

11.1 Update on proposed Rushall Reserve shared pathway

Trim Record Number: D17/61137

Responsible Officer: Director Planning and Place Making

[Help](#)

Purpose

1. To update Council in relation to the proposed Rushall Reserve shared path project and to obtain direction on the path width and alignment that would inform the planning permit application.

Background

2. On 2 August 2016, officers reported back to Council on the outcomes of consultation on the proposal to construct a shared path between Rushall Station and Koonda Lat through Rushall Reserve. The plan from the 2 August report is included as Image 1 below.

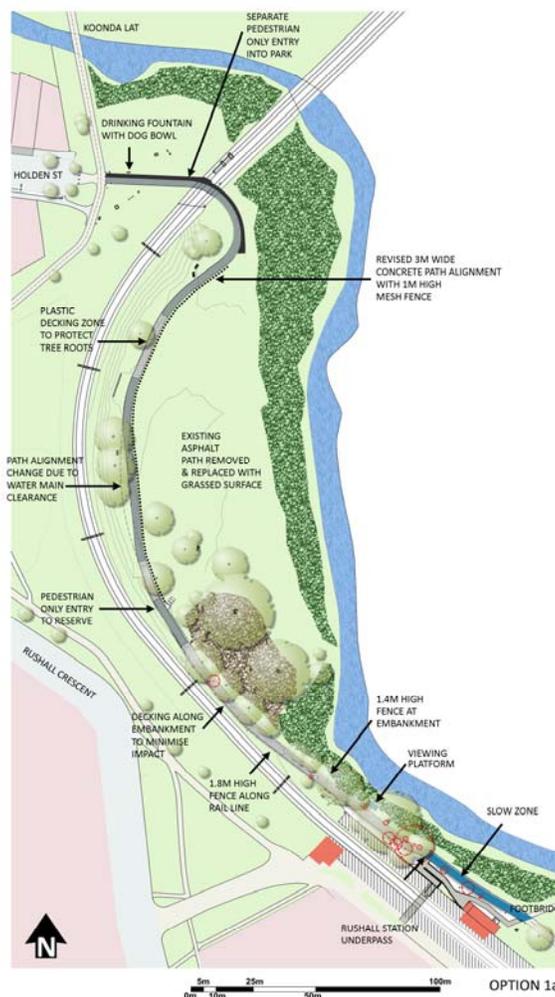


Image 1 – Alignment of proposed path at Rushall Reserve included in 2 August Council report.

3. Having regard to the history and the Council directive of July 2015, the Council, in August 2016, resolved to advance the proposed pathway through Rushall Reserve: a brief background is provided for context:

- (a) at that meeting an officer report was received on the outcomes of consultation on the proposal to construct a shared path between Rushall Station and Koonda Lat through Rushall Reserve;
- (b) the plan from the 2 August report is included as Image 1 above. It is noted that the western alignment was consistent with the Council direction to officers in the July 2015 resolution. (A full copy of the Council report is included in Attachment 1).
- (c) the report presented three options. One was to proceed with a path having a width of 2.5m, one was to proceed with a path having a width of 3.0m; a third option was not to proceed with the path;
- (d) after considering the officer report and hearing submissions, Council resolved to *“proceed with the construction of a 2.0 metre asphalt path on the edge of Rushall Reserve linking the existing Merri Creek Trail between Rushall Station and Koonda Lat Bridge.”*; and
- (e) the resolution also states that Council (Attachment 2):
“endorses a re-design of the path, with the objective of retaining the significant tree shown as Number 5 on Attachment 1 on the basis that the final design is assessed against the AustRoads Guidelines, but in the event that the above is not able to be achieved, authorises officers to commence the planning permit application for the removal of the significant tree as required under the Yarra Planning Scheme.”

Roundtable meeting in April, 2017

4. Further engagement with representatives of selected stakeholder groups was held on 18 April 2017 with an independent facilitator (Ms Michelle Howard). This included representatives from the following groups:
 - (a) Children’s playgroup/Share Rushall Reserve;
 - (b) Save Rushall Reserve;
 - (c) Yarra Disability Advisory Committee;
 - (d) Yarra Bicycle Advisory Committee; and
 - (e) Residents of Rushall Park.
5. Also in attendance were Councillor Stone (Mayor) and Councillors Coleman, Fristacky and McEvoy along with Council officers, the Director Planning and Place Making, Group Manager – Chief Executive’s Office and Manager Recreation and Open Space.
6. Having regard to the July 2015 and August 2016 Council directions via the resolutions, the principal matter remaining for discussion is that of risk management regarding the width of the path. However, the Roundtable conversation also provided Councillors with feedback for awareness and consideration. The notes of that conversation are included in Attachment 3.

