Notice is hereby given that a meeting of the council will be held as an online virtual meeting on September 07, 2020, commencing at 9am.

This meeting will be live streamed through the council website.

Mark Dixon
Chief Executive Officer
Agenda

1. Calling to order

2. Statement of acknowledgement

We acknowledge the traditional owners of this land on which we are meeting and pay our respects to their Elders past, present and emerging, and to those from other communities who are here with us today, for they hold the memories, the tradition and the culture of all Aboriginal and Torres Strait Islander People.

3. Apologies and requests for leave of absence

4. Declaration under Acts, Regulations, Codes or Local Laws

5. Declaration by councillors of any conflict of interest

Councillors must disclose any conflicts of interest they have in matters being considered at council meetings. The Local Government Act describes seven classes of interest requiring disclosure (refer to sections 77B, 78, 78A, 78B, 78C, 78D and 78E of the Act).

If you have a conflict of interest at a council meeting, you must:

- disclose the conflict of interest immediately before the matter is considered;
- notify the chairperson you are leaving the meeting; and
- leave the room and any area where you can see or hear the meeting until the matter has been concluded.

When making your disclosure, you must state the class of interest as well as describing the nature of the interest. However, if this would mean disclosing information that is confidential or private, particularly if it is about another person, you can make a full disclosure to the CEO in writing before the meeting and then just disclose the class of interest in the meeting.

6. Reports for determination

   6.1 Section 223 submission hearing - Lot 2, Bandiana. 7
   6.2 Proposed sale of land at LOGIC - Extension Request to Heads of Agreement 15

7. General business
8. Urgent business

9. Confidential urgent business

10. Close of meeting
Live streaming and video recording of meeting

The council meeting will be live streamed on the internet and video recorded.

The video recording of the meeting will be uploaded online within 48 hours of the conclusion of the meeting, and be capable of repeated viewing.

The voices and images of those participating in the meeting, and in the gallery, may be captured as part of this recording.

Every care is taken to maintain the privacy of persons in the public gallery with the camera focussed on the Mayor, Councillors and Executive Officers.

However, persons in attendance at a public council meeting are advised that incidental capture of an image or sound of persons in the public gallery may occur. By remaining at the meeting persons give their consent to being filmed and the possible use of images and sound recordings in a live streaming or published video of the public council meeting.
<table>
<thead>
<tr>
<th>Environment</th>
<th>Minor (4)</th>
<th>Moderate (3)</th>
<th>Major (2)</th>
<th>Catastrophic (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Brief, non-hazardous, or contained temporary pollution</td>
<td>Residual pollution requiring cleanup</td>
<td>Significant harm to the environment requiring restorative work</td>
<td>Irreversible damage to the environment</td>
</tr>
<tr>
<td>Financial</td>
<td>Little to no impact on revenue or expenditure</td>
<td>Moderate impact on revenue or expenditure</td>
<td>Major impact on revenue or expenditure that will result in a council budget review</td>
<td>Total impact on revenue or expenditure that may lead to the organisation being placed into administration</td>
</tr>
<tr>
<td>Service Delivery</td>
<td>Disruption to program, project or service with no downtime. May be dealt with by routine operations or management action and have limited impact on objectives</td>
<td>Require management initiated review and have some impact on the business unit's program, project or service, or on the strategic objectives. Temporary loss of key data</td>
<td>Would threaten the continuation of a business unit's program, project or critical service. Impact adversely on the business unit's strategic objectives. Unrecoverable loss of key data</td>
<td>Would threaten the organisation's viability or would not allow the organisation to achieve its objectives</td>
</tr>
<tr>
<td>Reputation</td>
<td>Limited political/community sensitivity</td>
<td>Some political/community sensitivity and local media scrutiny and/or requires external audit</td>
<td>Results in significant political community sensitivity and media scrutiny and/or parliamentary questions</td>
<td>Results in extreme political/community sensitivity and media scrutiny or may result in a commission of inquiry or request for Royal Commission.</td>
</tr>
<tr>
<td>Safety</td>
<td>Limited political/community sensitivity</td>
<td>Result in injury or health impacts that are reversible, but may require medical attention but limited ongoing treatment</td>
<td>Results in life-threatening or serious injury which is irreversible requiring medical attention and ongoing treatment</td>
<td>Results in death or permanent disability of one or more people</td>
</tr>
<tr>
<td>Legislative Compliance</td>
<td>Minor technical breach but no damage</td>
<td>Minor technical non-compliance and breaches of regulations or law with potential for minor damage or monetary penalty</td>
<td>Major compliance breach with potential exposure to large damages or awards.</td>
<td>Sanctions compliance breach with potential prosecution with maximum penalty imposed.</td>
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</tbody>
</table>

