	Australia	27/09/2023
	3228	Australia	27/09/2023
	3217	Australia	27/09/2023
	3065	Australia	27/09/2023
	3000	Australia	27/09/2023
	3228	Australia	27/09/2023
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	3000	Australia	27/09/2023
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	4101	Australia	27/09/2023
	6164	Australia	27/09/2023
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	3000	Australia	27/09/2023
	3228	Australia	27/09/2023
	2000	Australia	27/09/2023
	2326	Australia	27/09/2023
		Australia	27/09/2023
	6230	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3004	Australia	27/09/2023
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	3030	Australia	27/09/2023
	3000	Australia	27/09/2023
	3228	Australia	27/09/2023
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	3001	Australia	27/09/2023
	6155	Australia	27/09/2023

	2000	Australia	27/09/2023
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	3001	Australia	27/09/2023
	3008	Australia	27/09/2023
	3004	Australia	27/09/2023
	3001	Australia	27/09/2023
	3217	Australia	27/09/2023
	2000	Australia	27/09/2023
	2194	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	TW2	UK	27/09/2023
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	3000	Australia	27/09/2023
	3000	Australia	27/09/2023
	3030	Australia	27/09/2023
	3228	Australia	27/09/2023
	3001	Australia	27/09/2023
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	3228	Australia	27/09/2023
	3001	Australia	27/09/2023
	3214	Australia	27/09/2023
	3228	Australia	27/09/2023
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	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
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	3241	Australia	27/09/2023
	4000	Australia	27/09/2023
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	3228	Australia	27/09/2023
	2000	Australia	27/09/2023
	3000	Australia	27/09/2023
	3001	Australia	27/09/2023
	3001	Australia	27/09/2023
	2196	Australia	27/09/2023
	3216	Australia	27/09/2023
	3228	Australia	27/09/2023
	3228	Australia	27/09/2023
	5000	Australia	27/09/2023
	3004	Australia	27/09/2023
	4109	Australia	27/09/2023
	2000	Australia	27/09/2023
	5000	Australia	27/09/2023
	6239	Australia	27/09/2023
	3001	Australia	27/09/2023
	3070	Australia	27/09/2023
		Austria	27/09/2023
		Jersey	27/09/2023
	3228	Australia	27/09/2023
	3238	Australia	27/09/2023
	3001	Australia	27/09/2023



Name	City	State	Postal Code	Country	Date	Comment
			3228	Australia	24/09/2023	"This land was gifted to the community. Not to be sold by our council to a greedy developer. Keep this green corridor as an open public space. Protect our wildlife and waterways."
			3135	Australia	24/09/2023	"This represent a complete disregard for our living environment and sets a bad precedent for continued degradation. There are other places this facility could be built, and I am not convinced it would finish up as a retirement village."
			3228	Australia	24/09/2023	"This is gifted crown land. It belongs to the community not greedy developers."
			3228	Australia	24/09/2023	"The council shouldn't just go ahead and sell off public land without consulting the community."
			3001	Australia	24/09/2023	"Surfcoast councillors need to represent their electorate. The decision 4-4 (5-4 due to mayor's second vote) was not unanimous and clearly not what the surf coast shire want in regard to approve this development. A 'NO' vote for the sale of land is imperative to acknowledge the communities concern over the negative impact on the cypress lane (and adjoining area) environment"
			2021	Australia	24/09/2023	"This green corridor connects the surfcoast interior to the ocean, a providing a home and safe passage for countless wildlife. And the fact the land was a gift and now is to be sold for profit with no regard for the environment is stunning."
			2140	Australia	24/09/2023	"Public land is for the people!"
			3228	Australia	24/09/2023	"It's very important to protect this vital corridor for the future"
			3221	Australia	24/09/2023	"Council need to put people and environment before profits!"
			3216	Australia	24/09/2023	"It's wrong to sell land that people gave to the community!! Council can't profit from land given to them by the public."
			3226	Australia	24/09/2023	"Torquay is loosing its vibe, thanks to greedy developers. Surf coast council needs to listen to it's ratepayers instead of overdeveloping Torquay."
			3228	Australia	24/09/2023	"I don't want it opened for sale"
			3228	Australia	24/09/2023	"My family and friends use that land every other day. It belongs to the community"
			3129	Australia	24/09/2023	"The land was donated to Council for all the people to enjoy. Not for Surfcoast Council to sell off to one greedy developer to build multi storey complex on destroying animal habitat and the harmony of the area."
			RH4 2JF	UK	24/09/2023	"This land was given so it could be protected, not sold to line the pockets of developers."
			3351	Australia	24/09/2023	"Land gifted for public use Must remain available to all. Don't sell a gift to the community."
				Australia	24/09/2023	"It's a bad precedent, there is lack of community consultation, I am not convinced it will actually stay "retirement living" It would be better suited to a location"
			3231	Australia	24/09/2023	"Keep the land as intended"
			3228	Australia	24/09/2023	"Blatant disregard by the Council to honour the wishes of the community when the land was gifted to them."
			5033	Australia	24/09/2023	"It's a breach of trust."
			3004	Australia	24/09/2023	"Local wildlife has suffered enormously with development. We have to value habitat."
				Maldives	24/09/2023	"We say no to public space being used to build on."
			3228	Australia	24/09/2023	"A firm no to the development of Cypress Lane. Our local wildlife need a safe haven."
			3217	Australia	24/09/2023	"This development by _____ is not suited to this site. The Council should not be selling public land to a developer! Leave Cypress Lane alone!"
			3630	Australia	24/09/2023	"The land was donated by Community people, keep it open for families to enjoy the wildlife & surrounds."
			5001	Australia	24/09/2023	"It's important habitat for non humans."
			3228	Australia	24/09/2023	"An otherwise noisy strip of Torquay is protected by natural bush and trees creating a pleasant walkway for the public through to the creek linear park. Proposed use for multiple residents is irresponsible. They'd be driven mad by the traffic noise and fumes. It would destroy a unique part of rural Torquay."
			3214	Australia	24/09/2023	"This land was gifted in trust and from someone who believed the Surfcoast Shire would honour his legacy, not cash it in and make money on what is priceless."
	Victoria		3228	Australia	25/09/2023	"This land was gifted to the shire for everyone"
			3228	Australia	25/09/2023	"This land is important for our wildlife. So much has been lost with development. We do not need any more Overdevelopment in Torquay"
			3228	Australia	25/09/2023	"We don't need this type of development thrust upon the Council, too large, too high and asking for land that was donated to Council for public use!"
			2382	Australia	25/09/2023	"We need these natural corridors for the future. Find another spot for so many units. Find another solution."
			3342	Australia	25/09/2023	"The crucial effect such open spaces affect to all living animals, including humans. They are the lungs, and the mental health of everything that needs space and air. To sell for commercial gain is immoral and devastating to the well being of all in the future"
			3355	Australia	25/09/2023	"We only have one chance to stand up. Please stand up."
			3000	Australia	25/09/2023	"This proposal goes against Council's own protective regulations; protecting the Torquay township and protecting the environment."
			4556	Australia	25/09/2023	"This persistent betrayal of the public by Councils needs to be stopped! Councils are voted in to look after the public's interests not for the benefit of developers profits!!!"
			3717	Australia	26/09/2023	"Unnecessary use of land in such an area."
			3228	Australia	26/09/2023	"The council can't sell what's not theirs!"
			3228	Australia	26/09/2023	"In agreement with all concerns and objections expressed."
			3066	Australia	26/09/2023	"This is wrong"