Issues

Width of Shared Pathway

7. It is important to highlight to Council that the width of the proposed path, at 2.0m (August Council resolution), is not consistent with the desirable or minimum width for a shared path in the Austroads Guidelines (Part 14). The relevant excerpt from the guideline is included below:

Shared paths

Table 7.6 shows desirable widths and acceptable ranges of width for shared use paths. As for bicycle paths, the upper limit of the acceptable range in the table should not discourage designers from providing a greater width where it is needed (e.g. very high demand that may also result in overtaking in both directions).

Table 7.6: Shared path widths

	Path width (m)		
	Local access path	Commuter path	Recreational path
Desirable minimum width	2.5	3.0	3.5
Minimum width – typical maximum	2.5 ⁽¹⁾ –3.0 ⁽²⁾	2.5 ⁽¹⁾ –4.0 ⁽²⁾	3.0 ⁽¹⁾ –4.0 ⁽²⁾

1 A lesser width should only to be adopted where cyclist volumes and operational speeds will remain low.

2 A greater width may be required where the numbers of cyclists and pedestrians are very high or there is a high probability of conflict between users (e.g. people walking dogs, roller bladers and skaters etc.).

Source: Austroads (2009f) Figure 7.4.

8. While the Austroads Guidelines are not legislated, and while there are scenarios where a section of new path cannot be designed in accordance with the guidelines due to topographical constraints, senior officers believe it is inappropriate to design a shared path below the minimum recommended width in circumstances where it is possible to achieve this width.
9. In the case of the shared pathway at Rushall Reserve, subject to VicTrack approval, a path width of 2.5-3.0m with an appropriate run-off area can be achieved for most of its length and would represent a design width that complies with the Austroads Guidelines, reduces Council’s exposure to possible future claims and ensures that, in the event of a claim against Council, that Council’s insurer would be in a position to accept the claim. Council’s Insurer has an expectation that Council would, as a minimum, comply with Industry Standards.
10. It is noted that Council has reconstructed the majority of its off-road path network since 2005. The vast majority of these paths have been constructed at a width of 3.0m or wider in accordance with the Austroads Guidelines. The sections of the Merri Creek Trail immediately upstream and downstream of the subject site were constructed 3.0m wide in 2010 and 2008 respectively.
11. The path downstream of High Street will be constructed at a width of 3.0m as part of the Coulson Reserve ramp project, currently being delivered.

Alternative alignment through the Reserve

12. For the purposes of constructing a path at this location, the topographical constraints mean that there is only one alignment possible along the escarpment between Rushall Station and Rushall Reserve: generally indicated by “A” in Attachment 4. From the point at which the path enters the actual Reserve, several alignments have been considered, the two most practical are shown as B1 and B2 in Attachment 4.
13. Accepting that if the path was to proceed, it must follow an alignment consistent with “A” along the escarpment, the resolutions of Council from July 2015 and August 2016, both recommend that the path alignment through the Reserve should follow the railway side of the Reserve, as shown by Image 1 above and “B1” in Attachment 4.
14. In light of feedback received at the roundtable meeting in April, the available budget and the design attributes of both B1 and B2, officers have reviewed these options and believe that B2 can be delivered within the available budget and would deliver a better design outcome for path users and park users. The pros and cons of each option are included in Attachment 4 and summarised elsewhere in this report.

