

Questions taken on notice

12 July 2022



At Council meetings, questions from the public and from Councillors are sometimes taken 'on notice', meaning that an answer cannot be provided at the meeting itself. When an answer is available, it is provided direct to the questioner, and is also published here.

As well as the full response, the text below includes a summary of the question and the answer provided at the meeting. A recording of the Council Meeting (including Public Question Time and Councillor Questions Without Notice) is available on Council's website for four years following the meeting.

Response to question from George Manidis

Question

At the June 2022 meeting a parent of Alphington Grammar asked for clarification around the Council's communication channels with Alphington Grammar land owners, (the Greek community of Melbourne). The Greek Community of Melbourne is the Greek Orthodox Community of Melbourne, Victoria. Whilst rate notices and other notices are regularly received at the GCM head office, the 4 August 2020 resolution by Council to formally end the 1953 licence with Old Heidelberg Road was sent to a law firm, that from time to time did some work and represented the Greek community of Melbourne. It was not sent to our office. The GCM is concerned that private information was distributed without its consent and at the very least, the Council should have sent a duplicate copy to our head office. Why was the 4 August 2020 letter sent to a law firm and not the registered postal address of the Greek community of Melbourne as per Council's stated policy?

Council resolution of 4 August 2020 indicates the GCM is the land owners of the land, leased by Alphington Grammar School would be notified that the licence of 1953 for Old Heidelberg Road would formally end. Why was the GCM not informed of this?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

Council had received correspondence from Rigby Cooke Lawyers dated 14 August 2020 advising that it acts for the GOCMV in the matter of Old Heidelberg Road, Alphington.

It is usual practice to forward this correspondence to a client's legal representative.

Response to question from Suzy Stamos

Question

In August 2009, the Victorian Civil and Administrative Tribunal (VCAT) approved the issuing of permit for the lower Darebin trail. For this to occur private land was acquired from

Alphington Grammar School. At the time Sheryl Nagal the manager of Parks Victoria stated on record that it was a fantastic and long anticipated outcome for local communities and walkers and cyclists more broadly, Alphington Grammar school agrees, stating importantly 'we commend Alphington Grammar School for agreeing to sell to the state government the land necessary to allow the final link to this trail to be achieved. This demonstrates the goodwill to the community. The sale of this private land provided access to the trail including access to the creek, which is the exact objective according to the have your say web page for opening the gate. It provided cyclists and pedestrians the connection that was needed to make the trail the great success that it is today. The access via the gate does not provide the outcome that was sought by the community. Were the council members aware of this goodwill by the school and was it factored in as part of the decision making process?

The road management act provides that Council is the road authority and to exercise the function within the overall policy. How did the Council analyse resources required to meet its other obligations, which are to ensure that the road is fully compliant with the laws and regulations and that it would use rate payer funds efficiently and effectively?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

The public Council meeting on 5 October 2021 listed an item to specifically consider the question of the gates illegally erected by the school and which were restricting community access to the public Old Heidelberg Road reservation down to the Darebin Creek reservation. The Council had requested that matter be presented to Council for consideration in response to receiving many community complaints about the restrictions to public access caused by the locked gates.

This matter considered at that Council meeting also followed a community consultation process concerning the question of the locked gates and restricted access, as had been previously requested by the Council.

Having regard to that specific question (i.e. the illegally placed and locked gates) and having considered the many submissions received from community members, a number of community organisations, the school, affiliates of the school and school parents, the Council subsequently adopted the following formal resolution "That in the matter of the eastern portion of the Old Heidelberg Road reservation, Council: ...now determine that the current Old Heidelberg Road reservation is required to be opened to enable general public access by pedestrians to Darebin Creek reserve..."

As a separate issue, access to the Darebin Trail was raised as an aspiration via a number of community submissions. As the planning and development of the Darebin Trail was a State Government project, the Council then formally resolved to note those items and that they be referred to the Minister for Roads for consideration by means of a letter from the Mayor.

As noted, the Council is required to manage roads in the municipality to ensure compliance with its adopted Road Management Plan. In this regard, the Council had recently undertaken its obligations in accordance with the Road Management Act and the road is in compliance with that requirement.