	3977	Australia	26/09/2023	"I believe the surf coast council has no right to sell public land (cypress lane) that has been kindly donated by community members. Council should not sell the land to property developers and profit on this beautiful area that should stay as is, maintaining the wildlife and bird life that live in that area. Keep it as a green space and for people to enjoy."
	3228	Australia	26/09/2023	"LET IT BE YA DOGS"
	3228	Australia	27/09/2023	"The sale of public land is unacceptable. The community members who gifted this land to council did so in good faith. It's unfathomable that it would then be on sold to a developer for financial gain. The council preaches the safety of our local wildlife (imposing the 24 cat curfew under the guise of wildlife protection, for example) then proceeds to consider selling this green corridor that WILL impact the environment and those that live in it. All for greed!!!! This is why we can't have nice things!!!!"
	3053	Australia	27/09/2023	"I love hating the Shire."
	3741	Australia	27/09/2023	"Of the impact to habitat and stone water impact"
	3053	Australia	27/09/2023	"Public land is for public use!!"
	3228	Australia	27/09/2023	"We need to keep this land vacant"
	3220	Australia	27/09/2023	"Development is out of control in this region and our wildlife is paying the price. It's a big NO from me."
	3000	Australia	27/09/2023	"I think this is important"
	3227	Australia	27/09/2023	"This is public land that isn't for sale, we shouldn't be getting rid of green corridors, but rather protecting them."
	2450	Australia	27/09/2023	"It is about time Councils looked at the long term picture of what they are doing or allowing. Developers are not for us but only for themselves and their pockets. Once these areas go there is no replacing them - no trees no fresh air no water in the ground and no place for our native animals."
	3056	Australia	27/09/2023	"I agree with the serious concerns and objections raised. This land should remain natural. Don't sell it to developers! Conserve the environment."
	3228	UK	27/09/2023	"We should be respectful of this natural habitat and be saying no to any development. It is really sad that our councillors have elected to pass this. Especially our Mayor. I am shattered to think this could happen"
	3228	Australia	27/09/2023	"This is in blatant disregard to the original owners wishes and also in breach of a number of policies."
	3214	Australia	27/09/2023	"We are killing our unique wildlife through human development. It has to stop before there is nonwildlife left."
		Ireland	27/09/2023	"The development is unsuited to the area, will impact adversely on the native wildlife and will remove yet another green space used by the community to benefit developers."
	2000	Australia	27/09/2023	"Torquay has become a busy suburb- no longer Connected to Nature as it is! Selling donated public land for development of high density housing is crazy- Torquay is big enough- go ahead if you wish to destroy the reason people chose to move there."
		Jersey	27/09/2023	"I agree with all the objections that have been put forward."

## 2.3 Proposed sale of land and discontinuance of road: Cypress Lane and portion of reserve No. 3, Torquay

### Council Plan

### Theme Seven - Accountable and Viable Council

Strategy 19 - Improve Council's credibility as a trusted decision maker through meaningful engagement.

### Author's Title:

Senior Lawyer

### General Manager:

Damian Waight, Acting General Manager Strategy and Effectiveness

### Division:

Strategy and Effectiveness

### Department:

Integrity and Governance

### Attachments:

1. Attachment 1 - Certificate of valuation - Cypress Lane and Portion of Reserve No 3 [2.3.1 - 5 pages]
2. Attachment 2 Cypress Lane Torquay and portion reserve no 3 Site Photos [2.3.2 - 1 page]
3. Attachment 3 Location Map Cypress Lane and portion of Reserve No 3 Torquay [2.3.3 - 1 page]
4. Community Submissions responses [2.3.4 - 10 pages]

### Purpose

1. 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 road and the property sales as set out in the recommendation of this report.

### Recommendation

That Council:

1. Notes the outcome of the community engagement process undertaken in accordance with sections 207A and 223 of the *Local Government Act 1989* (Vic), section 114 of the *Local Government Act 2020* (Vic) and Council's Community Engagement Policy.
2. Approves the road discontinuance of 8,849m<sup>2</sup> of land shown as Cypress Lane on plan of subdivision 305011W ('Cypress Lane') (**Attachment 3**);
3. Authorises the Chief Executive Officer to publish a notice in the Victoria Government Gazette detailing the road discontinuance of Cypress Lane;
4. Approves the sale of:
  - 4.1 Cypress Lane to the permit holder of Permit 21/0333 for market value; and
  - 4.2 1,790m<sup>2</sup> of land shown as a portion of Reserve No. 3 on plan of subdivision 305011W being part of the land contained in certificate of title volume 11601 folio 161 ('Reserve Portion') (**Attachment 3**) to the permit holder of Permit 21/0333 for market value,

subject to the following conditions being included in the contracts of sale:

- 4.3 that the contract of sale may be ended by Council where the permit holder causes planning permit 21/0333 to be amended due to the permit holder's application or submission to the Victorian Civil and Administrative Tribunal;
- 4.4 that the permit holder must consolidate Cypress Lane and the Reserve Portion with the land the subject of planning permit 21/0333; and
- 4.5 that the permit holder must enter into an agreement in accordance with section 173 of the *Planning and Environment Act 1987* (Vic) to be registered on the consolidated land requiring that:

- 4.5.1 the land must only be developed in accordance with planning permit 21/0333;
  - 4.5.2 all accommodation units on the land must be used as housing for people 55 years or older or people with a disability; and
  - 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.
5. Authorises the Chief Executive Officer or delegate to negotiate the terms of the contract(s) of sale, take all necessary actions and execute all necessary documents to implement and finalise the sales.
  6. Directs the Chief Executive Officer to apply the net sale proceeds of Cypress Lane to the Accumulated Unallocated Cash Reserve in accordance with the Sale of Council Land Policy.
  7. Directs the Chief Executive Officer to apply the net sale proceeds of the Reserve Portion to Public Open Space Reserve in accordance with the Sale of Council Land Policy.
  8. Communicates this resolution to submitters and the broader community.

## **Motion**

### **Moved Cr Allen, Seconded Cr Bodsworth**

That Council:

1. Notes the outcome of the community engagement process undertaken in accordance with sections 207A and 223 of the *Local Government Act 1989* (Vic), section 114 of the *Local Government Act 2020* (Vic) and Council's Community Engagement Policy.
2. Approves the road discontinuance of 8,849m<sup>2</sup> of land shown as Cypress Lane on plan of subdivision 305011W ('Cypress Lane') (**Attachment 3**);
3. Authorises the Chief Executive Officer to publish a notice in the Victoria Government Gazette detailing the road discontinuance of Cypress Lane;
4. Approves the sale of:
  - 4.1. Cypress Lane to the permit holder of Permit 21/0333 for market value; and
  - 4.2. 1,790m<sup>2</sup> of land shown as a portion of Reserve No. 3 on plan of subdivision 305011W being part of the land contained in certificate of title volume 11601 folio 161 ('Reserve Portion') (**Attachment 3**) to the permit holder of Permit 21/0333 for market value,

subject to the following conditions being included in the contracts of sale:

- 4.3. that the contract of sale may be ended by Council where the permit holder causes planning permit 21/0333 to be amended due to the permit holder's application or submission to the Victorian Civil and Administrative Tribunal;
- 4.4. that the permit holder must consolidate Cypress Lane and the Reserve Portion with the land the subject of planning permit 21/0333; and
- 4.5. that the permit holder must enter into an agreement in accordance with section 173 of the *Planning and Environment Act 1987* (Vic) to be registered on the consolidated land requiring that:
  - 4.5.1. the land must only be developed in accordance with planning permit 21/0333;
  - 4.5.2. all accommodation units on the land must be used as housing for people 55 years or older or people with a disability; and

- 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.
5. Authorises the Chief Executive Officer or delegate to negotiate the terms of the contract(s) of sale, take all necessary actions and execute all necessary documents to implement and finalise the sales.
6. Directs the Chief Executive Officer to apply the net sale proceeds of Cypress Lane to the Accumulated Unallocated Cash Reserve in accordance with the Sale of Council Land Policy.
7. Directs the Chief Executive Officer to apply the net sale proceeds of the Reserve Portion to Public Open Space Reserve in accordance with the Sale of Council Land Policy.
8. Communicates this resolution to submitters and the broader community.