External Consultation

15. Council has undertaken extensive community consultation on this project prior to considering the matter at the meeting of 2 August 2016. As this report primarily considers matters relating to Council's risk management responsibilities and exposure to possible future claims, no external community consultation has occurred in preparing this report.
16. The feedback from the Roundtable community meeting held in April 2017 is, however, important for Councillors to note and consider (Attachment 3).
17. It is also noted that as part of the design development process following the Council resolution in August 2016, officers from Metro Trains and have requested a 3.0m path to meet their access requirements. Public Transport Victoria has requested that the path meet the requirements of the Austroads guidelines.
18. Representatives of Metro Train, VicTrack and Public Transport Victoria have been involved with the design of the path throughout and the engineer working on behalf of Council has been addressing any design concerns they may have at each stage of the project. The most challenging section of the path from a technical perspective is the escarpment between Rushall Station and the Reserve and only one minor amendment was requested from the most recent design review process.
19. Notwithstanding the consultation that has occurred in the past and the opportunity to consider path widths and alternative alignments through the Reserve, Council must obtain a planning permit due to the "use" of a public path in a Railway Reserve and for vegetation removal – which is subject to a legislated consultation process for sections A and B1 (refer Attachment 4).
20. Should it be supported by Council, Section B2 does not require a planning permit and the extent of works is such that additional formal consultation is not considered necessary.
21. Should Council determine to proceed with the proposed shared path, Council would need to enter into a Licence agreement with VicTrack over land within their control.

Internal Consultation (One Yarra)

22. Internal consultation has occurred with respect to this report and has included officers from the City Works and Assets Division, the Risk Management Unit, the Property Management Unit and Strategic Transport Unit.

Financial Implications

23. The cost of constructing a path between Rushall Station and Koonda Lat would vary according to the width of the path and the final alignment. Referencing the alignment options in Attachment 5, the current construction estimates are as follows:
 - (a) Section A (2.5m width): \$502,850;
 - (b) Section B1 (2.5m width): \$125,700; and
 - (c) Section B2 (2.5m width): \$43,500.
24. Therefore construction estimates for the total project are:
 - (a) A + B1 = \$628,550; or
 - (b) A + B2 = \$546,350
25. The figures include a cost for design consultancy works but do not, at this stage, include a construction contingency. The estimate includes the following elements:
 - (a) Pavement construction (including decking);
 - (b) Fencing;
 - (c) Drinking fountain;
 - (d) Railway infrastructure realignment; and
 - (e) Furniture.

26. After considering the requirements of the railway authorities and the logistical requirements of minimising impact on trees in the Reserve, the alignment of Sections A + B1, that which is consistent with the 2016 resolution of Council, exceeds the available funds. Sections A + B2, which has several benefits over the B1 alignment, described in Attachment 4, is within the available budget.
27. Subject to the final alignment (that is whether it follows B1 or B2 in Attachment 4) the cost of constructing a path at 2.5m wide is estimated to be \$4,000-\$10,000 more expensive than a 2.0m wide path (as per the 2 August resolution) and a 3.0m wide path can be expected to be \$8,000-\$20,000 more expensive than a 2.0m wide path.
28. Council has previously allocated funding for this project that has been carried forward while consultation is undertaken. A total of \$545,000 has been carried forward into the 2017/18 Budget. Final construction costs will be determined based on material selection and path alignment.

Economic Implications

29. There are no economic implications associated with this report.

Sustainability Implications

30. The recommended widths of paths based on their attributes and potential users are developed with consideration of the risks associated with this activity and the suitability of the path for all users. Increasing the path width would have the effect of making the path more suitable for pedestrians, persons on mobility devices and cyclists alike.

Social Implications

31. The path would improve the accessibility to the reserve and also improve the ongoing connectivity between the linear paths to the north and south. It is noted that there is some divergence of opinion amongst the stakeholders regarding the project.

Human Rights Implications

32. There are no known human rights implications associated with this report other than providing equitable access for all persons.

Communications with CALD Communities Implications

33. No consultation with CALD communities has occurred with respect to this report.

Council Plan, Strategy and Policy Implications

34. The 2017-2021 Council Plan, references cycling and walking under Objective 6 – A connected Yarra. It says:

“Council is committed to creating a city that is accessible to all irrespective of levels of personal mobility, to support a fulfilling life without the need for a car.”

and

“With our municipal population expected to grow by 33% by 2031, improving sustainable transport capacity to accommodate our growing population is a priority. To encourage using public transport, walking or cycling as the first choice of transport for all ages for short to medium trips (less than five kilometres), Council is working to provide an effective, interconnected and well maintained pedestrian and bicycle network that both inexperienced and experienced users feel safe and comfortable using.

We will work on major improvements to cycling and walking infrastructure to provide integrated and connected travel options...”