**Consequence**

<table>
<thead>
<tr>
<th>Likelihood</th>
<th>Almost Certain (A)</th>
<th>Likely (B)</th>
<th>Possible (C)</th>
<th>Unlikely (D)</th>
<th>Rare (E)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Can be expected to occur in most circumstances (i.e. weekly)</td>
<td>Will probably occur in most circumstances in the future (i.e. monthly)</td>
<td>May occur in some circumstances in the future (i.e. yearly)</td>
<td>Could occur at some time in the future, but doubtless (i.e. every 2-10 years)</td>
<td>Expected to occur in exceptional circumstances (i.e. &gt;10 years)</td>
</tr>
<tr>
<td>Response based on risk score</td>
<td>Low</td>
<td>Medium</td>
<td>Medium</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td></td>
<td>Low</td>
<td>Medium</td>
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<td>Low</td>
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<td>Medium</td>
<td>Low</td>
<td>Low</td>
</tr>
</tbody>
</table>

**Extremes**
- Extreme - Council/CEO's attention immediately required. Possibly avoid undertaking the activity or implement new controls.
- High - Director attention required. Consider suspending or ending activity or implement additional controls.
- Significant - Manager's attention required. Ensure that controls are in place and operating and management responsibility is agreed.
- Medium - Manage through usual procedures and accountabilities.
- Low - Add controls where appropriate.
6.1 - Section 223 submission hearing - Lot 2, Bandiana.

Purpose of report

This council meeting is being held to hear from persons who have requested to be heard in support of a written submission under section 223 of the Local Government Act 1989 (the Act) on the intention to sell ‘Lot 2’, being the land known as corner Kiewa Valley Highway and Mcgeochs Road, Bandiana, Victoria 3691.

Background

At its meeting of July 27, 2020 the council resolved to give public notice of the intention to sell ‘Lot 2′ being the land known as corner Kiewa Valley Highway and Mcgeochs Road, Bandiana, Victoria 3691.

Public Notice

The public notice (Attachment A) was given on Saturday, 1 August 2020, with submissions required by noon on Monday, August 31, 2020.

The details of the public notice are as follows:

The proposal is that the land be sold by private treaty to Repus Funds Pty Ltd (Purchaser).

The contract of sale for the land will provide:

1. A purchase price of $1,725,000 plus GST;
2. Payment of a deposit equal to 10% of the price;
3. The sale will be conditional on:
   - the Purchaser procuring a Planning Permit Approval within 18 months after the day of sale;
4. Settlement will be due 30 days after the issue of the Planning approval; and,
   - As a condition of sale, the purchaser must enter into an agreement pursuant to section 173 of the Planning and Environment Act 1987 which requires the Purchaser to substantially commence and practically complete the development of the Land, within specified timeframes.

Section 223

The section 223 process provides that a person making a submission is entitled to request that they be heard in support of their written submission. One submission was received from JMP Developments Pty Ltd – Andrew Stern, Director. The submitter has requested to be heard.

A copy of the JMP Developments Pty Ltd submission has been attached to this report (Attachment B).
The submitter has been advised that:

- All councillors will receive a copy of the written submission.
- The submitter will have up to 15 minutes to speak to their written submission. The Chairperson may extend the time if there is a high level of complexity to the submission.
- The submitter’s comments should be in support of their written submission.
- The submitter’s comments, or a summary, will be included in a report to the subsequent Council meeting of 21 September, 2020.
- Other than to clarify procedural matters through the Chairperson, there will be no opportunity to ask questions of the Council.
- There will be no questions directed at the submitter while they are speaking. The Chairperson or councillors may ask questions once the submitter has finished speaking in order to clarify or explore matters raised.
- The submitter is requested to observe any directions that the Chairperson may give.

