



# COUNCIL AGENDA

## **Special Council Meeting**

Notice is hereby given pursuant to the provisions of the Local Government Act, 1999, that the next Meeting of Unley City Council will be held in the Council Chambers, 181 Unley Road Unley on

***Monday 08 July 2019 7.00pm***

for the purpose of considering the items included on the Agenda.

A handwritten signature in black ink, appearing to read "B. J. King".

**Acting Chief Executive Officer**

## **OUR VISION 2033**

Our City is recognised for its vibrant community spirit, quality lifestyle choices, diversity, business strength and innovative leadership.

## **COUNCIL IS COMMITTED TO**

- Ethical, open honest behaviours
- Efficient and effective practices
- Building partnerships
- Fostering an empowered, productive culture – “A Culture of Delivery”
- Encouraging innovation – “A Willingness to Experiment and Learn”

## **ACKNOWLEDGEMENT**

We would like to acknowledge this land that we meet on today is the traditional lands for the Kaurna people and that we respect their spiritual relationship with their country.

We also acknowledge the Kaurna people as the traditional custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kaurna people today.

## **PRAYER AND SERVICE ACKNOWLEDGEMENT**

We pray for wisdom to provide good governance for the City of Unley in the service of our community.

Members will stand in silence in memory of those who have made the Supreme Sacrifice in the service of their country, at sea, on land and in the air.

Lest We Forget.

## **WELCOME**

## **ORDER OF BUSINESS**

<b>ITEM</b>	<b>PAGE NO</b>
<b>1. ADMINISTRATIVE MATTERS</b>	
<b>1.1 APOLOGIES</b>	
Nil	
<b>1.2 CONFLICT OF INTEREST</b>	
<i>Members to advise if they have any material, actual or perceived conflict of interest in any Items in this Agenda and a Conflict of Interest Disclosure Form (attached) is to be submitted.</i>	
<b>2. REPORTS OF OFFICERS</b>	
2.1 S270 Review of Council Decision- Young Street Children's Crossing	5
2.2 Recommendation to vary Council Decision C0031/19 (24 June 2019) – Declaration of General Rates	44

### **NEXT MEETING**

Monday 22 July 2019 - 7.00pm

Council Chambers, 181 Unley Road Unley





## DECISION REPORT

<b>REPORT TITLE:</b>	S270 REVIEW OF COUNCIL DECISION - YOUNG STREET CHILDREN'S CROSSING
<b>ITEM NUMBER:</b>	2.1
<b>DATE OF MEETING:</b>	08 JULY 2019
<b>AUTHOR:</b>	DALLIS VON WALD
<b>JOB TITLE:</b>	PRINCIPAL GOVERNANCE OFFICER
<b>ATTACHMENTS:</b>	<ol style="list-style-type: none"><li>1. KELLEDYJONES LAWYERS - FINAL REPORT - CITY OF UNLEY CHILDREN'S CROSSING 270 REVIEW</li><li>2. INDEX OF APPENDICES - KELLEDYJONES LAWYERS - FINAL REPORT</li><li>3. KELLEDYJONES LAWYERS - FINAL REPORT - APPENDICES (UNDER SEPARATE COVER)</li></ol>

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### 1. **EXECUTIVE SUMMARY**

This report presents the *Final Report- City of Unley Children's Crossing- Section 270 Review*, prepared by KelledyJones Lawyers, in response to applications from two residents requesting a review Council's decision in relation to the Young Street Children's Crossing, Parkside (Council Decision: 1450, 29 April 2019).

The Final Report found that Council did not act unlawfully or unreasonably in resolving to install the Crossing at the location adjacent to 22-24 Young Street, Parkside.

The Review did not find that Council has failed to take into account relevant considerations in making its decision and has, at all times, sought to work constructively with the First and Second Applicants to reduce the impact the Crossing may have.

In addition, KelledyJones Lawyers have recommended that further consideration be given as to whether a reduction to the south-western protruberance length of the Crossing can be safely accommodated in the design of the Crossing, to allow for an additional permit park.

## **2. RECOMMENDATION**

That:

1. The KelledyJones *“Final Report- City of Unley Children’s Crossing-Section 270 Review”* as set out in Attachment 1 to this report (Item 2.1, Council Meeting, 8 July 2019) be received.
  2. Having regard to the Findings of the *“Final Report- City of Unley Children’s Crossing-Section 270 Review”*, it be acknowledged that the actions of Administration which informed the original decision of Council were appropriate.
  3. *The matter is for Council to determine – options are provided at Section 6 of this Report.*
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## **3. RELEVANT CORE STRATEGIES/POLICIES**

4. Civic Leadership
- 4.3 Our business systems are effective and transparent.

## **4. BACKGROUND**

On 9 May 2019, the Chief Executive Officer, Peter Tsokas, received (in accordance with section 270 of the *Local Government Act 1999*) a request for an internal review of Council’s decision regarding the proposed children’s crossing at Young Street, Parkside (Council Decision: 1450, 29 April 2019) from the First Applicant. On 24 May 2019, Council received a further request for reivev of the same matter from the Second Applicant. For privacy reasons, applicant names are not included in this report and have been redacted in the KelledyJones Lawyers Final Report.

In accordance with Council’s Procedure for Internal Review of a Council Decision (the Internal Review Procedure), as the Chief Executive Officer’s delegate, the Principal Governance Officer made an initial assessment of the applications, and due to the nature of the decision to be reviewed, determined that the matters be referred to an independent third party for review. As the applications were based upon similar contentions, the matters were joined for efficiencies.

KelledyJones Lawyers (KJL) were appointed to conduct the review.

The First Applicant requested a review based upon the following considerations:

- safety of the children, noting that the Koala Crossing would be adjacent to dwellings with 1.8-metre-high fences;
- impact of the loss of parking for both residents, as well as parents dropping their children to school;
- requirement to remove street trees; and
- requirement to relocate a fire plug, currently located adjacent to 22 Young Street;

With a further submission that Council did not undertake consultation with the local community in relation to the:

- type of crossing to be installed (i.e. Emu or Koala); or
- requirement to remove street trees.

The Second Applicant requested a review based upon the following considerations:

- actual location that pedestrians cross Young Street to access Parkside Primary School;
- impact of the loss of parking for Young Street residents;
- requirement to remove street trees; and
- the accuracy of the pedestrian data obtained by the Council, and its reliance on the same.

Both applicants were contacted by KJL to provide submissions as part of the investigation process. The draft report was provided to all parties for comment and review by close of business 28 June 2019. A further submission was provided by the First and Second Applicants prior to the close of submissions. KJL took into account all of the submissions made and subsequently provided the final report for Council's consideration.

A full copy of the *Final Report- City of Unley Children's Crossing-Section 270 Review* prepared by KJL is provided as Attachment 1 with report Appendices as Attachment 2.