35. A key focus of Council's Strategic Transport Statement and the Yarra Bike Strategy Refresh is for Council to *“deliver infrastructure projects and support behaviour change measures that encourage a broad cross section of the community to travel through, to, from and within Yarra by bicycle”*. The path from Rushall Station to Koonda Lat was included in this document as *“Strategy 3 – Better Off-Road Bicycle Network”*.

36. The “*provision and maintenance of cycling and walking tracks*” was the 6th most important issue in the Annual Community Satisfaction Survey (2017).

Legal Implications

Legal precedent

37. Relevant to this issue are the Supreme Court finding in relation to a case from 2010: *Monty v Bayside City Council & Ors*.
38. The case relates to an incident that occurred on the shared path running parallel to Beach Road, Brighton and it happened that a cyclist hit a steel post adjacent to the shared path after being affected by a sudden gust of wind while riding. The cyclist suffered significant injuries and claimed negligence on the part of Council.
39. In providing evidence to the hearing, a road safety engineer specifically referenced the Austroads Guidelines and in particular the fact that the path did not provide the “recommended width”, the “effective width”, the “minimum width to an obstacle” and concluded that “*the design of the shared path and its environs in the vicinity of the crash site was deficient*” and that the path, at 2.5m wide, was too narrow and should have been 3.0m or more.
40. The judge noted that the Bayside City Council had not discharged its duties by assessing the attributes of the design to ensure that it was safe and presented no unforeseen obstacles. The judge determined that Council had an obligation “*to prevent the foreseeable risk of injury to users of that bike path*”.
41. The judge awarded the plaintiff approximately \$250,000 in damages as a result of the injuries sustained.

Insurer's advice

42. In addition to reviewing legal precedent, officers have also sought the advice of Council's insurers with regards to the potential construction of a path that does not adhere to the minimum or desired widths. They advised as follows:

“Council's Liability Policy responds to third party Personal Injury and/or third party Property Damage if Council is deemed legally liable. What Council will be liable for of course will depend on the specifics of each claim.

However if Council requires defence or is held liable, the policy would respond. Given the existence of an Australian standard, Council would need to outline the reasons for not complying with it as part of its defence.

The reality is that most plaintiff lawyers would use the guidelines as an argument for the Council's 'failure' and 'negligence'.”

43. This, it is considered, would be particularly so having regard to a precedent such as the Bayside City Council case.
44. Future costs to Council arising from any potential claim cannot be quantified at this time; however, Council's financial exposure is adversely affected if, in response to a claim, Council's insurers determine not to indemnify Council as it failed to construct a path according to the minimum design standards.

Council as Committee of Management

45. The path would link the Merri Creek Trail from Rushall Station to Koonda Lat; this would cross Crown Land that is managed by Council and VicTrack on behalf of the Victorian State Government.
46. While the Crown is ultimately responsible for land in its ownership, Council, as Committee of Management on behalf of the Crown, accepts multiple responsibilities on behalf of the State Government, one of which is insurance and risk management responsibilities over that land.
47. The State Government holds insurance over land for which it is responsible; however the Certificate of Currency explicitly excludes “Municipal and/or Local Councils, Authorities and/or Associations”.