Response to question from Carol Hanna

Question

Council continues to claim that the school has never responded to its communication. I can confirm that it has done so by writing to all Council members initially and another five times to Mr Gilbert directly. Those dates being: 3 October 2021, where there was no response; 15 October 2021, the school initiated a face to face meeting, which was held on the 10 September 2021, it again wrote to Mr Gilbert on the 25 March 2022; 16 May 2022, 23 May 2022 and again with no response, 24 May 2022 a letter was sent by Maddocks Lawyers, the lawyers appointed by the school to deal with this case, again no response, Has Council received the correspondence or been briefed about the issues raised in all those correspondence's?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

A review of Council's records notes that the correspondence had been noted and referenced in a range of return correspondence. The following is noted:

3 October 2021 to Councillors individually and the CEO, seeking Council defer / adjourn the matter listed for the Council on 5 October Council Agenda Paper to enable further discussions. The Council proceeded with consideration of the matter as listed on the Council Meeting Agenda.

15 October 2021 was in response to Council's correspondence of 11 October and it was further responded to on 1 November when Council provided a response to several questions raised in the 15 October letter. It was again referenced by Council in its 19 November correspondence.

The referenced face to face meeting actually occurred on 10 December not September.

25 March 2022 was in response to Council's correspondence of 18 March 2022 and was further responded to on 29 March 2022 at which time the Council sought advice as to when proposed fencing works to the school boundaries was to commence and when the gates will be removed to enable pedestrian access by the general public as outlined in the Council's resolution.

16 May 2022 was in response to Council's correspondence of 14 April. It was advice on actions which the School was proposing to pursue. It also indicated that the School would reach out to Council after the school boundaries had been pegged out by their land surveyor.

23 May 2022 was in response to Council's correspondence of 17 May requiring the School to remove the pedestrian gates and also seeking Council grant an extension of time whilst matters are resolved and further, threatening an injunction against Council if it did not confirm it would take no action to remove the gates.

24 May 2022 was a letter from Madgwicks Lawyers advising that they are acting for the Alphington Grammar School and advising that they considered it inappropriate for Council to demand the removal of the gates in its letter of 17 May 2022 and that they will be making further applications to Council for information relating to the process.

Response to question from James Baker

Question

... In a recent Facebook post (a local resident of Alphington who campaigned strongly for this Alphington link bike path and project) states "is anyone else wondering why Alphington Grammar and the City of Yarra can't reach a compromise on access to Old Heidelberg Road. Most people just want to access the school grounds on outside hours. Wouldn't it be a better outcome to the community if they could just utilise this wonderful space without going to the courts!" What will you do as Mayor to address the frustration and anger of Alphington residents and the good people of Yarra city when they realise that your council has spent thousands of dollars of rates and tax payers money and need to spend tens of thousands more to be compliant with the diverse road and management issues or possibly court issues relating to this particular area which presents for its residents to only realise that they can't and won't be able to access any of the desired areas because Alphington Grammar is now going to build a high fence around the boundaries of its defined property, its private school property to keep the children and staff safe which will completely prevent public access just past the road?

This council and its members continue to receive ongoing negative publicity from the press and local community, much of the frustration seems to relate to Yarra Councils inability to appropriately consult with the community, possibly because it is unable to segregate its own political views from those of the community it actually represents. If I, myself offer to purchase the defunct end of Old Heidelberg Road to the gate of Alphington Grammar School for a significant amount of money, which could be better spent on fixing the pathway that this lady is having walking on and the tram stops that the other gentlemen mentioned before. The last council meeting I attended there was talk about tumble weeds blowing down the street and cafes and restaurants not being up and running again. Would you hold a public consultation process and let the good people of Yarra decide whether they want my money to fix the gaping deficient that this council has or 60 meters of defunct road past the gate at Alphington Grammar school because I will make a formal offer in writing if you run a public consultation process?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

The Old Heidelberg Road Reservation is public property which community had been able to access freely for many years.