*Attachment 1*

*Attachment 2*

As the decision being reviewed was made by formal resolution of Council; the Internal Review Procedure requires that it be returned to Council for reconsideration.

### **Revocation or Amendment of a previous decision of Council**

Section 21 of the *Local Government (Procedures at Meetings) Regulations 2013* provides:

**21 – Chief Executive Officer may submit a report recommending revocation or amendment of council decision**

- (1) The chief executive officer may submit a report to the council recommending the revocation or amendment of a resolution passed since the last general election of the council.
- (2) The chief executive officer must ensure that the report is placed on the agenda for the meeting at which the report is to be considered.

This provision enables a recommendation to revoke/amend a previous decision of council to be placed on the Council agenda by the CEO.

Whilst ordinarily a report prepared in accordance with Regulation 21 would recommend the preferred action to be taken by Council.

In this instance, given the nature of the matter, it is recommended that Council give due consideration to the KJL report and then determine its preferred course of action, which may include confirmation, revocation or amendment of the previous decision of Council.

The options available to Council are to reconfirm Council Resolution 1450/2019 from the 29 April 2019 Council meeting, or revoke/amend the decision, having considered the *Final Report- City of Unley Children's Crossing-Section 270 Review* prepared by KJL.

## **5. DISCUSSION**

Council's Internal Review Procedure provides that the role of KJL, as the reviewer, was to:

- i. Explain the procedure to the applicant and explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application for review;
- ii. Acknowledge receipt of the application;
- iii. Ensure that the application is recorded on the Internal Review Register;
- iv. Outline the timeframes involved and the action to be taken in the first instance;
- v. Undertake a preliminary investigation to determine what (if any) actions have already been taken to try to resolve the matter;
- vi. Keep the applicant informed of progress;
- vii. Ensure that adequate records of the review process and findings are produced and maintained;
- viii. Provide a report(s) to Council at intervals through the review process and a final report at the conclusion of the process.

In undertaking the internal review, KJL reviewed the decision in question to ensure that the original decision making process had regard to the following:

- i. The decision maker had the power to make the decision;
- ii. All matters relevant to the decision were considered and were not influenced by extraneous factors;
- iii. The process was free from bias;
- iv. The decision maker did not exercise a discretion or power in bad faith or for improper purpose;
- v. The decision was made on facts and evidence;
- vi. The decision was reasonable.
- vii. Any relevant legislation, policies or procedures were considered;
- viii. The decision maker did not exercise a discretionary power at the direction of another person.

In consideration of the requirements under the Internal Review Procedure, and the submissions made by all parties, KJL drew the following conclusions and made the following recommendations in relation to the review of Council's decision to construct the Children's Crossing at Young Street, Parkside:

- 13.1 *Taking the above into account, we find that the Council did not act unlawfully or unreasonably in resolving to install the Crossing, at the location adjacent to 22-24 Young Street.*
- 13.2 *Further, while we understand the First and Second Applicants oppose the type and location of the Crossing, we **do not find** that the Council has failed to take into account relevant considerations in making its decision and has, at all times, sought to work constructively with the First and Second Applicants to reduce the impact that the Crossing may have.*
- 13.3 *We recommend the Council give further consideration as to whether a reduction to the south-western protuberance length of the Crossing, to accommodate, an additional permit park, can be safely accommodated in the design.*
- 13.4 *We recommend that in considering whether to make this Report publicly available, that the Council resolves to make publicly available a redacted copy of the Report and Appendices.*
- 13.5 *Irrespective of the manner in which the Council resolves to determine this matter, it is acknowledged that the First and Second Applicants have recourse to the Ombudsman if they remain dissatisfied.*

It is noted that the version of the KJL Final Report provided as an Attachment to this Report (included the Appendices) is a redacted copy, consistent with the recommendation at paragraph 13.4.

Funding for this project has been received via the State Government's "Fund My Neighbourhood" initiative. The Funding Agreement initial due date was 30 June 2019. Due to delays with delivery of the project, the due date has been extended by the Department of Premier and Cabinet to 31 August 2019. The Administration has been advised that there will be no further extensions to this date, which means that unspent funds will need to be returned.

## **6. ANALYSIS OF OPTIONS**

### Option 1 –

1. The KelledyJones "Final Report – City of Unley Children's Crossing-Section 270 Review" as set out in Attachment 1 to this report (Item 2.1, Council Meeting, 8 July 2019) be received.
2. Having regard to the Findings of the "Final Report – City of Unley Children's Crossing-Section 270 Review", it be acknowledged that the actions of Administration which informed the original decision of Council were appropriate.

3. In response to the findings set out in the “Final Report – City of Unley Children’s Crossing-Section 270 Review”, Part 2 of the previous Council Decision: 1450, 29 April 2019, to install a Children’s Crossing along Young Street, Parkside as outlined in Attachment 2 to Item 1450, be confirmed.
4. In response to the recommendation at paragraph 13.3 in the “Final Report – City of Unley Children’s Crossing-Section 270 Review”, and as part of the installation of the Children’s Crossing along Young Street, Parkside, staff be authorised to consider and determine whether a reduction to the south-western protruberance length of the Crossing, to accommodate an additional permit park, can be safely accommodated in the design.

This option provides for Council to confirm its previous decision and proceed with the installation of the Children’s Crossing on Young Street, Parkside. The Final report advises that Council did not act unlawfully or unreasonably in resolving to install the Children’s Crossing, nor did it fail to take into account relevant considerations in making its decision, which supports the option to confirm the previous decision of Council in this matter.

This option also adopts the Recommendation made by KJL to consider whether the south-western protruberance length can be reduced to accommodate an additional permit park.

This option will allow for the project to proceed in a timeframe that is unlikely to compromise external funding received. This option does not make a change to other parts of the original Council resolution relating to the installation of a Children’s Crossing on Robsart Street, Parkside or installation of Kerb Extensions along Castle Street, Parkside, at its intersection with Robsart Street

#### Option 2 –

1. The KelladyJones “Final Report – City of Unley Children’s Crossing-Section 270 Review” as set out in Attachment 1 to this report (Item 2.1, Council Meeting, 8 July 2019) be received.
2. Having regard to the Findings of the “Final Report – City of Unley Children’s Crossing-Section 270 Review”, it be acknowledged that the actions of Administration which informed the original decision of Council were appropriate.
3. In response to the findings set out in the “Final Report – City of Unley Children’s Crossing-Section 270 Review”, Part 2 of the previous Council Decision: 1450, 29 April 2019, to install a Children’s Crossing along Young Street, Parkside as outlined in Attachment 2 to Item 1450, be reversed and no further action be taken.