48. As a result, Council must carry insurance on behalf of the Crown for land that it manages.

Comments/Discussion

49. The August 2016 Council resolution includes a reference to the Austroads Guidelines with the intention of protecting a large tree close to where the path intersects with the pedestrian underpass at the Rushall Railway Station.
50. As outlined above, the recommended width of the path at 2.0m contained in the resolution of Council is not consistent with the Austroads Guidelines for shared paths. The retention of the tree referred to above creates slope issues at that point and would increase the speed of cyclists following the path downstream as they approach Rushall Station.
51. The reference to the Austroads Guidelines for the purposes of protecting the tree makes it appropriate for officers to refer back to the same Guidelines to determine if adhering to the resolution of Council would provide for a safe, usable path that ensures Council is meeting its duty of care to future path users.
52. Drawing on the recommendations contained in the Austroads Guidelines, the judge's findings in the *Monty v Bayside City Council & Ors* case and with the knowledge that a 2.5m or 3.0m wide path can be accommodated at this location, it is not considered appropriate to construct the path at 2.0m wide.
53. That the Council resolution instructs officers to construct a 2.0m wide path should not restrict officers from carrying out works that are consistent with the guidelines for this type of work, more so when the potential consequences of the path design are known.
54. Through the design process, officers have identified that a 2.5m-3.0m wide path with clearances from balustrading and retaining structures (where required) can be constructed at this location.
55. Construction of a path at 2.5m-3.0m as per the original officer's recommendation would effectively manage the risk of this and future Councils and would ensure that Council could draw on its public liability insurance policy, in the event of a claim against Council.
56. As reported previously, due to the controls within the Yarra Planning Scheme, a planning permit is required to remove any trees and construct a path at this location. (Where it is within the Railway reservation land in the Yarra Planning Scheme.)
57. The land where trees are affected is in an Environmental Significance Overlay which requires a town planning permit for any proposed tree removal. The land on the western edge of Rushall Reserve (where the Council resolution directs) is in a Railway Purposes Reservation; which means the path requires a planning permit.
58. The path alignment shown as B2 in Attachment 5 does not require a planning permit as it is wholly within the Council Reserve and does not involve vegetation removal. That alignment would connect with an existing path that is at grade, with good sight lines and run off and is approximately 2.5m in width. No works would be necessary for that section of path at this time, however it would be subject to renewal works in future years.
59. It is considered fair to say that representatives of all stakeholder groups at the RoundTable accept the desirability for a safe path through Rushall Reserve. It is the concern of bicycles in the Reserve (in particular, fast moving bicycles), their impact on the safety and enjoyment of the reserve and the impact of tree removal (approximately 12) that is the core of the issue.
60. Section A in Attachment 2, along the escarpment, is common to all alignments and vegetation removal is required for the path to be constructed.
61. In the report to Council in August 2016 it was noted that Option B1 would have to be realigned to maintain an appropriate clearance from the water main. Having consideration of this detail and the feedback received at the Roundtable, Option B2 connects to an existing path and includes a curved section of path as it enters the Reserve and would partly address concerns about speed of cyclists.

Project risks

62. As detailed in Attachment 4, the majority of risks associated with delivery of this project are contained in Section A. The constraints posed by railway infrastructure limit potential path alignments and generate design factors that would not be required elsewhere in the project.
63. The nature of the railway infrastructure in this location is such that the construction involves substantial financial outlay due to changed alterations to the railway signal infrastructure and would include risks to the project timeframe. Though the contractors engaged to carry out the alterations to railway infrastructure would be approved by Metro Trains and VicTrack, as the works are triggered by a Council project, it will carry a degree of financial risk associated with maintaining railway operations and dealing with ageing railway signalling infrastructure during construction.
64. Officers are seeking technical advice on the space required to construct the path and how that may impact vegetation and railway infrastructure. This early advice would inform a construction management plan, but is considered essential information to identify and mitigate risks.

Options

65. The substantive elements of the resolution of Council on 2 August 2016 (Attachment 2) provide direction for officers to proceed with the design and Planning Permit application. Officers are, however, seeking final direction as to the final path width and whether Councillors wish to provide any further comments to officers.
66. Given that the construction of a shared pathway, in accordance with the minimum standards set out in the Austroads guidelines, and having consideration of the health and safety of future path users, it is the view of officers that construction of a path at 2.0m wide as per the resolution of 2 August 2016 is not an appropriate option (and needs to be wider).
67. Having reviewed the pros and cons of each alignment through the Reserve (B1 and B2 in Attachment 4), officers recommend that when considering the final width of the path, Council amend the direction to officers so as to follow an alignment generally consistent with the section labelled as B2.
68. Having consideration of the information above and the resolution of Council from 2 August 2016, officers advise the following options.
69. **Option 1** – That Council revisit its August 2016 resolution regarding the 2.0m wide path contained in 2(a) of the resolution from 2 August 2016 (Attachment 2) and instead proceed with the design and construction of a 2.5m wide path following the general alignment represented by Sections A + B2 in Attachment 4.

Pros:

- (a) the increased width of the path meets the *minimum* standards prescribed by the Austroads Guidelines and would ensure that Council would be insured in the event of a claim against Council;
- (b) the increased width would not have any additional impact on trees along the path alignment; and
- (c) would cost \$4,000-\$10,000 less than a 3.0m wide path.