## Amendment

### Moved Cr Wellington, Seconded Cr Barker

That Council:

1. Notes the outcome of the community engagement process undertaken in accordance with sections 207A and 223 of the *Local Government Act 1989* (Vic), section 114 of the *Local Government Act 2020* (Vic) and Council's Community Engagement Policy.
2. Approves the road discontinuance of 8,849m<sup>2</sup> of land shown as Cypress Lane on plan of subdivision 305011W ('Cypress Lane') (**Attachment 3**);
3. Authorises the Chief Executive Officer to publish a notice in the Victoria Government Gazette detailing the road discontinuance of Cypress Lane;
4. Approves the sale of:
  - 4.1. Cypress Lane to the permit holder of Permit 21/0333 for market value; and
  - 4.2. 1,790m<sup>2</sup> of land shown as a portion of Reserve No. 3 on plan of subdivision 305011W being part of the land contained in certificate of title volume 11601 folio 161 ('Reserve Portion') (**Attachment 3**) to the permit holder of Permit 21/0333 for market value,

subject to the following conditions being included in the contracts of sale:

- 4.3. that the contract of sale may be ended by Council where the permit holder causes planning permit 21/0333 to be amended due to the permit holder's application or submission to the Victorian Civil and Administrative Tribunal;
- 4.4. that the permit holder must consolidate Cypress Lane and the Reserve Portion with the land the subject of planning permit 21/0333; and
- 4.5. that the permit holder must enter into an agreement in accordance with section 173 of the *Planning and Environment Act 1987* (Vic) to be registered on the consolidated land requiring that:
  - 4.5.1. the land must only be developed in accordance with planning permit 21/0333;
  - 4.5.2. all accommodation units on the land must be used as housing for people 55 years or older or people with a disability; and
  - 4.5.3. for the duration of the use of the land as a retirement village, one in every ten of the accommodation units must be occupied by at least one resident eligible for a Commonwealth pensioner concession card.

5. Authorises the Chief Executive Officer or delegate to negotiate the terms of the contract(s) of sale, take all necessary actions and execute all necessary documents to implement and finalise the sales.
6. Directs the Chief Executive Officer to apply the net sale proceeds of Cypress Lane to the Accumulated Unallocated Cash Reserve in accordance with the Sale of Council Land Policy.
7. Directs the Chief Executive Officer to apply the net sale proceeds of the Reserve Portion to Public Open Space Reserve in accordance with the Sale of Council Land Policy.
8. Communicates this resolution to submitters and the broader community.

CARRIED 910

For	Against	Abstained
Cr Allen Cr Barker Cr Bodsworth Cr Gazzard Cr Hodge Cr Pattison Cr Schonfelder Cr Stapleton Cr Wellington	Nil	Nil

### Amended Motion

#### **Moved Cr Allen, Seconded Cr Bodsworth**

That Council:

1. Notes the outcome of the community engagement process undertaken in accordance with sections 207A and 223 of the *Local Government Act 1989* (Vic), section 114 of the *Local Government Act 2020* (Vic) and Council's Community Engagement Policy.
2. Approves the road discontinuance of 8,849m<sup>2</sup> of land shown as Cypress Lane on plan of subdivision 305011W ('Cypress Lane') (**Attachment 3**);
3. Authorises the Chief Executive Officer to publish a notice in the Victoria Government Gazette detailing the road discontinuance of Cypress Lane;
4. Approves the sale of:
  - 4.1. Cypress Lane to the permit holder of Permit 21/0333 for market value; and
  - 4.2. 1,790m<sup>2</sup> of land shown as a portion of Reserve No. 3 on plan of subdivision 305011W being part of the land contained in certificate of title volume 11601 folio 161 ('Reserve Portion') (**Attachment 3**) to the permit holder of Permit 21/0333 for market value,

subject to the following conditions being included in the contracts of sale:

- 4.3. that the contract of sale may be ended by Council where the permit holder causes planning permit 21/0333 to be amended due to the permit holder's application or submission to the Victorian Civil and Administrative Tribunal;
- 4.4. that the permit holder must consolidate Cypress Lane and the Reserve Portion with the land the subject of planning permit 21/0333; and

<p>4.5. that the permit holder must enter into an agreement in accordance with section 173 of the <i>Planning and Environment Act 1987</i> (Vic) to be registered on the consolidated land requiring that:</p> <p>4.5.1. the land must only be developed in accordance with planning permit 21/0333;</p> <p>4.5.2. all accommodation units on the land must be used as housing for people 55 years or older or people with a disability; and</p> <p>4.5.3. for the duration of the use of the land as a retirement village, one in every ten of the accommodation units must be occupied by at least one resident eligible for a Commonwealth pensioner concession card.</p> <p>5. Authorises the Chief Executive Officer or delegate to negotiate the terms of the contract(s) of sale, take all necessary actions and execute all necessary documents to implement and finalise the sales.</p> <p>6. Directs the Chief Executive Officer to apply the net sale proceeds of Cypress Lane to the Accumulated Unallocated Cash Reserve in accordance with the Sale of Council Land Policy.</p> <p>7. Directs the Chief Executive Officer to apply the net sale proceeds of the Reserve Portion to Public Open Space Reserve in accordance with the Sale of Council Land Policy.</p> <p>8. Communicates this resolution to submitters and the broader community.</p>	<p>LOST 415</p>
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For	Against	Abstained
Cr Allen Cr Bodsworth Cr Pattison Cr Stapleton	Cr Barker Cr Gazzard Cr Hodge Cr Schonfelder Cr Wellington	Nil

### Council Resolution

#### **Moved Cr Hodge, Seconded Cr Wellington**

That Council:

1. Notes the outcome of the community engagement process undertaken in accordance with sections 207A and 223 of the *Local Government Act 1989* (Vic), section 114 of the *Local Government Act 2020* (Vic) and Council's Community Engagement Policy.
2. Does not approve the road discontinuance of 8,849m<sup>2</sup> of land shown as Cypress Lane on plan of subdivision 305011W ('Cypress Lane') (**Attachment 3**)
3. Does not approve the sale of:
  - 3.1. Cypress Lane to the permit holder of Permit 21/0333 for market value; and
  - 3.2. 1,790m<sup>2</sup> of land shown as a portion of Reserve No. 3 on plan of subdivision 305011W being part of the land contained in certificate of title volume 11601 folio 161 ('Reserve Portion') (Attachment 3) to the permit holder of Permit 21/0333 for market value.
4. Communicates this resolution to submitters and the broader community.

CARRIED 613

<b>For</b>	<b>Against</b>	<b>Abstained</b>
Cr Allen Cr Bodsworth Cr Gazzard Cr Hodge Cr Schonfelder Cr Wellington	Cr Barker Cr Pattison Cr Stapleton	Nil

### **Outcome**

2. If Council accepts this recommendation:
  - 2.1. Cypress Lane will be discontinued as a road;
  - 2.2. Cypress Lane will be sold to the abutting landowner, being the permit holder of planning permit 21/0333; and
  - 2.3. The Reserve Portion will be sold to the abutting landowner, being the permit holder of planning permit 21/0333.

### **Key Considerations**

3. Council resolved to commence the statutory community engagement process at its 28 February 2023 meeting for the discontinuance of road and sale of Cypress Lane and the Reserve Portion (**Attachment 3**).
4. Community engagement on the proposed road discontinuance and sale of land was undertaken and the submissions are summarised in **Attachment 4**.
5. Permit 21/0333 has been granted to use the land referenced in this report, and the abutting privately owned land for a retirement village under Clause 32.03-1 and Clause 32.03-4 of the Low Density Residential Zone (**Permit 21/0333**). The permit requires lots 36A, 36B, 37A, 38A, 39, 40A, 40B, 41A and 41B on plan of subdivision 305011W (**abutting land**), Cypress Lane and the Reserve Portion be consolidated under the *Subdivisions Act 1988* (Vic) into a single lot.
6. Conditions on the use and development of the consolidated land are to be incorporated into the contract of sale, which would be in addition to the conditions contained in Permit 21/0333.
7. The sale of the land would result in a financial benefit of the market value of the land as at 31 August 2023, being \$1,550,000.00 (from Cypress Lane) and \$475,000.00 (from the Reserve Portion) to Council and would decrease ongoing maintenance and renewal obligations on the land.
8. All 196 independent living units may only be occupied by residents 55 years or older, or people with a disability, with 1 in every 10 of the units occupied by those eligible for a Commonwealth pensioner card.
9. The sale will facilitate provision of 196 independent living units within Torquay where future market demand predicts that 340 dwellings would be required by 2036 to accommodate seniors, as referenced in **Attachment 4**.