Council Plan

<table>
<thead>
<tr>
<th>Strategic objective</th>
<th>Strategy areas</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide strong leadership and governance, demonstrating excellence in the way we do business by being innovative, responsive and transparent. We will be accountable and steward the organisation in the highest regard.</td>
<td>Good governance and customer experience</td>
<td>Foster a positive culture of skilled employees which allows for the continuous improvement of our service delivery providing the best outcomes for our community in an open, transparent and fair manner.</td>
</tr>
</tbody>
</table>

Council policy / strategy implications

The council has issued Guidelines on the section 223 process and this council meeting is being conducted in accordance with those Guidelines.

Risk management implications
6.1 - Section 223 submission hearing - Lot 2, Bandiana. (cont’d)

<table>
<thead>
<tr>
<th>Risk description</th>
<th>C’quence</th>
<th>L’hood</th>
<th>Rating</th>
<th>Controls &amp; treatments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 223 hearing is not held and council is in breach of the Act.</td>
<td>1</td>
<td>E</td>
<td>S</td>
<td>Conduct the hearing in accordance with the requirements in the Act.</td>
</tr>
</tbody>
</table>

**Financial implications**

There are no financial implications with holding this hearing.

**Environmental implications**

There are no environmental implications associated with holding this hearing.

**Sustainability implications**

There are no sustainability implications associated with holding this hearing.

**Social / cultural implications**

There are no social / cultural implications associated with holding this hearing.

**Legislative implications**

This hearing is part of the legislative process by which council considers submissions received under section 223 of the Act.

**Community engagement and internal consultation**

This council meeting is a part of the legislated process involving a public call for submissions, and an opportunity to be heard.

**Options for consideration**

The Council is required by legislation to provide for submitters to be heard in support of section 223 submissions. This process complies with the resolution of the Council on July 27, 2020.

**Conclusion**

The request to be heard is a right for any submitter who responds to a section 223 public notice on a proposed action by Council. This meeting will provide the opportunity for this to occur.

**Attachments**

The following documents are attached to this report:
- Attachment A: Public Notice
- Attachment B: Submission
Tabled papers

Nil

Declaration of conflict of interests

Under section 80C of the Local Government Act 1989 officers providing advice to the council must disclose any interests, including the type of interest.

Deputy Chief Executive Officer - Debra Mudra
In providing this advice, I have no interests to disclose in this report.

Manager Investment Attraction and Economic Development - Adam Wiseman
In providing this advice, I have no interests to disclose in this report.

Deputy Chief Executive Officer - Debra Mudra
In providing this advice as the report author, I have no interests to disclose in this report.

Property Officer - April Lampe
In providing this advice as the report author, I have no interests to disclose in this report.

Recommendation

That the presentation made in support of the section 223 submission from representatives of JMP Developments Pty Ltd be noted, and a summary of the presentation be included in a report on the section 223 process for the intention to sell ‘Lot 2’, to the meeting of the Council scheduled for Monday September 21, 2020.
27 August 2020

City of Wodonga
PO Box 923
WODONGA VIC 3689

Attention: Mark Dixon

Hi Mark,

Further to the above, I am writing to you in accordance with Section 223 of the Local Government Act 1989.

By way of background, City of Wodonga ran an Expressions of Interest process for the proposed sale of the above parcel of land and expressions of interest were required to be lodged with Council on Tuesday 21 July by 3pm. I lodged an offer within the required timeframe (attached).

I then received notification from a Council staff member, advising that a Special Council meeting was to be held on Monday 27 July at 9am to advise an outcome.

At the conclusion of this meeting it was announced that “subject to further negotiation” it was Councils intention to proceed with a proposal lodged by Repus Funds Pty Ltd - no further details were provided at that time.

A subsequent press article indicated that the purchase price was $1.8 million.

On Thursday 30 July, I lodged a revised, unconditional offer of $2,010,000, with a 10% deposit and balance payable in 60/90 days (attached). Your immediate response is attached.

Shortly thereafter, I then received a generic email response from a Council officer advising that Council was proposing to proceed with a proposal from Repus Funds Pty Ltd (attached).
Clearly this notification was received *after* we had submitted our revised proposal to Council.

Subsequent to all of this, Council then provided public notification of the proposed sale to Repus Funds Pty Ltd at a sale price of $1.725 million plus GST.