This option provides for Council to reverse its previous decision to install a Children's Crossing on Young Street, Parkside. This decision does not make a change to other parts of the Council resolution relating to the installation of a Children's Crossing on Robsart Street, Parkside or installation of Kerb Extensions along Castle Street, Parkside, at its intersection with Robsart Street.

Any unspent funding as a result of the reduced scope of works may need to be returned to the Department of Premier and Cabinet.

**7. RECOMMENDED OPTION**

The matter is for Council to determine.

**8. REPORT CONSULTATION**

Nil

**9. REPORT AUTHORISERS**

<b>Name</b>	<b>Title</b>
Tami Norman	Executive Manager, Office of the CEO
Nicola Tinning	Acting Chief Executive Officer







**CITY OF UNLEY**  
**CHILDREN'S CROSSING**  
**SECTION 270 REVIEW**

CONFIDENTIAL

## CITY OF UNLEY

### CHILDREN'S CROSSING

#### Review pursuant to section 270 of the *Local Government Act 1999*

#### 1. INTRODUCTION

- 1.1 By email dated Thursday 9 May 2019, [REDACTED] ('the First Applicants'), made application with the City of Unley ('the Council') for a review under section 270 of the *Local Government Act 1999* ('the Act'). A copy of the application is **Appendix 1**.
- 1.2 Subsequently, by application dated Friday 24 May 2019, [REDACTED] ('the Second Applicants'), made application with the Council for a review under section 270 of the Act. A copy of this application is **Appendix 2**.
- 1.3 Briefly, the First Applicants are the registered owners in fee simple of the land comprised in [REDACTED].
- 1.4 The Second Applicants are the registered owners in fee simple of the land comprised in [REDACTED].
- 1.5 On 29 April 2019, the Council's governing body had resolved, amongst other things, to install a 'Koala Crossing' on the roadway between 22 and 24 Young Street, ('the Crossing'), [REDACTED].
- 1.6 The Crossing is proposed to, predominantly, service the needs of the school community of the local Parkside Primary School ('the School') and, in particular, to address safe access and egress to/from the School grounds.
- 1.7 The First and Second Applicants are of the view that there are alternative, preferable, locations for the Crossing to be installed, locations that would, at least arguably, result in fewer impacts for residents of Young Street.
- 1.8 Accordingly, the First and Second Respondents made application for a review of the decision of the Council to determine to install the Crossing on the roadway adjacent to 22-24 Young Street.
- 1.9 In determining to install the Crossing at the stated location, the First Applicants assert that the Council failed to take into consideration, or failed to adequately take into consideration:
  - 1.9.1 the safety of the children using the Crossing, noting that it was proposed to be installed adjacent to dwellings with 1.8-metre-high fences;
  - 1.9.2 the impact of the loss of parking for both residents, as well as parents, when dropping off or picking up children attending the School;
  - 1.9.3 the requirement to remove street trees to accommodate the Crossing and a failure to undertake public consultation in relation to the same;

- 1.9.4 the requirement to relocate a fire plug, currently situated adjacent to 22 Young Street; and
  - 1.9.5 the requirement to undertake public consultation with the local community in relation to the type of crossing to be installed, (i.e., whether it was to be of an 'Emu' or 'Koala' design).
  - 1.10 The Second Applicants assert that, in determining to install the Crossing at the proposed location the Council failed to take into consideration, or failed to adequately take into consideration:
    - 1.10.1 the actual location that pedestrians cross Young Street to access the School;
    - 1.10.2 the impact of the loss of parking for residents of Young Street; and
    - 1.10.3 the fact that the installation of the Crossing will result in the removal of a number of street trees.
  - 1.11 Taken together, it may, reasonably, be construed that both the First and Second Applicants contend that in determining to install the Crossing at the proposed location on Young Street, the Council has not considered all relevant matters. Accordingly, that it was not acting as an informed and responsible decision maker in the interests of its community and, hence, the decision is contrary to sections 6 and 8 of the Act.
  - 1.12 Insofar as the two (2) applications deal with the same decision and some common associated issues, in the interest of accountability, as a public authority responsible for the expenditure of public funds, it was determined that they can (and should) be considered together in the course of this review, and subject of this one Report.
  - 1.13 With respect to the issue of confidentiality, at no stage did the First Applicant's indicate they wished their application for review to be dealt with on a confidential basis.
  - 1.14 Indeed, the Second Applicant's confirmed, prior to receipt of the draft Report, they had been advised by the First Applicant's they had submitted an application for review, and the First and Second Applicant's made a joint deputation to the Council at its meeting of 29 April 2019 in relation to the Crossing.
  - 1.15 The draft Report was provided to no other third party.
  - 1.16 However, for the avoidance of doubt, the First Applicants having now raised this issue as part of their additional submission, we recommend that if the Council determines to make the Report public, that the Council resolves to make publicly available a redacted copy of the Report and Appendices.
- 2. THE SECTION 270 REVIEW PROCESS**
- 2.1 To facilitate the process, the Council engaged KelledyJones Lawyers ('KJL'), to:
    - 2.1.1 undertake an independent, 'arms-length' review of all relevant information available to the Council at the time of the decision; and

- 2.1.2 having regard to the concerns raised by the Applicants, to review the decision-making processes and prepare a report for the consideration of the Council.
- 2.2 For the avoidance of doubt, reference to 'the Council' in this report is a comprehensive term and is to be read, as necessary, as encompassing the governing body, employees of the Council and the corporate entity.
- 2.3 On 17 May 2019, KJL sent a letter to the First Applicants to advise of its engagement and to invite them to provide any further information they wished to be considered as part of the review.
- 2.4 By email dated 28 May 2019, the First Applicants provided a further submission. A copy of this further submission is **Appendix 3**.
- 2.5 By way of this further submission, the First Applicants contend that:
- 2.5.1 the 'Parkside Primary School Pedestrian Safety Upgrades' documentation distributed by the Council on 23 August 2018, failed to outline the negative impacts arising from the installation of the Crossing and, in their view, *'had all the negative impacts been included (like all the potential benefits were) it is clear a greater number of respondents would have opposed the Koala crossing'*;
- 2.5.2 *'had the Councillors been aware the community consultation process was flawed, we expect that Councillors would have recognised they could not approve the installation of the Children's Crossing on Young Street, Parkside'*;
- 2.5.3 it is not *'reasonable for Council to locate the Children's Crossing adjacent to the only property without off-street carparking when there are other proven suitable locations, including adjacent to 30/31 Young Street, Parkside'*;
- 2.5.4 the Council appears to *'have spent little effort designing a Children's Crossing of a size that minimises the impact on residents'*;
- 2.5.5 the proposed parking restrictions are not reasonable, in that the design *'shows the parking restrictions 20m before and 10m after the Crossing will be in place from 8:00am to 4:00pm when there are other schools in the Unley Council area where the restrictions are only in place during peak periods'*;
- 2.5.6 representatives of the School had the benefit of hearing a deputation made by the First Applicants at the Council meeting of 29 April 2019 'which allowed them to structure their argument against points made in our deputation while we had no right of reply';
- 2.5.7 the deputation given by the representatives of the School *'pressured Councillors to approve the Children's Crossing on Young Street as they argued that this project has been going on for over five years'*; and