### **Background**

10. Council has been approached by the abutting landowner of Cypress lane for the opportunity to purchase Cypress Lane and the Reserve Portion to support the development the subject of Permit 21/0333.
11. In February 2022 Council provided in-principle support for the sale of Cypress Lane and Reserve no. 3 subject to:
  - 11.1. the sale of land contract including the condition that the land will be used for the purpose of providing housing for seniors or people with a disability.
  - 11.2. the sale of Council land only proceeding if a planning permit is approved by Surf Coast Shire Council and is not subject to a VCAT appeal.
  - 11.3. Council completing all statutory requirements set out in section 114 of the *Local Government Act 2020* and Councils policies for the sale of Council land. These requirements include:
    - 11.4. Obtaining a valuation of the land within six months before the sale.
    - 11.5. Ensuring that Council publishes a notice of intention to sell the land at least four weeks prior to the sale.
    - 11.6. Ensuring Council undertakes a community engagement process in accordance with Council's Community Engagement Policy and
    - 11.7. Complies with Council's Sale or Exchange of Council Land Policy.
12. In February 2023, Council amended resolution 2 of the 22 February 2022 Council meeting from: 'That the sale of Council land can only proceed if a planning permit is approved by Surf Coast Shire Council and is not subject to a VCAT appeal' to; 'That the sale of Council land known as Cypress Lane and part of reserve number 3 identified in **Attachment 1**, can only proceed if a planning permit is approved by the Surf Coast Shire Council and is not subject to a VCAT appeal by the applicant of the planning permit.'
13. A notice of Decision to Grant Permit 21/0333 was determined on 29 August 2023 permitting the use of the abutting land, Cypress Lane and Reserve Portion for a retirement village, construction of associated buildings and works, removal of a reservation from land under section 24A of the *Subdivision Act 1988 (Vic)* and the removal, destruction or lopping of native vegetation.
14. In reaching its recommendation to grant Permit 21/0333, the application for use and development of the land was considered against the relevant provisions of the Surf Coast Shire Planning Scheme and the submissions received in accordance with the *Planning and Environment Act 1987 (Vic)*. Council concluded that the proposal contained in Permit 21/0333 satisfied all relevant requirements and objectives.
15. Council must now consider whether to approve the sale of Cypress Lane and the Reserve Portion to the abutting landowner.
16. If Council does not approve the sale, the abutting landowner may seek to amend Permit 21/0333 externally through the Victorian Civil and Administrative Tribunal or make an alternate permit application.

### **Options**

17. **Alternative Option 1** – That Council does not support the road discontinuance and sale of Cypress Lane and the Reserve Portion.

This option is not recommended for the following reasons:

- 17.1. Cypress Lane is no longer practically required to be used by the public as the applicant owns all abutting land;
- 17.2. Council incurs expense and liability for the ongoing maintenance and renewal of Cypress Lane and the Reserve Portion;
- 17.3. Conditions additional to those conditions contained in Permit 21/0333 on the use and development of the land would no longer be available; and
- 17.4. If the land does not form part of the development, the permit holder may make an alternate permit application which may result in less favourable amenity outcomes for the community.

### **Council Plan (including Health and Wellbeing Plan) Statement**

#### **Theme Seven - Accountable and Viable Council**

Strategy 19 - Improve Council's credibility as a trusted decision maker through meaningful engagement.

### **Financial Considerations**

18. A valuation dated 31 August 2023 has been obtained. A copy of the certificate of valuation is contained in **Attachment 1** and provides that –
- 18.1. the market value of Cypress Lane is \$1,550,000.00; and
  - 18.2. the market value of the Reserve Portion is \$475,000.00.
19. The market value of the lands was assessed by reference to the value of the land as if amalgamated with the surrounding properties. The valuation notes that Cypress Lane has no value to the greater market, other than to one party, namely the sole proprietor of the surrounding allotments. A sale to the permit holder will result in the greatest financial benefit being realised.
20. In accordance with the Sale, Exchange or Transfer of Council Land Policy:
- 20.1. the net proceeds of the Reserve Portion must be allocated to the Public Open Space Reserve; and
  - 20.2. the net proceeds of Cypress Lane must be allocated to the Accumulated Unallocated Cash reserve.
21. The sale of land will also reduce Council's maintenance and renewal costs. Permit 21/0333 establishes a private road as well as pedestrian access from Coombes Road to Deep Creek with all associated maintenance and renewal costs to be the responsibility of the landowner.

### **Community Engagement**

22. In accordance with the requirements of sections 207A and 223 of the *Local Government Act 1989* (Vic), section 114 of the *Local Government Act 2020* (Vic), Council's Community Engagement Policy and Council's Sale, Exchange or Transfer of Council

2.3 Proposed sale of land and discontinuance of road: Cypress Lane and portion of reserve No. 3, Torquay

Land Policy, community engagement for the discontinuance of Cypress Lane as a road reserve and potential sale of Cypress Lane and the Reserve Portion was conducted via the following methods –

22.1. Public advertisements in the –

- 22.1.1. Surf Coast Times;
- 22.1.2. The Age; and
- 22.1.3. On Council’s website;

22.2. Postal notifications to –

- 22.2.1. Previous submitters of the previous application for planning permit; and
- 22.2.2. Adjacent properties,

inviting public submissions in accordance with section 207A of the 1989 Act for a 28 day consultation period. The submission period closed on 7 April 2023.

23. At the Hearing of Submissions held on 16 May 2023, submitters were given the opportunity to present their submission to Councillors. At this meeting 9 submitters presented their submissions and Councillors were given the opportunity to discuss and raise questions directly with submitters.
24. A total of 76 objections and 4 letters of support have been lodged with or heard by Council. Planning themes have been considered as part of the granting of Permit 21/0333 and the scope of this report is to further consider themes pertaining to the discontinuance of road and sale of land. The objections are summarised below and are addressed in detail in **Attachment 4**.
25. Submissions and responses are detailed in **Attachment 4**. Community concerns have been balanced with the relevant considerations such as Council’s strategic goals and realisation of the best outcomes for the broader community, and control mechanisms have been recommended to address concerns raised.
26. Submissions included, in part or in full, planning themes considered by Council on 22 August 2023 as part of their consideration of Permit 21/0333 for the ‘use and development of a retirement village, removal of native vegetation and removing a reservation from land under section 24A of the Subdivision Act’. This report considers the key themes raised by submissions by reference to the *Local Government Act 2020* (Vic), *Local Government Act 1989* (Vic) and Council’s Sale, Exchange or Transfer of Council Land Policy.

Theme	Concerns raised	Response summary
Manner in which Council obtained the land	<ul style="list-style-type: none"> <li>• Cypress Lane and the Reserve Portion were gifted to Council for a specific purpose</li> <li>• Council does not have the authority to sell gifted land</li> </ul>	<ul style="list-style-type: none"> <li>• The land was vested in Council under section 32 of the <i>Subdivision Act 1988</i> (Vic). The vesting occurred at the Body Corporate’s request due to the owner’s concerns over maintenance and public liability.</li> <li>• Council is legislatively authorised to sell the land.</li> </ul>

Capacity of a retirement village to provide public benefit	<ul style="list-style-type: none"> <li>• There is no public need for a retirement village in that area</li> <li>• A retirement village will not accommodate existing public needs such as social housing and housing for people with a disability or aged care</li> </ul>	<ul style="list-style-type: none"> <li>• 2021 Census data identifies that Torquay's population will grow to 8,827 by 2041 requiring capacity for 818 non-private dwellings (which includes retirement village living).</li> </ul>
Preservation of access to Deep Creek	<ul style="list-style-type: none"> <li>• The public will lose a picturesque walkway along Cypress Lane</li> <li>• The Reserve Portion provides essential access to Deep Creek</li> </ul>	<ul style="list-style-type: none"> <li>• There are a number of alternate and safer options for public access to Deep Creek. Additionally, Permit 21/0333 requires 24 hour public access between Coombes Road and Deep Creek and the community will not lose access.</li> </ul>
Pre-determination of sale	<ul style="list-style-type: none"> <li>• Council's resolution to provide in principal support for the sale of land signifies Council have determined to sell the land prior to public consultation and that Councillors who gave in principal support for the sale did so by reference to the proposed use of the land, creating a conflict of interest</li> </ul>	<ul style="list-style-type: none"> <li>• The prior resolutions were subject to community consultation and are not, nor were they intended to be, a resolution to sell the land. Council policy requires Council to consider whether the sale would achieve the best outcomes for the community. It is reasonable for the future use of the site to be considered when determining what the best outcomes for the community are.</li> </ul>
Valuation methodology	<ul style="list-style-type: none"> <li>• Does not reflect market value and is far too low</li> <li>• Has used an incorrect methodology</li> <li>• Is out of date</li> </ul>	<ul style="list-style-type: none"> <li>• A licenced valuer has completed a valuation by reference to the land's highest value as if amalgamated into surrounding allotments and is dated 31 August 2023.</li> </ul>

### **Statutory / Legal / Policy Considerations**

27. Council is empowered to discontinue and sell a public road pursuant to section 206 and schedule 10 clause 3 of the *Local Government Act 1989* (Vic) and to sell public land pursuant to section 114 of the *Local Government Act 2020* (Vic).