The offer that Council is proposing to proceed with is $285,000 less than our proposal and in addition, is subject to the purchaser successfully procuring a planning permit within 18 months from the sale date - further reducing the value of this offer relative to the offer that I have made due to the extended terms of sale. The extra funds that Council will receive under our proposal far outweighs any benefit that Council may receive from the alternative proposal, even allowing for the rates that a new building on this site will provide, assuming that a s173 agreement and Planning Permit are finalised with Repus Funds Pty Ltd.

Whilst I note that the Expression of Interest documentation provided Council with significant flexibility in dealing with prospective offers, I am at a loss to see how Council can be seen to be discharging its primary obligation of acting in the best interests of its ratepayers in accepting a lower offer. In a previous life, I acted on numerous occasions for various Federal, State and local Governments in the sale of surplus property assets via Expressions of Interest and in EVERY instance where there were multiple bidders, the selling agents were instructed to seek second round offers from at least the two highest bidders prior to concluding the sale process and finalising the terms of sale with the highest bidder. Why has this process not been followed - clearly the financial ramifications of not entertaining second round offers can be seen by the substantial shortfall in price?

I am sure that every ratepayer in Wodonga would be aghast if this money was foregone, in the knowledge that a vastly superior, unconditional offer was on the table.

I know in responding to my submission, that Council will rely on the criteria noted in the Expression of Interest documentation that articulated several criteria in selecting the purchaser – this included Section 4.4 which stipulated that the purchaser would need to execute a planning permit and section 173 agreement within an agreed timeframe. However, Council was not obliged to follow this process, noting that Section 4.10 enabled Council to “consider proposals which do not conform to this invitation”.

2
Furthermore, noting that the land being offered for sale is zoned industrial and is hardly of local significance (as may the case be with a prime site located within the Wodonga CBA) I fail to see why Council would elect to accept a substantially inferior offer, subject to conditions and potentially a very elongated settlement period.

We appreciate that Council is very keen to avoid the mess that has been created via the sale of the adjacent saleyards land to IMMIX and the ongoing issues that this is causing, however Council would be well aware that our group will NOT allow any development of the above land to occur that is prejudicial to adjacent residential Estates.

In light of the above circumstances, I would like to be heard in person in a meeting with Council (in accordance with the Local Government Act ) and would appreciate your advice as to time, date and place.

Regards,

Andrew Stern
Director

JMP Developments Pty Ltd
andrew@jmpdevelopments.com.au
0400 556 245
6.2 - Proposed sale of land at LOGIC - Extension Request to Heads of Agreement

Purpose of report

The purpose of this report is to seek a resolution from the Council dealing with the proposed sale of land parcels within the LOGIC Industrial Estate.

This report is presented to the Council following a request from Wodonga Solar Pty Ltd seeking an extension to the timeframes set out in the signed Heads of Agreement.

Background

At its Special Meeting held on 20 December 2019, and under confidential business, the Council resolved as follows:

1. The Council notes and receives the revised offer from Wodonga Solar Pty Ltd in the sum of $3.5 million plus GST to purchase the land on the corner of Tom Tanners Road and Eames Road, and 226 Lady Franklin Road, Barnawartha North, Victoria 3691, which is Part Lot C on PS7269615 and Crown Allotment 3B on TP709965S (“the site”).

2. The Council resolves to accept the revised offer and to sell the site to Wodonga Solar Power Pty Ltd in the sum of $3.5 million plus GST, subject to its consideration of submissions received under s 223 of the Local Government Act 1989 (“the Act”).

3. As a consequence of Item 1 and 2 (above), the Council resolves not to actively market the site for sale to potential solar plant operators/investors.

4. In accordance with sections 189 and 223 of the Act public notice be given in the Border Mail of the intention to sell the site to Wodonga Solar Pty Ltd for a purchase price of $3.5 million.

5. Prior to the council issuing a public notice of its intention to sell the land to Wodonga Solar Power Pty Ltd, the Chief Executive Officer be authorised to negotiate and to reach general agreement (via a heads of agreement) on the following terms and conditions, to be included within the public notice and sales Contract:

   a) The sale price to be $3.5 million excluding GST.
   b) The Contract of Sale to be concluded and signed within 60 days of the conclusion of the section 223 process.
   c) Settlement is due within 90 days of signing the Contract of Sale.

6. The public notice shall stipulate that persons may make a submission on the proposed sale in accordance with section 223 of the Act and that written submissions be received on or before a date that is at least 28 days after the publication of the notice.
7. The Chief Executive Officer be authorised to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act in relation to this matter.