- 2.5.8 despite it being four (4) weeks since the Council's decision to proceed with the Crossing, *'residents have not been advised the installation is proceeding nor provided a copy of the final design, therefore preventing other residents from lodging a Section 270 review of the Local Government Act 1999 if they are (as we were) surprised by elements of the final design due to the variance from what was provided to residents in the consultation period'*;
- 2.6 KJL sent a letter to the Second Applicants on 28 May 2019, by way of email, to advise of its engagement and to invite them to provide any further information they wished to be considered as part of the review. There was, and is, no requirement for the Council to have advised the Applicant's of the same.
- 2.7 The Second Applicants advise the email was caught in the 'junk' file, and once discovered, they contacted KJL by telephone on Friday 14 June 2019.
- 2.8 The Second Applicant's iterated the matters contained in their application for review and confirmed that they wished for this information be taken into account as part of the review (**Appendix 2**).
- 2.9 The relevant 'test' that has been applied in this review is whether, based on all of the available information, the decision made by the Council was:
- 2.9.1 a reasonable decision to make in the circumstances;
  - 2.9.2 a decision open to be made on the facts before it;
  - 2.9.3 a decision made in the public interest; and
  - 2.9.4 on the basis of a decision-making process that was not flawed in any manner.
- 2.10 The First and Second Applicants have submitted, amongst other things, that the decision of the Council, particularly with regards to the location of the Crossing, [REDACTED].
- 2.11 It is important to note that decisions made by the Council may not (and indeed are unlikely) to ever be decisions that all residents, ratepayers and electors in the Council area may agree upon. In fact, councils are often required to make decisions that a majority, if not all, of the ratepayers, electors and residents may not favour (for example, an increase in rates).
- 2.12 However, that does not mean that the decision made by the Council is not a decision available to it, or a reasonable decision to make in the circumstances, or that it is an otherwise invalid decision.
- 2.13 The standard of proof that has been applied in this review is on the balance of probabilities. In determining whether that standard has been met, in accordance with the High Court decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, KJL has considered the nature of the allegations made and the consequence if they were to be upheld.
- 2.14 The review process has been guided by the Council's *Procedure for Internal Review of a Council Decisions*, adopted in accordance with section 270 of the Act, as well as

principles of procedural fairness. A copy of the *Procedure for Internal Review of a Council Decisions* is **Appendix 4**.

- 2.15 The objective of this Report is to assist the Council in its review process.
- 2.16 This Report sets out:
- 2.16.1 the background facts which have given rise to the applications for review;
  - 2.16.2 a summary of relevant information obtained during the course of the review;
  - 2.16.3 the findings of KJL in relation to the issues raised by the First and Second Applicants; and
  - 2.16.4 the options now available to the Council.
- 2.17 KJL **recommended** that, consistent with principles of procedural fairness, the First and Second Applicants be provided with a copy of the draft Report and afforded an opportunity to make any further submission, limited to the facts as stated, the conclusions drawn and the recommendations made, prior to finalisation of the Report.
- 2.18 By way of email dated Friday 28 June 2019, the Second Applicants provided a further submission. A copy of this submission is **Appendix 33**.
- 2.19 The Second Applicant's wished to emphasise that while they are not opposed in principle to the Crossing on Young Street, they remain *'surprised and disappointed by the processes that have been used to determine the location of the crossing.'*
- 2.20 By way of email dated Friday 28 June 2019, the First Applicant's provided a further submission, which was subsequently amended due to formatting issues and re-sent to KJL on Saturday 29 June 2019. A copy of this submission is **Appendix 34**.
- 2.21 For the avoidance of doubt, KJL confirms the further submissions of the First and Second Applicant's have been taken into account in the finalisation of this review.

### 3. BACKGROUND

- 3.1 In February 2018, a local resident and parent of a student at the School, submitted an application to the State Government's *'Fund My Neighbourhood'* program, for grant funding for the Council to install pedestrian safety upgrades for the School.
- 3.2 In the course of the application process, the parent identified Young Street as being a desirable location for a crossing. A copy of the Application is **Appendix 5**.
- 3.3 The Application was successful and the Council was provided with a \$150,000 grant from the State Government for the purpose of installing children's crossings for the benefit of the School community.
- 3.4 The funding was allocated to the Council for the 2018/2019 financial year. KJL understands that the funding is required to be applied to the proposal by 30 June 2019.
- 3.5 Following notification of the successful grant application, the Council's Transport and Traffic Team undertook a preliminary study of the area and produced the *'Local Area Traffic Management Plan- Zone 2- Parkside'* ('the Plan').

- 3.6 The Plan focuses on parking, walking and cycling and traffic management and safety within the area bounded by Greenhill Road, Glen Osmond Road, Fullarton Road, Wattle Street and Unley Road in the Council area.
- 3.7 Importantly and relevant to this Report, the Plan identified that:
- 3.7.1 Young Street experiences high volumes of morning traffic '*due to school and potentially rat running*' (page 10);
  - 3.7.2 the streets around the School experiences high volumes of morning traffic and that '*an improved school crossing and measures at intersections will limit negative impacts of this*' (page 10);
  - 3.7.3 access and safety improvements in the vicinity of the School needed to be considered for a potential future project (page 15); and
  - 3.7.4 an improved pedestrian crossing was required on Young Street (page 23).
- 3.8 The Plan also specifically identified that:

*Council has received DPTI funding to improve crossing opportunities on Young Street and for pedestrian improvements in the direct vicinity of the school. The project considers traffic management adjacent to Parkside Primary School at a holistic level and will aim to improve the safety of pedestrian movements to and from the school, particularly at key crossing points e.g. Robsart Street near the school entrance, Young Street **near school accesses** and the intersection of Robsart/Castle Streets.*

*This will include installation of a 'flashing light' Koala crossing on Robsart Street, a new crossing installed on Young Street (**Emu or Koala – to be determined and subject to consultation**), and improvements at the intersection of Robsart Street/Castle Street upgraded to create a lower speed environment.*

*However, the initiatives will likely **result in some loss of on-street parking particularly around the new crossing on Young Street**. The local community relies on on-street parking as Parkside residential properties generally do not have ample off-street parking. This may generate **significant opposition by local residents who are affected by the project**. (our emphasis)*

- 3.9 The Plan was the subject of public consultation as set out at page 14, and in accordance with the Council's *Community Engagement & Public Consultation Policy*, prior to it being adopted by the Council on 30 July 2018.
- 3.10 A copy of the Plan is **Appendix 6**.