28. Community engagement, notice publication and submissions have been completed in accordance with Council's statutory obligations under sections 207A and 223 of the 1989 Act, section 114 of the 2020 Act and Council's Community Engagement Policy.

29. A valuation dated 31 August 2023 has been obtained.

30. In accordance with the Sale, Exchange or Transfer of Council Land Policy, land sales must be considered in the strategic context of Council's economic, social and environmental objectives and undertaken with the intention of securing the best balance of financial and/or other outcomes for the community which are discussed in more detail in **Attachment 4**. The discontinuance of road and sale of land, on the balance of considerations, provides the best economic and social outcomes and secures the best balance of financial and housing outcomes for the community.
31. The proposal aligns with Council's Age Friendly Strategy 2020-24 in that it will facilitate the use of land to house seniors in support of Goal 2 of the strategy: 'Housing related issues are identified and solutions developed which increase options for people to age well in place'.

### **Risk Assessment**

32. Internal consultation with key stakeholders including Infrastructure and Economic Development has been undertaken as part of the risk assessment process and feedback supports the proposed road discontinuance and sale subject to the conditions contained in the permit.
33. External authorities such as Barwon Water, Powercor and the Country Fire Authority have been consulted as part of the risk assessment process. No conditions were required by external authorities, should the discontinuance and sale proceed.
34. While this proposal holds risk of some community dissatisfaction, it is considered that this risk is balanced by the fact that the proposal will facilitate the use of land for elderly housing, which aligns with Council's Age Friendly Strategy 2020-24.

### **Sustainability Considerations**

35. The sale of the land would decrease ongoing maintenance and renewal obligations in the future.
36. By incorporating conditions in the contract of sale, Council is able to facilitate and ensure the use of the consolidated land as housing to accommodate seniors, pensioners and people with a disability.
37. The proposed development is centred on sustainable practices, including utilising recycled water, not using gas, incorporating Water Sensitive Urban Design principles, solar panels systems for each Independent Living Unit and proposing a star rating of 7 stars for each independent living unit and 7.2 for apartment buildings.
38. Permit 21/033 incorporates control mechanisms to manage environmental matters of concern including landscaping, stormwater, drainage, construction, native vegetation and ongoing monitoring and protection of Deep Creek with respect to the stormwater outlet.

### **Conflict of Interest**

39. No officer declared a conflict of interest under the *Local Government Act 2020* in the preparation of this report.

**Confidentiality**

40. This report and attachments contain no confidential information under section 66(2) of the *Local Government Act 2020*.

**Transparency**

**Audit and Risk Committee involvement**

41. This item is not within the scope of matters considered by the Audit and Risk Committee.

**Councillor Briefings**

42. This item was discussed at the following Councillor briefings prior to being presented to Council for consideration. Councillor attendance at each briefing was as follows:

Councillor Briefing Date: 13 September 2022

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>N</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>N</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Councillor Briefing Date: 28 November 2022

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>Y</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>N</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>Y</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Councillor Briefing Date: 7 February 2023

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>Y</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>Y</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Minutes - Special Council Meeting - 3 October 2023

2.3 Proposed sale of land and discontinuance of road: Cypress Lane and portion of reserve No. 3, Torquay

Councillor Briefing Date: 11 July 2023

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>N</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>Y</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>N</i>		

Councillor Briefing Date: 5 September 2023

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>Y</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>N</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Councillor attendance at briefings is not a statutory requirement. Councillors are able to access and request information through a number of mechanisms to understand matters being presented at a Council Meeting.

Attachement 1: Valuation



**Preston Rowe Paterson**

International Property Consultants and Valuers

This certificate of valuation must be read in context of and in conjunction with the full valuation report ref: 1160412, dated the 31<sup>st</sup> August 2023. All comments, terms and conditions contained in the full valuation report relate directly to this Certificate of Valuation.

**Roadway R1 & Reserve 3 at Cypress Lane Torquay, VIC 3228**

Instructing Client	Surf Coast Shire Council
Purpose of Valuation	Disposal/Acquisition purposes and no other purpose
Basis of Assessment	Assessment 1 - Market Value of Roadway R1 as if amalgamated with the surrounding properties Assessment 2 - Market Value of Reserve 3 as if amalgamated with 22 Cypress Lane, Torquay
Date of Valuation	31 <sup>st</sup> August 2023
PRP Reference	1160412

Title Details

Assessment 1

Title	Address	Title Type	Lot and Plan Type	Plan	Volume	Folio
1	Roadway R1	Roadway	R1 on Plan of subdivision	305011W	-	-
2	4 Cypress Lane	Freehold	36A on Plan of subdivision	305011W	10746	415
3	10 Cypress Lane	Freehold	36B on Plan of subdivision	305011W	10746	416
4	16 Cypress Lane	Freehold	37A on Plan of subdivision	305011W	10047	467
5	5 Coombes Road	Freehold	39 on Plan of subdivision	305011W	10492	982
6	24 Cypress Lane	Freehold	38A on Plan of subdivision	305011W	10746	417
7	22 Cypress Lane	Freehold	38B on Plan of subdivision	305011W	10746	418

Assessment 2

Title	Address	Title Type	Lot and Plan Type	Plan	Volume	Folio
8	Reserve 3	Reserve	Reserve 3 Plan of Subdivision	305011W	11601	160
9	22 Cypress Lane	Freehold	38B on Plan of subdivision	305011W	10746	418

**Preston Rowe Paterson (Geelong) Pty Limited**

161 Myers Street Geelong Vic 3220

CERTIFICATE OF VALUATION





Title Proprietorship

Title	Proprietor Type	Registered Proprietor
1	Sole Proprietor	Surf Coast Shire
2	Sole Proprietor	Coombes Road Pty Ltd
3	Sole Proprietor	Coombes Road Pty Ltd
4	Sole Proprietor	Coombes Road Pty Ltd
5	Sole Proprietor	Coombes Road Pty Ltd
6	Sole Proprietor	Coombes Road Pty Ltd
7	Sole Proprietor	Coombes Road Pty Ltd
8	Sole Proprietor	Surf Coast Shire
9	Sole Proprietor	Coombes Road Pty Ltd

Interest Valued Freehold

Date of Inspection 31<sup>st</sup> August 2023

Date of Valuation 31<sup>st</sup> August 2023

Valuation (Exclusive of GST) **Assessment 1: \$1,550,000**  
**(One Million, Five Hundred and Fifty Thousand Dollars)**

**Assessment 2: \$475,000**  
**(Four Hundred and Seventy-Five Thousand Dollars)**

Report Prepared By

Valuer who has undertaken this valuation

Gareth Kent  
AAPI CPV #63378



### Critical Assumptions

The Client acknowledges:

This valuation is current at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value.

In accordance with the provisions of our Professional Indemnity Insurance we advise that all valuations are only valid for three (3) months from the date of valuation, no responsibility being accepted for client's reliance upon reports beyond that period. Accordingly, any parties authorised to rely upon this opinion should be aware for the need of a review if necessary.