8. That at the conclusion of the section 223 process:
   a) A special meeting of Council be convened on a date to be determined to hear from any person or persons who request to be heard in support of a section 223 written submission; and
   b) A report on any section 223 submissions received by Council along with a summary of any hearings held, be provided to the next ordinary meeting of Council.

9. The Council resolves that this resolution is not confidential and will be released publicly.

**Division**
A division was called.
Councillors Mitchell, Lowe, Speedie and Watson voted for the motion.
Councillors Mildren and Hall voted against the motion.

**Carried**

Following the section 223 process as set out above, and at its meeting held on 29 June 2020, the Council resolved as follows:

That:

1. Having considered the submission received, the Council resolves to enter into a Contract of Sale with Wodonga Solar Power Pty Ltd to sell the land on the corner of Tom Tanners Road and Eames Road, and 226 Lady Franklin Road, Barnawartha North, Victoria 3691, which is Part Lot C on PS726961S and Crown Allotment 3B on TP709965S in the sum of $3.5 million plus GST;

2. The Chief Executive Officer be authorised to undertake the administrative procedures necessary to enable and conclude the sale; and

3. The submitter be advised of Council’s decision and the reasons for it as explained in this report.

**Motion**

Crs John Watson / Danny Lowe

That the recommendation be adopted.

**Division**

A division was called.
Councillors Mitchell, Bennett, Speedie, Lowe and Watson voted for the motion. Councillors Hall and Mildren voted against the motion.

Carried

In terms of the resolutions of the Council, officers prepared and presented the draft Contract of Sale to Wodonga Solar Power Pty Ltd, anticipating a short turnaround time and the subsequent payment of the deposit.

During this time, a number of pieces of correspondence to and from Wodonga Solar Power Pty Ltd was exchanged, culminating in an emailed request from the Chief Executive Officer of Wodonga Solar Power Pty Ltd, generally seeking the following:

- An extension to the negotiating period by 6 months if a Grid Connection Agreement is signed, or to expire 30 days after the date of the Grid Connection Agreement; and

- A rent (lease payment) suspension period of 6 months to commence on the date of signing a new Heads of Agreement.

The email provides some motivation why this request was made, including the current restrictions brought about by COVID-19, a forced re-design of the plant to include possible battery storage options, and operational challenges in securing a Grid Connection Agreement.

As per the resolution of the Council, the signed Heads of Agreement included a clause which effectively sets out that the parties must negotiate and concluded the Contract of Sale within 60 days of the Council resolving to sell the land – being 28 August 2020. If this has not been complied with, either party may terminate the Heads of Agreement. The sales process then effectively ceases.

From the recent correspondence and the request received from Wodonga Solar Power Pty Ltd, it would appear as if they do not wish to exercise this (termination) option.

Also, the correspondence undertakes that Wodonga Solar Power Pty Ltd will have met their outstanding lease obligations by 31 August 2020. At the time of preparing this report, this had not been done.

Council Plan

<table>
<thead>
<tr>
<th>Strategic objective</th>
<th>Strategy areas</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advance our position as a leading regional city, fostering opportunities for development and jobs, and building a destination that offers a variety of experiences, recognising our rich and diverse history and culture.</td>
<td>Business and investment</td>
<td>Continue to attract new and diverse industry to Logic Wodonga</td>
</tr>
</tbody>
</table>
Council policy / strategy implications

There are no council policy or strategy implications associated with this report.

Risk management implications

There are a number of risks which have been identified.

<table>
<thead>
<tr>
<th>Risk description</th>
<th>C’quence</th>
<th>L’hood</th>
<th>Rating</th>
<th>Controls &amp; treatments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council does not resolve to extend the timeframes in the current Heads of Agreement.</td>
<td>3</td>
<td>B</td>
<td>S</td>
<td>The Council elects to place the land on the market and seek a buyer for the land.</td>
</tr>
<tr>
<td>Wodonga Solar Power Pty Ltd is unable to secure the Grid Connection Agreement, either within the timeframes or at all.</td>
<td>3</td>
<td>C</td>
<td>S</td>
<td>Council terminates the Heads of Agreement and places the land on the open market for sale.</td>
</tr>
<tr>
<td>Council and Wodonga Solar Power Pty Ltd unable to agree to terms of the revised Heads of Agreement.</td>
<td>3</td>
<td>C</td>
<td>S</td>
<td>Council terminates the Heads of Agreement and places the land on the open market for sale.</td>
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</table>

Opportunity description

<table>
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<tr>
<th>C’quence</th>
<th>L’hood</th>
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<th>Controls &amp; treatments</th>
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<tbody>
<tr>
<td>Council does not resolve to extend the timeframes in the current Heads of Agreement.</td>
<td>2</td>
<td>B</td>
<td>H</td>
</tr>
</tbody>
</table>

Financial implications

There are no financial implications directly associated with this report.