Cons:

- (a) the path would not be consistent with the 3.0m wide Merri Creek Trail immediately upstream or downstream of the subject site.
70. **Option 2** – That Council revisit the August 2016 resolution regarding the 2.0m wide path contained in 2(a) of the resolution from 2 August 2016 (Attachment 2) and instead proceed with the design and construction of a 3.0m wide path following the general alignment represented by Sections A + B2 in Attachment 4.

Pros:

- (a) the increased width of the path would meet the desired standards prescribed by the Austroads Guidelines and would ensure that Council would be insured in the event of a claim against Council;
- (b) would provide for continuity of a 3.0m wide path between the High Street bridge and Koonda Lat; and
- (c) the increased width would not have any additional impact on trees along the path alignment.

Cons:

- (a) Option would cost \$4,000-\$10,000 more than the 2.5m wide path.

Summary

- 71. The option of constructing a 2.0m wide path as per the resolution of Council in August 2016 presents risks to path users and represents a liability to the current and future Councils as it does not meet the minimum requirements of the Austroads Guidelines in a situation where it is possible to meet those requirements.
- 72. Notwithstanding the consultation that has occurred in the past and the opportunity to consider path widths and alternative alignments through the Reserve, Council must obtain a planning permit – which is subject to a legislated consultation process for Sections A and B1 (refer Attachment 4).
- 73. Should Council see the benefit of Section B2 being the link in the reserve (as distinct from Section B1) it is within the Council prerogative to make that determination. Some people in the community have suggested this would be a more appropriate alignment in any event. It is also noted that component would not require a planning permit as it is outside the Railway Reservation land and no trees would be impacted.
- 74. Officers require a clear direction from Council so that this matter has a way forward - it is considered that it is not essential to consult on any realignment to Section B2 as that part of the path would simply be a connecting path between the escarpment (Section A) and the existing bitumen path existing along the eastern alignment of the Reserve. The administration can provide information to the local community of any such decision along those lines (that is, informing people) through formal communications and newsletters etc.
- 75. **Option 1**, that being construction of a 2.5m wide path with appropriate run-offs, following an alignment consistent with Sections A + B2 in Attachment 4 is commended to Council on the basis that it is consistent with the minimum requirements as described in the Austroads Guidelines, is within the available budget and delivers an outcome for the community that is consistent with the underlying objectives of the Council resolution from August 2016.
- 76. On the basis that Council supports progressing an outcome described in paragraph 73 above, officers will prepare the necessary information to submit a planning permit application under the Yarra Planning Scheme.

RECOMMENDATION

1. That Council:
 - (a) notes the further officer report regarding the proposed shared path in Rushall Reserve;
 - (b) notes the feedback received at the roundtable meeting on 18 April 2017;
 - (c) notes the judge's findings in *Monty v Bayside City Council & Ors.* (2010) relating to an incident on a shared path and the advice from Council's insurers on potential liabilities arising from constructing a path that does not comply with the minimum standards as recommended in the Austroads guidelines;
 - (d) notes the benefits associated with amending the path alignment through Rushall Reserve as described in Attachment 4 as B2;
 - (e) endorses construction of a 2.5m wide path with appropriate run-offs;
 - (f) endorses an amended alignment consistent with A + B2 as described in Attachment 4;
 - (g) authorises officers to prepare the necessary information to submit a planning permit application as required under the Yarra Planning Scheme, having regard to VicTrack risk assessment requirements, for construction of a 2.5m wide path with appropriate run-offs in the area generally shown as section A in Attachment 4;
 - (h) authorises officers to include the relevant elements from 2(d) of the resolution of Council on 2 August 2016 (Attachment 2), those being:
 - (i) except where decking is required, that the path be constructed in asphalt;
 - (ii) measures to slow the speed of bicycles and other mobility aids using the path;
 - (iii) planting of intermittent low vegetation along the edge of the path with appropriate segments of fencing with gates for pedestrian access;
 - (iv) 1.4 metre high fencing along the embankment as a safety measure;
 - (v) additional seating in the reserve, the installation of a drinking fountain with a dog bowl, and improved signage; and
 - (vi) tree planting in the reserve and ground covers, to offset any tree and vegetation removal; and
 - (i) authorises officers to communicate this resolution to park users through the installation of signage in the Reserve.

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Attachments

- 1 Council Report - 2 August 2016
- 2 Minutes from Council meeting on 2 August 2016
- 3 Round table meeting notes - 18 April 2017
- 4 Rushall pathway options