The Alphington Grammar School at a point in time had illegally erected gates across this public road, in a manner which then restricted public access to the road reservation outside of school hours – i.e. generally prior to 7.00 a.m. and after 9.00 p.m. when school cleaners leave the premises and also week-ends and public holidays. The School has also extended its sportsground across a portion of the public road reservation.

The Council in responding to many community requests about the restricted access determined to undertake a community consultation on the question of the future treatment of the Old Heidelberg Road Reservation, prior to it formally considering and determining on the matter.

Following consideration of a very large number of submissions from the community, community organisations, the school and affiliates of the school, comprising:

- Some 14 favouring a continued restriction of access to the Old Heidelberg Road reservation;
- Some 19 suggesting a more limited access to the Old Heidelberg Road reservation

- Some 339 requesting the opening of access to the Old Heidelberg Road reservation
- together with a number of verbal presentations to the Councillors at the Public Council Meeting on 5 October 2021

the Council resolved:

“That in the matter of the eastern portion of the Old Heidelberg Road Reservation, Council: ...now determine that the current Old Heidelberg Road Reservation is required to be opened to enable general public access by pedestrians to Darebin Creek Reserve...”

It is also noted that the public Council Report did reference a number of possible options in considering and determining on the matter.

Response to question from Martha Vazenios

Question

At the May council meeting a parent asked why farm road was not sufficient in terms of access to the creek and trail and given that VicRoads had deemed it an unsuitable access point to the creek since it is not DDA compliant and poses many other challenges for the public who will be competing with peak drop off times at the school amongst other problems. The Mayor stated VicRoads is a separate matter, it's about creating a significant thoroughfare for pedestrians onto the Darebin creek trail. So this is not what we are talking about here, what the decision was for was maintaining pedestrian access, it wasn't about creating a big link. It doesn't need all that DDA compliant stuff, it's just about an existing link to public land and reopening it for the public, it's a different matter. Mayor do you once again refute that they are the same matter and if yes please explain why these were attachments in the submission?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

The Mayor was referencing:

The matter listed at Council's Meeting of 5 October 2021 was specifically about considering the question of whether public pedestrian access to the Old Heidelberg Road Reservation down to the Darebin Creek Reservation should be re-instated.

This issue arose following the receipt of community complaints about the restriction caused by the illegally locked gates, preventing access to the public land, which then led to Council undertaking a community consultation process on the question.

The Council Report also noted a number of questions about the potential for an access to the Darebin Trail, which questions were raised and presented to Council by many community submissions from the community consultation process and also, that the works relating to those other matters were being managed and determined by VicRoads.

In response to the suggested additional works as raised through the community representations, the Council further resolved that The Mayor write to the Minister for Roads advising of the various additional proposals from the community consultation. These included:- a suggested connection from Old Heidelberg Road Reservation to the Darebin Creek Trail and a suggested replacement Bridge crossing the Darebin Creek and a request that the State Department consider same.

Response to question from Luisa Di Giovine

Question

Councillors are elected to represent the entire community not a minority with the loudest voices. Lack of transparency and consultation in this whole process is gagging true public opinion. An activist group is high jacking the agenda for the general community of which Alphington Grammar represents a large part of. Why is Yarra Council bowing to an activist group who by their own Facebook post admit they don't want to lose the schools open spaces and most people just want to access the school grounds. Is council aware of how many people have used the redundant part of Old Heidelberg Road since councils decision to open it and what activities are undertaken by those who have accessed it?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

The Old Heidelberg Road Reservation is public property which the community had been able to access freely for many years.

The Alphington Grammar School at a point of time had without authority, erected gates in a manner which then restricted public access to the road reservation generally outside of school hours. The School had also extended its sportsground across portion of the public road reservation.

The Council in responding to many community requests about the restricted access, determined to undertake a community consultation on the question of the future treatment of and access to, the Old Heidelberg Road Reservation, prior to formally determining on the subject.

The Council followed a lengthy community consultation process and which resulted in a very significant number of submissions – received from community members, several community Organisations, the School and its affiliate organisations and school parents.

The Council also heard a number of verbal submissions at its Meeting on 5 October 2021, prior to making its formal resolutions.