It is however true that the current situation does not see the council realise the proposed sale deposit ($350,000) and full settlement during the current financial year.

If the request for an extension to the Heads of Agreement is agreed to by the Council, it is likely that the proceeds of the sale would be realised during the 2021/2022 financial year.

Environmental implications

There are no environmental implications associated with this report.

Sustainability implications

There are no sustainability implications associated with this report.

Social / cultural implications

There are no social or cultural implications associated with this report.
Legislative implications

There are no legislative implications associated with this report.

Community engagement and internal consultation

No immediate community engagement or internal consultation is envisaged at this time.

Options for consideration

There are a number of options available for consideration.

Option 1 – Do nothing

This option would see no change to the status quo of the proposed sale of the land, with no agreement being reached on the draft Contract of Sale and no progress being made on the payment of the deposit or the settlement date being determined.

This would still allow either party to terminate the Heads of Agreement at any time post 28 August 2020. Under this option, the sale thus largely remains in limbo until such time as Wodonga Solar Power Pty Ltd progresses and finalises their Grid Connection Agreement and sign the Contract of Sale. The timeframes remain open-ended.

This option also sees the current lease remain in place with all its conditions and obligations upon the Tenant.

Option 2 – Accept the request for an extension to the Heads of Agreement

This option sees a new Heads of Agreement being negotiated and drawn up and signed which would effectively require the new agreement to allow for the Contract of Sale to be negotiated and signed within 6 months of the Heads of Agreement being signed, or within 30 days of the a Grid Connection Agreement being finalised and signed.

This option also suspends the lease payments for 6 months after signing a new Heads of Agreement.

This is not a recommended option as it delays the finalisation of the Contract of Sale and also alters the conditions upon which the original lease was agreed to and concluded – being lease payments to be made monthly, in advance and on the 1st day of each month.

Should this option be preferred, and with a change in the Heads of Agreement, it would be recommended that in accordance with sections 189 and 223 of the Local Government Act, 1989, a public notification process recommences, setting out the changed conditions of the proposed sale.
Option 3 – Reject the request for an extension to the Heads of Agreement

This option sees the Council reject the request for a new Heads of Agreement.

By rejecting the request for an extension to the Heads of Agreement, the Council effectively determines and resolves to terminate the current Heads of Agreement.

In this instance, the lease remains in place and in force.

The council is able to place the land for sale on the open market and to do this, it is proposed that this be done in accordance with council’s recently adopted Land Divestment Policy.

This option allows Wodonga Solar Power Pty Ltd and others to submit an offer to purchase the land.

Option 4 – Agree to an extension to the Heads of Agreement with a First Right of Refusal clause

This option is a combination of Options 2 and 3, and sees an amended Heads of Agreement put in place which would see the Council agree to an extension with the proviso that the land parcels be placed on the open market and that if a purchase bid were made equal to or better than the already-accepted offer, Wodonga Solar Power Pty Ltd would be offered a First Right of Refusal to either meet the new bid, or increase their financial offer, or conclude the Contract of Sale within say 48 hours of having been advised of the new bid.

This option would seem to place the Council in a good position in that the land parcels can be placed on the market for sale, it would have a Heads of Agreement in place and a lease still attracting lease payments.

It is however possible that this would not be an acceptable agreement with Wodonga Solar Power Pty Ltd.

Conclusion

During the latter half of December 2019, Wodonga Solar Power Pty Ltd made a strong bid for the purchase of the land parcels under consideration. To accommodate their revised offer, the Council re-considered an increased purchase offer at a Special Council meeting held on 20 December 2019.