While all reasonable endeavours have been made to clarify the accuracy of the information provided, it is assumed that the information provided by the instructing party consists of a full and frank disclosure of all information that is relevant. For the purpose of our valuation, we have made the following critical assumptions:

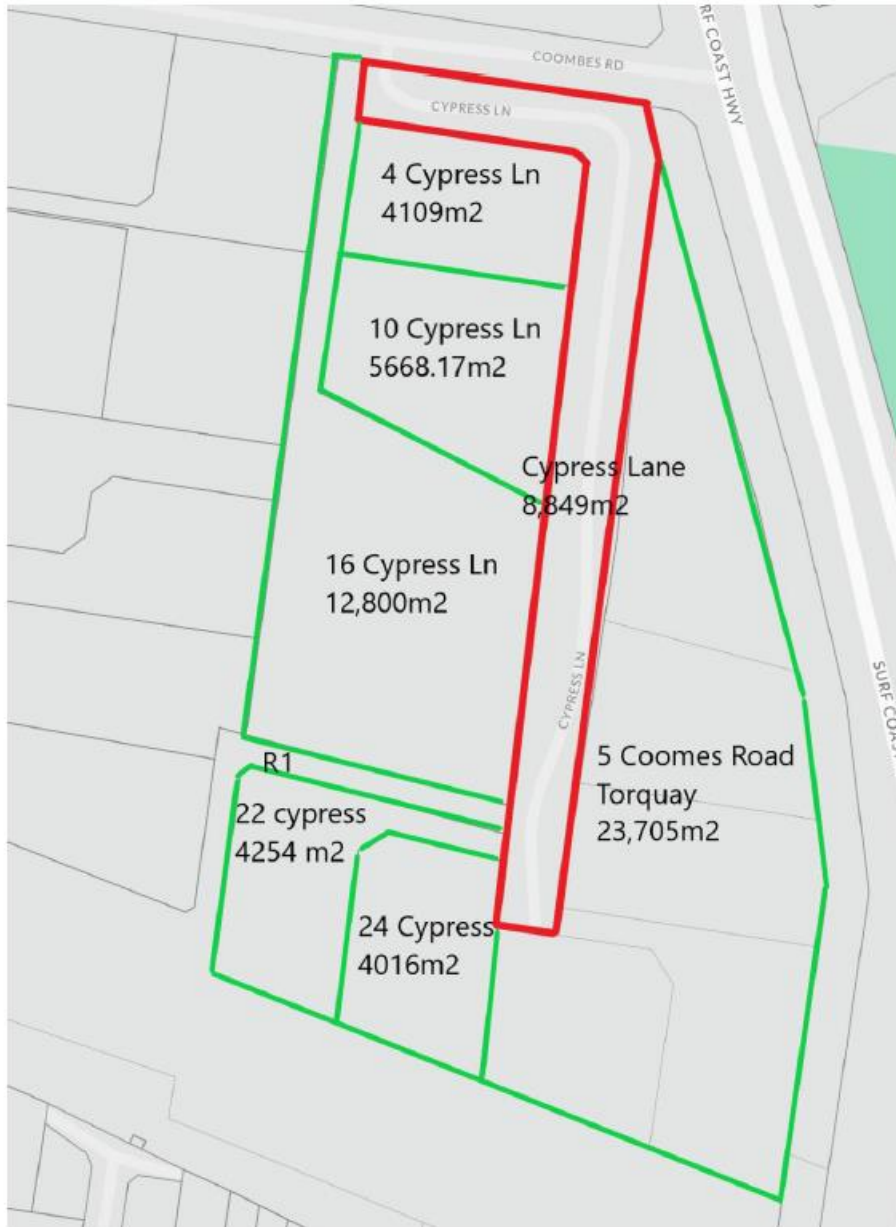
- In the case of advice provided in this report, we must emphasise that specific assumptions have been made which appear reasonable based upon current market sentiment and forecasts. It follows that any one of the associated assumptions may change over time and no responsibility can be accepted in this event. The value performance indicated herein is an assessment of the potential value trend and should not be viewed as absolute certainty.
- That the land is not subject to any encroachments or onerous restrictions on use or enjoyment.
- That the building has been constructed in accordance with law and is not subject to any structural design defects, asbestos issues or pest infestation.
- That all structural improvements on the land are wholly within the Title boundaries.
- That there are no site contamination issues that would require remediation works to be undertaken and / or would affect the market value or marketability of this property.
- That the property is unaffected by any road alteration proposals.
- That we have been provided with all information about the property known to the client which might reasonably be expected to affect its valuation.
- We note that the Valuer is not an expert in Occupational Health and Safety matters; however, we can confirm that no matters of an obvious nature were revealed from our onsite inspection of the subject property.
- The building measurements denoted herein have been based on physical measurements during inspection and have been relied upon in the assessment of value. The Valuer assumes no variations in the area assessed.
- In the course of this valuation, we have relied upon third party provided information which we have assumed to be correct.

In the event that any of the above assumptions prove to be incorrect we reserve the right to review our assessment.

Valuation of Roadway R1 & Reserve 3 at Cypress Lane Torquay, VIC 3228  
Prepared for Surf Coast Shire Council



Valuation of Roadway R1 & Reserve 3 at Cypress Lane Torquay, VIC 3228  
Prepared for Surf Coast Shire Council



Attachment 2 – Cypress Lane Torquay and portion of Reserve No 3 – Site photos



Image 1 - Cypress Lane Torquay entry from Coombes Road



Image 2 – Cypress Lane Torquay looking south



Image 3 – Cypress Lane Torquay looking towards Surf Coast Highway



Image 4 – Portion of Reserve No 3



Image 5 – Portion of Reserve No 3 looking west

### Attachment 3 – Council Meeting Report – Proposed sale of land and discontinuance of road – Cypress Lane and portion of Reserve No 3

#### – Location Map





## Attachment 4

### Summary and responses to community submissions

#### Assessment

##### Manner in which Council obtained the land

1. Concerns were raised that Council could not sell the land as the Body Corporate originally gifted the land to Council for the specific purposes of public use.

##### Response – summary

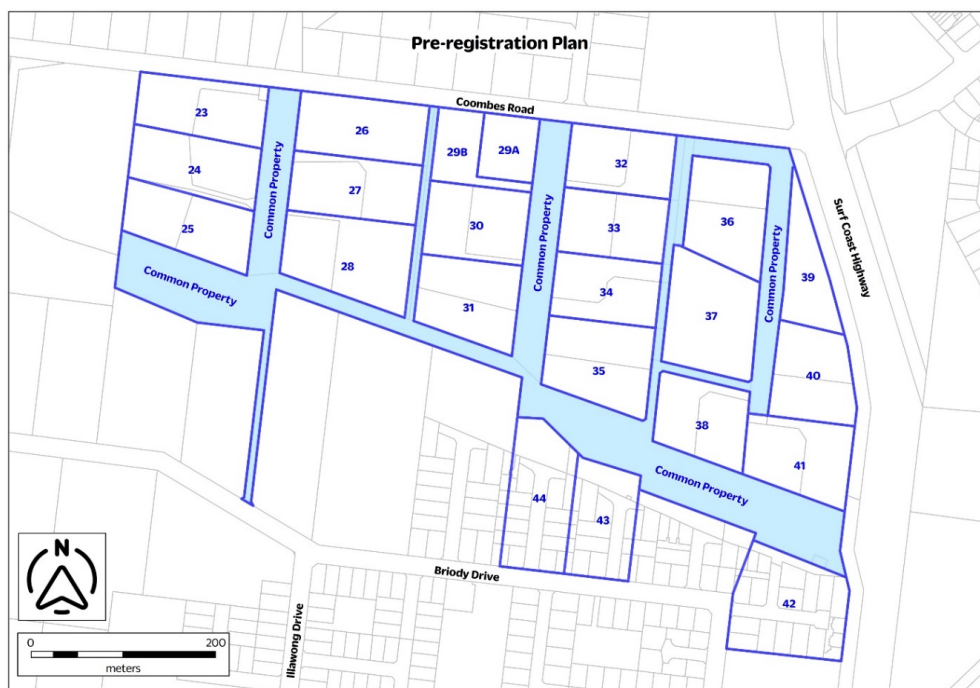
2. The agreement between Council and the Body Corporate does not require Council to hold the land for the specific purposes of a road and public open space in perpetuity.
3. The Body Corporate approached Council and requested the common property be transferred to Council predominantly due to public liability concerns and maintenance costs.
4. The land was not gifted or transferred to Council, it was vested under section 32 of the *Subdivision Act 1988* (Vic).
5. By virtue of the common property vesting in Council under the *Subdivision Act 1988* (Vic), the land became the property of Council subject only to the conditions contained in legislation. Any implied conditions of the Body Corporate as to the future use of the land became void as it is contrary to the legislation.

##### Response - detailed

6. In December 1991 plan of subdivision 305011W registered under the *Cluster Titles Act 1974* (Vic).
7. The subdivision included the land on the southern side of Coombes Road between the Surf Coast Highway and those lots abutting Piper Lane. The subdivision included the relevant portion of Deep Creek as well as several lots on the eastern side of Deep Creek.