#### **4. PARKSIDE PRIMARY PEDESTRIAN SAFETY UPGRADES**

- 4.1 On 23 August 2018, the Council sent a letter to residents in the vicinity of the School with the title '*Parkside Primary School Pedestrian Safety Upgrades*', as identified by the First Applicants at paragraph 2.5 above.



- 4.2 In the letter, the Council advised that:
- 4.2.1 *'the project involves the installation of Koala School Crossings on Young Street and Robsart Street'*;
  - 4.2.2 *'a Koala School Crossing incorporates yellow flashing lights to warn motorists of the presence of schoolchildren [sic] and to provide a safe crossing'*;
  - 4.2.3 *'the design of the school crossings will prohibit parking (during school days) 20m prior the crossing and 10m after the crossing to improve the safety of the schoolchildren [sic] by increasing visibility'*; and
  - 4.2.4 the Council was *'looking to install a Koala School Crossing on Young Street near the entrance to the school walkway opposite 22-24 Young Street. The traffic volume on Young Street is 1800 vehicles per day with an average speed of 34.3 km/h with 261 vehicles in the morning peak and a further 199 in the afternoon peak. Currently there are 22% of vehicles exceeding the posted speed limit'*.
- 4.3 The letter enclosed a form seeking feedback on the proposed *'Koala School Crossings and the intersection treatments'* and provided contact details if residents required further information.
- 4.4 Feedback on the proposal was requested to be submitted by 14 September 2018, albeit in small writing at the bottom of the form, the date has been incorrectly referred to on a second occasion as 14 September 2017.
- 4.5 We do not consider that this error had any material impact on the public consultation process, noting the date that the form was distributed and that the correct date was otherwise set out on the form. A copy of the letter and attachment is **Appendix 7**.
- 4.6 The First Applicant's submit that the reference to 1,800 vehicles per day in the letter is in conflict with the Plan, which states at page 31 that the daily traffic volume is 1,640 vehicle per day.
- 4.7 However, the Council has confirmed that it collects traffic volume and speed data as part of an ongoing traffic monitoring program, which includes Young Street, Parkside.
- 4.8 The data quoted in the Plan was collected in November 2016 (1640), being the most current traffic data as at the time of the traffic study for the purposes of the Plan, while the data relied upon for the purposes of the letter was obtained on 17 May 2018.
- 4.9 Accordingly, we do not find that there is any discrepancy in relation to the traffic volumes relied upon by the Council.
- 4.10 Following receipt of the letter from the Council, on 31 August 2018, the First and Second Applicants then met with the Council's Parking and Traffic Advisor.
- 4.11 At that time, the First Applicants state that they were advised *'the location and design [of the proposed crossing on Young Street] was simply a 'concept' and it may not be the final location'*.



- 4.12 This representation was correct, insofar as the Council had not, at that time, completed its public consultation process for the proposal.
- 4.13 On 13 September 2018, the Second Applicants provided a submission to the Council in relation to the proposed School Pedestrian Safety Upgrades. A copy of the Second Applicants' submission is **Appendix 8**.
- 4.14 On 14 September 2018, the First Applicants hand delivered and emailed, a submission to the Council in relation to the proposed School Pedestrian Safety Upgrades. A copy of the First Applicants' submission is **Appendix 9**.
- 4.15 Following completion of the public consultation process on the proposed School Pedestrian Safety Upgrades, support for the project from the residents in the immediate vicinity was demonstrated as follows:

Total number of circulars delivered	408
Total responses received	57
Number of respondents supporting the Young Street crossing	49
Number of respondents against the Young Street crossing	6
Number of respondents supporting the Robsart Street crossing	50
Number of respondents against the Robsart Street crossing	3

- 4.16 As part of the public consultation, the Council also sought the views of the broader community through its online '*Have Your Say*' webpage, and the results received via that forum were as follows:

Total number of responses received	51
Number of respondents supporting the Young Street crossing	45
Number of respondents against the Young Street crossing	6
Number of respondents supporting the Robsart Street crossing	44
Number of respondents against the Robsart Street crossing	4

- 4.17 The Council submits that on the basis that broad community support had been demonstrated for the proposals, Council Administration determined to undertake a pedestrian study in Young and Robsart Streets, for the purposes of determining the most appropriate location for the proposed pedestrian safety upgrades.
- 4.18 The First and Second Applicant's contend that the results from the public consultation process could not be said to have demonstrated '*broad community support*', as the feedback received only constituted a response from 12%-14% of the residents who received a letter.
- 4.19 However, this submission does not take into account the fact that the Council also sought to consult more broadly, via its website, and the responses it did receive were overwhelmingly in support of the project.

- 4.20 Of course, the results of a public consultation process is but one relevant factor to take into account in the decision-making process, and these results have not been relied on by the Council, to the exclusion of all other available information.
- 4.21 Following the conclusion of the public consultation process, pedestrian counts were conducted on 16 October 2018 which identified, amongst other things, that the western gate of the School, (the gate opposite the land owned by the First and Second Applicants), was the most used gate on Young Street for pedestrians to enter and exit the School.
- 4.22 A copy of the pedestrian count data obtained by the Council is **Appendix 10**.
- 4.23 On 6 December 2018, the First Applicants met again with the Council's Parking and Traffic Advisor, together with Councillor Mike Hudson ('Cr Hudson').
- 4.24 The First Applicants submit that during this meeting they were advised that '*the pedestrian study showed the majority of children walked from the west to access the western school gate and crossed in front of 30 Young Street*'.
- 4.25 As a consequence, the First Applicants state that they asked the Council '*to consider 30 Young Street as an alternative location and supplied council with a diagram showing this proposed location*'. A copy of the diagram provided by the First Applicants is **Appendix 11**.
- 4.26 The Council's Parking and Traffic Advisor agreed to investigate obtaining an independent expert report to undertake a safety review and to provide an opinion as to which location was the safest and most suitable for the Crossing to be installed on Young Street.
- 4.27 Additionally, the First Applicants submit that they were also advised by the Council's Parking and Traffic Advisor at this time '*that perhaps the location of 30 Young Street would be too close to the intersection of Young Street and Castle Street*'.
- 4.28 Accordingly, the First Applicants submit they contacted '*a DPTI Senior Program Officer and a DPTI Senior Engineer (Traffic Engineering Standards in the Safety and Service Division)*' and requested information on the minimal clearances for a crossing from the junction with Castle Street.
- 4.29 The First Applicants provided the response they received to the Council by email on 14 January 2019. We note that this email did not contain the original response received by the First Applicants from '*the Senior Engineer*' at DPTI but, rather, reproduced the information they submit that they were provided with.
- 4.30 A copy of the First Applicants' email to the Council on 14 January 2019 is **Appendix 12**.
- 4.31 As part of the First Applicant's further submission, a full copy of the correspondence between the First Applicant's and DPTI has been provided (**Appendix 34**).
- 4.32 On 18 January 2019, via its webpage, the Council distributed a further notice regarding the School Pedestrian Safety Upgrades, advising that as a result of the support shown by both the local and broader community, the Council was proceeding with the detailed design phase of the Koala Crossing on Young and Robsart Streets,

as well as the pedestrian safety protuberances at the intersection of Castle and Robsart Streets. The notification also confirmed the outcome of the public consultation on the project.