The land valuations undertaken by council and Wodonga Solar Power Pty Ltd were, at the time, significantly incongruous and following a valuer’s conference, numerous rounds of negotiations and a final offer, the Council agreed to sell the land for $3.5 million, which was substantially above the outcome of the valuer’s conference.
A period of negotiation followed which culminated in a Heads of Agreement being signed, the section 189 and 223 process being undertaken and the Council resolving to sell the land to Wodonga Solar Power Pty Ltd at its meeting held on 29 June 2020.

With a signed Heads of Agreement in place, a draft Contract of Sale was presented to Wodonga Solar Power Pty Ltd, which, reflecting the terms and conditions set out within the Heads of Agreement, would ordinarily be executed in relatively short order.

However in this instance, this did not occur and following a range of discussions and online meetings, a request to extend the timeframes set out within the Heads of Agreement was received.

Should the Council resolve to continue discussions and negotiations with Wodonga Solar Power Pty Ltd with a view to extend the timeframes within a Heads of Agreement, it is recommended that any changes to the signed Heads of Agreement, effectively new conditions under which the land parcel are to be sold, should be subject to a section 189 and 223 process and that the public be provided the opportunity to make submissions.

Further, should the Council resolve to continue discussions and negotiations with Wodonga Solar Power Pty Ltd, it is recommended that a new valuation of the land be undertaken to meet the requirements of section 189 2(b) of the Local Government Act, 1989.

Given that the offer made in December 2019 was above the land value as determined following a valuer’s conference, it is also proposed that the land not be sold for any less than as resolved by the Council at its December 20, 2019 meeting.

In the event that the Council resolves to formally terminate the current Heads of Agreement with Wodonga Solar Power Pty Ltd and commence a sales process for the land parcels, it is recommended that the land be sold in accordance with Council’s Property Divestment Policy, adopted at the Council meeting held on 29 June 2020, and that any progress in this matter be reported to a future Council meeting.

Attachments
Nil

Tabled papers
Nil

Declaration of conflict of interests
Under section 80C of the Local Government Act 1989 officers providing advice to the council must disclose any interests, including the type of interest.
Director Planning and Infrastructure - Leon Schultz
In providing this advice, I have no interests to disclose in this report.

Director Planning and Infrastructure - Leon Schultz
In providing this advice as the report author, I have no interests to disclose in this report.

**Recommendation**

It is recommended that:

1. Council formally terminate the Heads of Agreement with Wodonga Solar Power Pty Ltd;

2. That the land parcels identified as the land on the corner of Tom Tanners Road and Eames Road, and 226 Lady Franklin Road, Barnawartha North, Victoria 3691, which is Part Lot C on PS726961S and Crown Allotment 3B on TP709965S be placed on the open market for sale;

3. The land described above be sold in accordance with Council’s Property Divestment Policy; and

4. The Chief Executive Officer be authorised to undertake all administrative processes to terminate the Heads of Agreement and to commence the new sales process.
Clause 23 of the Council’s Meeting Procedure Local Law (no. 1 of 2019) states:

23.1 The purpose of general business is to provide councillors with an opportunity to provide an update on their duties and meetings attended and to raise matters such as:

   a) A note of thanks or congratulations
   b) Advise of attendance at event / meeting
   c) Recognition
   d) Tributes

23.2 A General Business item is for information only. Matters requiring a council resolution should be raised under urgent business.
Clause 24 of the Council’s *Meeting Procedure Local Law* (no. 1 of 2019) states:

If the agenda for an Ordinary meeting makes provision for urgent business, business cannot be admitted as urgent business other than by resolution of Council and only then if it:

a) relates to or arises out of a matter which has arisen since distribution of the agenda; or

b) cannot safely or conveniently be deferred until the next Ordinary meeting or involves a matter of urgent community concern.
Clause 24 of the Council's *Meeting Procedure Local Law* (no. 1 of 2019) states:

If the agenda for an Ordinary meeting makes provision for urgent business, business cannot be admitted as urgent business other than by resolution of Council and only then if it:

a) relates to or arises out of a matter which has arisen since distribution of the agenda; or

b) cannot safely or conveniently be deferred until the next Ordinary meeting or involves a matter of urgent community concern.

A confidential urgent business item also needs to stipulate the reason for the matter being considered as confidential in accordance with section 89 (2) and section 89 (3) of the *Local Government Act 1989.*
• Chairperson to close the meeting.

• Next scheduled ordinary meeting of council: 9am on Monday, September 21, 2020