Image of part of the common property on the 1991 version of PS305011W



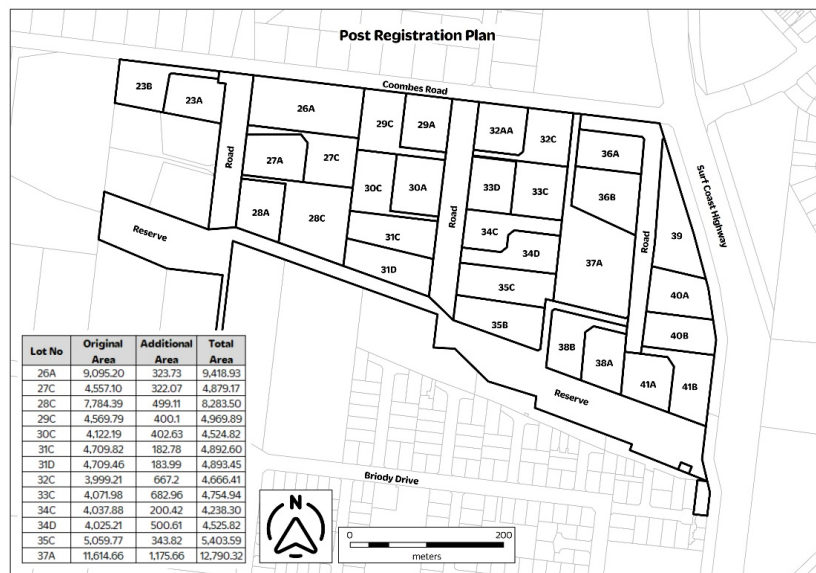
8. The Cluster Titles Act allowed a type of subdivision whereby owners of residential lots in the subdivision would also be joint owners of common property which included conventional municipal infrastructure or service authorities such as roads, drains, electrical supplies and public open space.
9. Within PS305011W, the common property included Piper Lane, Jetti Lane, Cypress Lane, several laneways between the lots leading to Deep Creek as well as Deep Creek.
10. In the early 1990's, the Body Corporate approached the responsible municipality at the time, City of Greater Geelong South Barwon District to have a portion of the common property vested in the municipality, namely the Creek land and Jetti Lane only. It is noted that none of the land the subject of the 1990's request formed part of the land now being considered for sale.
11. Whilst South Barwon agreed to have the land vested in it, the Body Corporate was unable to cause the plan to be registered due to delays in obtaining release of titles by various Body Corporate members.
12. In 2001, the Body Corporate approached Surf Coast Shire to again request that the common property be vested in title. Mr Joe Briody attended Council and raised concerns that the Body Corporate was responsible for public liability over the relevant portion of Deep Creek and the roads, all areas which were publicly accessible.





13. File documents in the possession of Council indicate that the Body Corporate had the following concerns –
  - a. Public liability issues over land accessed by the general public;
  - b. Long term maintenance issues over publicly used assets;
  - c. Renewal obligations over road infrastructure; and
  - d. Inequity in rating costs as ratepayers within the subdivision did not receive any rebate for Council servicing costs, however, were still required to pay for maintenance of common property from Body Corporate levied funds.
  
14. Council agreed to issue a permit under section 32 of the *Subdivision Act 1988 (Vic)*. Pursuant to a section 32 application, the Body Corporate would subdivide the land and vest the relevant portions of land in Council. Therefore, no transfer would occur and upon registration the land would automatically become 'roads' or 'reserve' where appropriate.
  
15. The planning permit conditions required the Body Corporate, at its own cost, to upgrade the assets being vested. These works including reconstruction of pavement, road sealing, vegetation trimming and fire prevention works. The cost of these works amounted to approximately \$30,700.00. The Body Corporate elected to pay this sum to Council who agreed to undertake the works on the Body Corporate's behalf. Council also agreed that the laneways between residential lots could be amalgamated with existing lots resulting in some lot owners land increasing by amounts between 180m2 to 1,175m2.

Image of post vesting plan with summary of lot area increases



16. Council completed the works in the mid 2000's and the Body Corporate obtained planning permit 06/0580 in May 2007. From the mid 2000's Council continued to



maintain the public infrastructure, however, it was not until 2015 that the Body Corporate was able to cause the section 32 *Subdivision Act 1988* (Vic) application to be registered. At the request of the Body Corporate, Council agreed to contribute \$5,000.00 towards the Body Corporate's legal costs to facilitate registration.

17. In 2015 the section 32 application was registered and the land vested in Council.

**Use as a retirement village**

18. Concerns were raised that the use of the land as a retirement village would is not a public need and will not accommodate existing public needs such as affordable housing, social housing, and housing for people with a disability or aged care.

**Response – summary**

19. There is a recognised need for housing supply within the area. Controls are also recommended to ensure the independent living units are available for specified cohorts to support the use of the land for elderly and/or people with a disability.

**Response – detailed**

20. Comments made by the Placemaking and Environment department of Council in their August 2023 report are noted as follows:

*“At the Victoria’s seniors page of the Victorian Government website\* it states that In 2021 there were almost 1.5 million Victorians aged 60 years or older, which represents 22 per cent of the total population and that by 2046 it is predicted that about 25 percent of the population will be 60 years of age or older. Additionally the number of people aged 60 or older is higher in rural and regional Victoria (26 percent in 2016) than in Greater Melbourne (18 percent). \*www.vic.gov.au/ageing-well-action-plan/victorias-seniors*

*The Market Assessment submitted with application for Permit 21/0333, provided by Macroplan, dated 19 June 2020, assessed the Australian Bureau of Statistics 2011 and 2016 Census data. This assessment concluded that with the population aged 65+ years in Torquay forecast to double during the next 15 years, a gap assessment indicates theoretical future market demand of approximately 340 dwellings by 2036 within the Torquay catchment to accommodate the underlying demand, assuming trend line penetration growth*

*The 2021 census data identifies that the Torquay population is predicated to grows to 8,827 by 2041, which if the demand remains the same would result in Torquay requiring capacity for 818 non-private dwellings (which includes retirement village living). Additionally, jobs in health care and social assistance represent 12.2% of total jobs in the Surf Coast and 13.6% of jobs in Torquay.*

*With an aging population there will be an increased demand for housing for the aging community, including retirement villages.*



*The site in this location is appropriately located for a retirement village with excellent access to facilities, infrastructure and services. The site:*

- a. has direct access to the Surf Coast Highway from Coombes Road, linking Torquay with Geelong*
- b. is in walking distances (300-400 metres) to shops, medical centres, a pharmacy and a supermarket*
- c. is in walking distance to bus stops connecting Torquay and Geelong*
- d. is adjacent to a footpath running parallel to the Surf Coast Highway*
- e. abuts the Deep Creek linear reserve and pathways to the south*
- f. is in close proximity (1.0 kilometre) to the Municipal Shire Offices and recreational reserves and facilities (including football and soccer ovals, playgrounds, netball courts and the Wurdi Baierr stadium, which offers a wide variety of sport and fitness activities including basketball, fitness classes, lifestyle activities and pickleball)*
- g. is in close proximity to the Community Hospital proposed on the corner of the Surf Coast Highway and South Beach Road*

*The Torquay Town Centre commercial precinct, which includes a wide variety of services and shops is located 4.8 kilometres to the south-east, whilst the Torquay North commercial precinct is 2.0 kilometres to the north-east. The foreshore reserve is 1.5 kilometres to the east.”*

21. Comments made by the Economic Development Division of Council as part of the internal referral process for Permit 21/0333 and annexed to the Placemaking and Environment department’s report dated 22 August 2023 are noted as follows –

21.1 The population of the Surf Coast Shire is growing from 37,623 in 2021 to 56,232 by 2041. More specifically for Torquay (excluding Jan Juc) the growth is forecast to grow from 18,570 to 30,318 by 2041.

21.2 Torquay and Winchelsea are the two designated growth areas of the Surf Coast Shire.

21.3 Eight selected age group ranges from 60-64 to 95+ inclusive total 3,901 people in 2021. By 2041, the number of people forecast to live in Torquay in that age group is 8,827 people and is proposed to grow in the following increments:

- increase to 4,924 by 2026
- increase to 6,130 by 2031
- increase to 7,502 by 2036
- Increase to 8,827 by 2041.