- 4.33 A copy of the Council's notice is **Appendix 13**.
- 4.34 The First Applicants then contacted Councillor Kay Anastassiadis ('Cr Anastassiadis'), and on 4 February 2019 an internal meeting was held at the Council between Cr Anastassiadis, Cr Hudson, the Council's General Manager City Development, the Council's Parking and Traffic Advisor and the Council's Manager City Design.
- 4.35 The meeting was to provide an update to both Ward Councillors on the project, the results of the consultation to date, the results of the pedestrian count and how Council Administration was proposing to progress the matter.
- 4.36 Following that meeting, Cr Anastassiadis provided an update by email to the First Applicants, which email iterated the previously stated position that the Council intended to obtain expert advice in relation to, amongst other things, the proposed location of the Crossing. A copy of Cr Anastassiadis' email to the First Applicants is **Appendix 14**.
- 4.37 The Council engaged Tonkin Consulting ('Tonkin') to prepare an independent report regarding a safety assessment of alternative locations for the Crossing in Young Street.
- 4.38 The Tonkin report was provided to the Council on or about 15 March 2019. A copy of the report is **Appendix 15**.
- 4.39 The report confirmed that the option to locate the Crossing adjacent to 22-24 Young Street **was the preferable location**. It further noted that:
- 4.39.1 the Crossing '*should ideally suit the majority of current and potential users*' (emphasis in original);
  - 4.39.2 locating the Crossing at 30 Young Street (as proposed by the First Applicants) '*would primarily serve pedestrians walking to/from the western leg of Young Street and is not well suited for pedestrians walking toward Glen Osmond Road*';
  - 4.39.3 there were additional advantages in locating the Crossing away from 30 Young Street, including having it located further from the junction with Castle Street; and
  - 4.39.4 locating the Crossing at 22-24 Young Street had an '*advantage from a constructability and useability review*', namely that the footpath could potentially be widened behind the Crossing '*to facilitate groups of school children waiting to use the crossing at the end of school*'.
- 4.40 The First and Second Applicants submit that the phrase in the Tonkin Report, as set out at 4.39.2 above, should read '*would primarily serve pedestrians walking to/from the western leg of Young Street and is not well suited for pedestrians walking from Glen Osmond Road*'.



- 4.41 We have received no evidence as part of this review that any person was misled or otherwise unclear in relation to what Tonkin was conveying in the report in this respect.
- 4.42 The First and Second Applicants subsequently, initiated another meeting with the Council on 18 March 2019. The meeting was attended by:
- 4.42.1 both Ward Councillors, Cr Hudson and Cr Anastassiadis;
  - 4.42.2 the Council's General Manager City Development;
  - 4.42.3 the Council's Transport and Traffic Lead; and
  - 4.42.4 residents from 20, 22, 24 and 26 Young Street.
- 4.43 During this meeting, the First Applicants state that the Council was provided with *'results from pedestrian counts undertaken by [REDACTED]* which was inconsistent with the data collected by the Council (**Appendix 10**) and which *'showed many more children entering at the main Eastern gate'*.
- 4.44 This contention is echoed by the Second Applicants who state that they *'presented [their] pedestrian movement data to council officers but there has been no response at all (Appendix 2)*.
- 4.45 Following the meeting, the First and Second Applicants were provided with a copy of the Council's pedestrian count information. A copy of that email is **Appendix 16**.
- 4.46 On 20 March 2019, the School's Principal and Deputy Principal wrote to Cr Hudson and Cr Anastassiadis for the purposes of:
- 4.46.1 expressing their *'deep concern about the safety of the students as they arrive and exit our school each day'*;
  - 4.46.2 advising that they had *'been informed that there are a couple of residents who are opposing the loss of parking space for a very short amount of time a day'* and that, in their view, *'surely the safety and wellbeing of student[s] of Parkside Primary takes precedent over losing carpark space'*; and
  - 4.46.3 expressing their disappointment that the project had been held up, particularly noting that *'the project received the votes it need to go ahead, so therefore it is not acceptable that it is taking so long to be installed'*.
- 4.47 A copy of the School letter to the Councillors is **Appendix 17**.
- 4.48 Both the First and Second Applicants submit that, during the meeting held on 18 March 2019, they were advised that *'three detailed designs would be presented to council'* and that the Council's General Manager City Development, *'recognised the complexity and detriment to affected residents and stated that council staff would make the recommendation that the City of Unley does not proceed with the crossing on Young Street with no caveat'* (emphasis in original) (**Appendix 1**).
- 4.49 However, during a phone call with the Council on 29 March 2019, the First Applicants were advised that the Council Administration would be making a recommendation to the Council that it approve the location of the Crossing at 22-24 Young Street.

- 4.50 The First Applicants contend that this *'change of heart'* evidences *'the misleading information supplied by this department throughout the process'* and notes that the Council's General Manager City Development *'later advised the reason for the change was due to additional information being obtained/provided which was not released to residents.'*
- 4.51 Indeed, by email dated 1 April 2019, the Council's General Manager City Development, wrote to the First Applicants and confirmed that whilst he did state at the meeting that he *'would be recommending to the Council not to proceed with the crossing'*, he also:

*stated on a number of occasions at the meeting that this recommendation was based on the information which had been provided to me at the meeting, the issues discussed and the opposition of the residents to the proposed crossing.*

- 4.52 The First Applicants were subsequently advised that as a consequence of additional information being received, the Council's General Manager City Development would support a recommendation to the Council that it proceed with the implementation of the Crossing at 22-24 Young Street. A copy of the General Manager, City Development's email exchange with the First Applicants is **Appendix 18**.
- 4.53 We pause at this point to note that notwithstanding what the Administration may, or may not, recommend to the Council, the final location of the Crossing, or indeed, even if the Council was to proceed with the installation of the Crossing, was and is, a matter for the consideration of the governing body. It is for the Council to make a decision as to whether to proceed with Crossing and, if so, to determine the final location, based on **all of the information** available to it, in making an informed and responsible decision in the interests of its community.
- 4.54 In this regard, on 17 April 2019, the First and Second Applicants, together, submitted [REDACTED]. The request was granted. A copy of the First and Second Applicants' [REDACTED] is **Appendix 19**.