Response to question from Julia Tink

Question

In a Herald Sun article dated 23 June, ... a cofounder of the Yarra Residents Collective explained that the report has done nothing but to address the underlining issues and lack of consultation and community engagement which are at the toxic core of this council. This is a council that routinely ignores and undermines its residents. (The cofounder) has no relation to the school but shares his serious concerns about how this particular council is running and highlights the serious issue of the lack of consultation and community engagement. Ratepayers Victoria president ... has called to have you all sacked. How you respond to these serious allegations from members of the community that you Mayor and fellow councillors all represent and that you have an internally poor culture that fails to have the community, tax payers and me a local resident of Alphington at heart. The article also confirms that Councils financial position was unstable, partly due to the pandemic but also structural, budgetary problems. With these issues how are you going to upkeep and put in safety measures into the redundant Old Heidelberg Road to allow the entrance to be

accessible for everyone, safe and lit and what are your plans around safety especially as the creek is flood prone and dangerous at this time of the year, yet there is no signage or warning to anyone who is entering that area? As a resident can you clearly outline the cost of ensuring the access point will be safe for the community given the council is clearly facing some serious financial challenges?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

The Council has a formally adopted comprehensive process of community consultation and engagement which incorporates a range of communication avenues.

The community consultation concerning the Old Heidelberg Road Reservation matter received a very significant number of community responses, including from the wider community, local residents, Community Organisations, the School and its affiliated bodies and parents.

In addition, the Council also heard verbal submissions from a number of the submitters, at the formal Council Meeting on 5 October 2021.

The Council as reported at the last meeting, has undertaken the required checking of the Old Heidelberg Road in accordance with its Road Management obligations.

The only determination at present is that the School has been requested to remove the illegally erected gates and to again allow public pedestrian access to the Old Heidelberg Road Reservation, as had existed for many decades prior to the School erecting the gates, which had then prevented such access.

Council does not foresee any notable costs as a result of requiring the gates to be removed and re-instatement of public access to the public road Reservation down to the Darebin Creek Reservation.

Response to question from Damian Kipouridis

Question

It is clear from Council's decision to open the gates in the minutes that Council is aware that opening the gate does not give access to the Darebin Creek trail, but when reading all of the submissions, over 63% want access to the Darebin Creek trail. Looking at the plans that were attached, the only way to enter the trail, you have to come off the trail, go underneath the bridge, which is essentially entering the creek and once you have entered the creek you walk up and enter the school property and walk across to the redundant Old Heidelberg Road. The majority of people want safe access, is Council concerned in opening up those gates they have provided an unsafe environment for people to access the Darebin Creek trail because they are doing it by means of entering the creek and also entering the school grounds. Also, when we have a flood event, they won't enter it, so I want to understand is Council concerned about that safety issue that they have created?

Response at the meeting

The Mayor took the question on notice.

Subsequent response

The Group Manager Chief Executive's Office subsequently provided the following information:

The Council is aware of the matters which you have referenced. These matters were referenced in the Council Report on 5 October 2021.

There were two separate elements considered at the 5 October 2021 Council Meeting:

- Firstly, the matter for which the Meeting was specifically called, was to consider the subject of the School illegally erecting gates which restricted public access to the public Old Heidelberg Road Reservation was considered in conjunction with community submissions thereon and also including information to Council from the community consultation on the question of the gates and
- Secondly, the separate issues which were proposed by the community members and outlined in their submissions arising from the community consultation process and in which, they had requested the Council to also consider. These additional issues included - a suggested possible access to the Darebin Trail from Old Heidelberg Road Reservation and the replacement of the former Bridge across Darebin Creek.

Following consideration of the Report, the significant number of community submissions and the verbal presentations by a number of submitters to Council at the 5 October 2021 Council Meeting, it then formally resolved:

“That in the matter of the eastern portion of the Old Heidelberg Road Reservation, Council: ...now determine that the current Old Heidelberg Road Reservation is required to be opened to enable general public access by pedestrians to Darebin Creek Reserve...”

and also,

”That the Mayor write to the Minister for Roads advising of the various community proposals in relation to the connection of Old Heidelberg Road Reservation to the Darebin Trail and the re-establishment of the former bridge across the Darebin Creek...”