21.4 The two ‘Lifestages’ or Retirement (65-79) and Elderly (80+) are the 2<sup>nd</sup> and 3<sup>rd</sup> largest forecast growth areas for Torquay’s population. The highest is ‘Older Workers’ (50-64).

21.5 By reference to non-private dwelling types (2021 Census – counted in region – people) The total number of people enumerated in the Torquay small geography



areas in the selected Non-Private Dwelling Type cohorts on Census Night 2021 was 362 including:

Nursing home	312
Accommodation for the retired or aged (not self-contained)	20
Other welfare institution	12
Other and non-classifiable	12
Boarding house, private hotel	6
<b>Total</b>	<b>362</b>

- 21.6 This represents 64.64% of the total number of people in the Surf Coast using these types of facilities.
- 21.7 As the current population of Torquay aged 60 years + is 3,901, it is estimated that 9.2% of this population is currently staying in a non-private dwelling.
- 21.8 As the population grows to 8,827, if the demand remains the same, Torquay would require capacity for 818 non-private dwellings.
- 21.9 Jobs in Health Care and Social Assistance represent 12.2% of total jobs in the Surf Coast and 13.6% of jobs in Torquay. Job creation is important in Torquay to maintain our current lifestyle as the Torquay population grows. A failure to create local jobs would reduce the current prosperity we enjoy and would require more local residents to travel outside of the Surf Coast for work.
- 21.10 In total, an additional 1,383 jobs are needed (138 jobs per year over the next 10 years) to keep pace with population growth. While the proposal does not mention the number of employees for this facility, Health is the second largest sector in Torquay and identified in 'Our Economic Story – the Surf Coast Shire: A Prosperous Place' as a growth sector for Torquay.
- 21.11 The significant growth in the elder population suggests that more facilities like this will be needed to meet current demand.
22. For the purposes of the *Retirement Villages Act 1986* (Vic), a retirement village means a community, the majority of which are people:
- a. at least 55 years old; or
  - b. retired from full time employment; or
  - c. is the spouse or domestic partner of a person at a. or b. above, who are provided with accommodation and services (other than aged care services).
23. Accordingly, a retirement village must, at a minimum, accommodate a majority of people who are retired from full time employment, regardless of their age.
24. Objections raise that a retirement village will not meet any public need but will instead only be attainable by those wealthy enough to afford a unit within the village.



25. It is recommended that Council require, as part of the sale process, an agreement under section 173 of the *Planning and Environment Act 1987* (Vic) to be registered on the consolidated land to require that:
- a. the land must only be developed in accordance with planning permit 21/0333;
  - b. all accommodation units on the land must be used as housing for people 55 years or older or people with a disability; and
  - c. one in every ten of the accommodation units must be occupied by at least one resident eligible for a Commonwealth pensioner concession card.
26. Requiring one in every ten of the accommodation units to be occupied by at least one resident eligible for a Commonwealth pensioner concession card ensures that –
- 26.1 the requirement will be triggered as accommodation units are released for sale opposed to a total amount being required over the whole development and only being triggered once the final stage of the development is completed.
- 26.2 where couples occupy a unit and only one resident is eligible for the pensioner concession card or the other resident becomes ineligible due to circumstances beyond their control, the eligible resident will be able to remain in the unit with their co-occupant.
27. To be eligible for a Commonwealth pensioner concession card, residents must be receiving certain Services Australia payments such as:
- a. Age pension;
  - b. Carer payment; and
  - c. Disability Support Pension.
28. Eligibility requirements for each of these payments are managed by Services Australia and include:
- a. residence rules;
  - b. income tests;
  - c. assets tests;
  - d. care obligations;
  - e. medical rules; and
  - f. non-medical rules.
29. Residents eligible for a pensioner concession card may not be holders of that card as they are receiving an alternate benefit from Services Australia. For example, a resident may be eligible for a pensioner concession card as well as card issued by the Department of Veteran Affairs (**DVA**), in which case the resident will usually receive the card issued by the DVA in lieu of the pensioner concession card. Requiring residents to hold a pensioner concession card would therefore exclude residents who would otherwise hold the pensioner concession card but for alternate support services such as those managed by the DVA.



**Preservation of access to Deep Creek**

30. Concerns were raised that the sale of land would result in a loss of a picturesque walkway along Cypress Lane and essential access to Deep Creek along the Reserve Portion.

**Response – summary**

31. There are a number of alternate and safer options for public access to Deep Creek. Additionally, Permit 21/0333 requires 24 hour public access between Coombes Road and Deep Creek and the community will not lose any access.

**Response – detailed**

32. Alternate and safer options exist to access Deep Creek in close proximity to Cypress Lane, namely the footpath running along the Surf Coast Highway, parallel to the eastern boundary.
33. To the west access is also provided through Jetti Lane, which similarly to Cypress Lane does not provide a pedestrian pathway and as such access is via the road pavement.

Image of pedestrian access to Deep Creek



34. The applicant has advised that the pedestrian pathway running parallel to the western (side) boundary from Coombes Road to the Deep Creek linear reserve will be available to the public 24 hours a day.
35. Permit 21/0333 requires public access through the site via the pathway running along parallel to the western boundary be available 24 hours a day.



**Pre-determination of sale and conflict of interest**

36. Concerns were raised that the Council resolution dated 22 February 2022 in which Council resolved to provide in principal support for the sale of land signifies that Council has determined to sell the land prior to public consultation and that Councillors who gave in principal support for the sale did so by reference to the proposed use of the land, creating a conflict of interest.

**Response – summary**

37. The resolutions of 22 February 2022 and 28 February 2023 were subject to community consultation and are not, nor were they intended to be, a resolution to sell the land. The sale of land, in accordance with Council's Sale, Exchange or Transfer of Land Policy requires Council, when determining whether to sell public land, to consider whether the sale would achieve the best outcomes for the community. It is reasonable for the future use of the site to be considered when determining what the best outcomes for the community are.

**Response – detailed**

38. In principal support for the sale of land was subject to community consultation. The task of community consultation would not have been initiated until after in principal support was received. The purpose of the 22 February 2022 and 28 February 2023 Council resolutions were to commence community consultation and gather further information to enable Councillors to make an informed decision on whether to proceed with the proposed sale.
39. The 22 February 2022 and 28 February 2023 resolutions do not bind Council to proceed with any sale and it has been made clear to the applicant that the resolutions make no representation or warranty that the land will be sold.
40. The sale of land, in accordance with Council's Sale, Exchange or Transfer of Land Policy requires Council, when determining whether to sell public land, to consider whether the sale would achieve the best outcomes for the community. It is reasonable for the future use of the site to be considered when making a determination on what the best outcomes for the community are.
41. The recommendation requires that the contract of sale may be ended by the vendor where the purchaser causes planning permit 21/0333 to be amended due to the purchaser's application or submission to the Victorian Civil and Administrative Tribunal. This is to ensure any changes to the permit allow Council to withdraw from the sale, thereby ensuring that the sale is tied to the proposed use.

**Valuation**

42. Concerns were raised that the valuation does not reflect market value, utilises incorrect methodology and is out of date.



**Response - summary**

43. A licenced valuer has completed a valuation by reference to the land's highest value as if amalgamated into surrounding allotments and is dated 31 August 2023.

**Response – detailed**

44. The valuation was obtained from a licenced valuer..
45. An updated valuation dated 31 August 2023 has been obtained.
46. The basis of the valuation assessment method was to obtain market value of Roadway R1 as if amalgamated with the surrounding allotments. The valuer comments that on this basis Roadway R1 has no value to the greater market, other than one party, that being is the registered proprietor of the surrounding allotments.
47. The highest and best use scenario of the Roadway is to consider the value it adds to the surrounding allotments if and when it was amalgamated. In order to make this assessment the valuer has considered the value of all surrounding allotments and utilised the before and after valuation approach.
48. The valuation for the Reserve Portion has been made by employing a similar method, that being market value as if amalgamated with an adjoining allotment known as 22 Cypress Lane, Torquay.



### **3 Close of Meeting**

The Special Council Meeting - 3 October 2023 closed at 7:50 pm.