## 5. COUNCIL MEETING OF 29 APRIL 2019

- [REDACTED] At its meeting of 29 April 2019, prior to the Council's consideration of Agenda item 1450 *'Children's Crossings Adjacent to Parkside Primary School'*, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 5.2 The Council also received a deputation on behalf of the School, from Suzie Sangster, the Principal of the School, Adrianna Kyriacou, the Deputy Principal and from Anthony Behn, in support of the children's crossings and the proposed locations.
- 5.3 KJL is advised that [REDACTED]  
[REDACTED]  
[REDACTED]

- 5.4 That is, the governing body, had before it for its consideration, the substance of the matters raised by the First and Second Applicants in this review.
- 5.5 However, it is noted that the First Applicants have submitted:
- [REDACTED]
- 5.6 For the avoidance of doubt, KJL holds the view that [REDACTED]
- 5.7 The opportunity to make a deputation to the Council, pursuant to regulation 10 of *the Local Government (Procedures at Meetings) Regulations 2013*, is not to be considered as an opportunity to participate in a debate or otherwise to be provided with an opportunity to 'refute' submissions that have formed the basis of another party's deputation.
- 5.8 Rather, it is an opportunity to place before the Council, information that a depute considers to be relevant to the considerations of the Council in a matter being decided by the Council, as the governing body.
- 5.9 KJL notes that, in facilitating the deputations received at its meeting on 29 April 2019, the Council was following the guidelines set out in its '*Deputation Request Form*' which provide that:
- 5.9.1 five (5) minutes is allocated per deputation for the purposes of the presentation;
  - 5.9.2 after the deputation has been made, it is open for Elected Members of the Council to ask questions about the deputation for a period of five (5) minutes; and
  - 5.9.3 representors cannot participate in the debate or ask any questions of the Council.
- 5.10 These guidelines were [REDACTED] and were applied equally to the deputation by the School.
- 5.11 Following receipt of the deputations, the Council moved to Agenda item 1450 '*Children's Crossings Adjacent to Parkside Primary School*'.
- 5.12 The Agenda Report included, amongst other things, information pertaining to the public consultation, specifically addressed the fact that there were '*three (3) residents who objected to the proposed location of the Children's Crossing along Young Street*', detailed the actions taken by the Council in relation to these concerns and included a copy of the Tonkin Report.
- 5.13 Importantly, the Council report also contained an '*Analysis of Options*', which included not proceeding with the Crossing on Young Street, as well as not proceeding with any of the proposed initiatives.



5.14 Following its consideration of the item, the Council resolved:

*That:*

1. *The report be received.*
2. *Installation of a Children's Crossing along Young Street, Parkside, as outlined in Attachment 2 to this Report (item 1450, Council Meeting, 29/04/2019) be approved.*
3. *Installation of a Children's Crossing along Robsart Street, Parkside, as outlined in Attachment 2 to this Report (Item 1450, Council Meeting, 29/04/2019) be approved.*
4. *Installation of Kerb Extensions along Castle Street, Parkside, at its intersection with Robsart Street and as outlined in Attachment 2 of this Report (Item 1450, Council Meeting, 29/04/2019) be approved.*

5.15 A copy of the Agenda Report is **Appendix 20**.

5.16 Relevantly, during the debate, Cr Hudson moved an amendment, the effect of which if carried, would have been to **remove** consideration of the Crossing on Young Street altogether. However, the amendment lapsed for want of a seconder.

5.17 Therefore, the Council **did** take into account the submissions that had been made by the First and Second Applicants and the options canvassed in the Agenda Report, in making a transparent and informed decision in relation to the item.

5.18 A copy of the relevant extract of the Council minutes is **Appendix 21**.

5.19 Following the Council meeting on 29 April 2019, on 9 May 2019, the First Applicants wrote to the Council, requesting a review of the Council decision to approve the Crossing on Young Street in the proposed location (**Appendix 1**).

5.20 That same date, the Council facilitated a meeting with the First and Second Applicants, taking into account the concerns raised by each, to discuss whether there was scope for the Council to:

*scale back kerb works (still within DPTI requirements) to minimize the impact on the on-street parking that we rely on. Further, we hoped it would then be possible to replant some suitable street tree(s) to partially restore the streetscape in front of our houses. (**Appendix 2**)*

5.21 Following that meeting, the Second Applicants wrote to the Council in appreciation of the meeting and iterating their concerns that:

*unless the consultant has a clear indication that the Council is concerned with our issue of parking loss it will be too easy to reply along the lines of 'do what I already told you'. We certainly hope for a serious reconsideration.*

5.22 The General Manager City Development subsequently replied to the Second Applicants and advised that:

*In respect to the issue of the extent of the kerb extensions, we are happy to consider what (if any) changes could be made to address the concerns raised. However, I need to be clear that Council has endorsed the current design and has resolved to proceed with the installation of the crossing. In addition, there is also the issue of Council needing to adhere to the requirements of the Funding Agreement it has entered into with the Department of Planning, Transport and Infrastructure (DPTI). As such, whilst we will consider changes this needs to be undertaken promptly as we need to proceed as soon as practicable.*

- 5.23 A copy of the email exchange with the Second Applicants is **Appendix 22**.
- 5.24 As the Second Applicants did not receive any further correspondence from the Council between 10 May 2019 and 24 May 2019, they determined to make an application for a review of the Council decision to approve the Crossing on Young Street (**Appendix 2**).

## 6. LEGAL FRAMEWORK

- 6.1 As part of this review, it is appropriate to consider whether the process implemented by the Council in seeking to establish the Crossing adheres to the legal framework established under the *Road Traffic Act 1961* ('the RTA').
- 6.2 The term 'road authority' is defined under section 5 of the RTA as being:
- (a) *an authority, person or body that is responsible for the care, control or management of a road; or*
  - (b) *any person or body prescribed by the regulations for the purposes of this definition, in relation to specified roads or specified classes of roads.*
- 6.3 For the purposes of this Report, it is relevant to note that the Council is the road authority for Young Street.
- 6.4 The term 'traffic control device' is defined under section 5 of the RTA as being:
- A sign, signal, marking, structure or other device or thing to direct or warn traffic on, entering or leaving a road, and includes –*
- (a) *A traffic cone, barrier, structure or other device or thing to wholly or partially close a road or part of a road; and*
  - (b) *A parking ticket-vending machine and parking meter.*
- 6.5 A children's crossing, such as an 'Emu' or 'Koala' crossing, is a traffic control device for the purposes of the above definition.
- 6.6 Pursuant to section 17 of the RTA, a road authority may only install, maintain, alter or operate a traffic control device with approval of the Minister.
- 6.7 An approval from the Minister is granted either expressly upon application or otherwise, by delegation, if the proposed traffic device falls within the '*Instrument of General Approval and Delegation to Council – Use of Traffic Control Devices, Road*



*Closure and Granting of Exemptions for Events* ('the Instrument'), as issued by the (then) Minister for Transport and Infrastructure in 2013, pursuant to section 12 of the RTA. A copy of the Instrument is **Appendix 23**.

- 6.8 Relevant to this Report is the following clauses of the Instrument:
- 6.8.1 clause A.3 Conformity with Australian Standards and the Code, which requires that *'all traffic control devices **must conform** to the requirements of and be installed, maintained, altered, operated or removed in accordance with the applicable Australian Standards, and the provisions contained in the Code and the applicable Australian Standards, as amended from time to time'*;
  - 6.8.2 clause A.5 Notification to the Commissioner of Highways, which requires the Council to *'notify the Commission of Highways before installing, altering or removing a traffic control device on a road that **runs into** or intersects with, or otherwise is likely to affect traffic on a road... that is under the care, control and management of the Commissioner of Highways; and*
  - 6.8.3 clause A.7 Traffic Impact Statement, which requires that *'**before any traffic control device is installed, altered or removed, a Traffic Impact Statement must be prepared by a person, who in the Council's opinion is an experienced traffic engineering practitioner**'* (our emphasis).
- 6.9 Clause A.5 is relevant insofar as Young Street 'runs into' a portion of Glen Osmond Road, which is a road under the care, control and management of the Commissioner of Highways.
- 6.10 Failure to comply with the conditions specified in the Instrument may result in a traffic control device (in this instance, the Koala crossings) being installed without authority, which is an offence, pursuant to section 21 of the RTA.
- 6.11 We have been advised that the Council has not yet notified the Commissioner of Highways of its intention to install the Crossings. However, this **is not** fatal to the validity of the project, insofar as the Instrument requires only that notification occur **prior to** the installation of the traffic control device. KJL **recommends** that the Council proceed to notify the Commissioner of Highways, prior to the installation of the Crossing, in accordance with its obligations under clause A.5.
- 6.12 The Council has engaged Tonkin to prepare a Traffic Impact Statement. A copy of the Traffic Impact Statement is **Appendix 24**.
- 6.13 For the purposes of clause A.3 of the Instrument, reference to 'the Code' is reference to the DPTI 'Manual of Legal Responsibilities and Technical Requirements for Traffic Control Devices – Part 2 – Code of Technical Requirements' ('the Code').
- 6.14 Amongst other things, the Code specifies the traffic management measures that are required to be installed in connection with a Koala crossing. The relevant provisions of the Code applying to Koala crossings are **Appendix 25**.
- 6.15 On KJL's review of the Koala crossing requirements outlined in the Code, it is apparent that the Crossing on Young Street has been designed in accordance with the same.

6.16 Accordingly, **we find** that the Council has, to date, complied with its legislative obligations under the Instrument and, therefore, the Code.

## 7. PEDESTRIAN STUDY

7.1 The First and Second Applicants have separately raised concerns with respect to the validity and reliability of the pedestrian survey undertaken for the purposes of determining the location of the Crossing.

7.2 The First Applicants state that:

7.2.1 undertaking the pedestrian survey with fixed cameras '*would have limitations in identifying the exact path of travel for pedestrians*'; and

7.2.2 they hold concerns over '*the sufficiency and accuracy of the pedestrian count conducted on one single day after the conclusion of the consultation period*'.

7.3 The Second Applicants state that:

7.3.1 they undertook their own pedestrian counts and compiled data from their observations;

7.3.2 these observations indicated that '*the largest foot traffic going to the western Young Street gate (tennis court gate) came along the south side of Young Street, i.e. they were already on the school side of the street*';

7.3.3 as the Council outsourced the pedestrian survey to Austraffic it was '*misleading to state that council officers undertook pedestrian counts*' in the Agenda Report (**Appendix 20**);

7.3.4 the Council's pedestrian survey data '*fails to record that the vast majority [of pedestrians] cross in front of 30 Young Street, not in front of 22-24 Young Street*';

7.3.5 their observations were substantially different to the data obtained by the Council, such that it should not have been relied upon; and

7.3.6 the Council provided '*this questionable data*' to Tonkin for the purposes of its independent safety report, which was subsequently relied upon in forming the recommendation that the Crossing be installed at 22-24 Young Street.

7.4 It is appropriate to note that the Council undertook a public consultation process, prior to causing a pedestrian survey to be undertaken, as it sought to, first, understand if there was community support for the Crossing.

7.5 As a public authority, responsible for the expenditure of public funds, in this instance, grant funding, it was required to determine if it was reasonable and appropriate to invest public funds in a pedestrian survey, in circumstances where the project may not have had community support. This was, of course, but one relevant consideration to take into account.

- 7.6 In so far as the Second Applicant's submit that the process was 'flawed' as it indicated the proposed location of the Crossing, we note that it was open for any person providing a submission to dispute the proposed location as part of the consultation process, as did the First and Second Applicant's.
- 7.7 Turning to the timings of the pedestrian survey, the Code does not prescribe the length of timing for which a pedestrian survey is required to be undertaken, nor does it require a pedestrian survey to be undertaken.
- 7.8 In relation to the 'pedestrian survey' undertaken by the Second Applicants '*on several days in term 1*', whilst the Council may have received that data, in our view, it cannot be required to rely on it, to the exclusion of all other information received.
- 7.9 The Second Applicants are, collectively, an interested party in relation to the proposed location of the Crossing. By contrast, Austraffic is an independent, national specialist traffic and transport company. The Council engaged a specialist, independent consultant to provide it with data collected on an impartial basis. Accordingly, it is reasonable, and appropriate, for the Council to rely on the same, together with all the other relevant information available to it, as part of this decision-making process.
- 7.10 Whilst the First Applicants take issue with the fact that the Austraffic pedestrian survey was undertaken using fixed cameras, KJL understands that this is an industry standard and the use of fixed cameras and the taking of video recordings, provides for more accurate data, insofar as it can be audited and verified.
- 7.11 The Second Applicant's further submit that the Council has failed to investigate their concerns regarding the pedestrian survey. However, we can confirm as part of the review process that the Council **did** raise these issues with Austraffic for its comment.
- 7.12 By way of letter dated 21 June 2019, Mr Peter Doupe, Director of Austraffic, a traffic engineer with '*thirty-something years experience*' confirms that he personally undertook the count on this occasion and '*...can verify what we did and I am confident that the count is correct.*'
- 7.13 A copy of this letter is **Appendix 35**.
- 7.14 Finally, whilst it is noted that the Agenda Report states that '*Council staff have undertaken pedestrian counts at the three (3) school gates*', rather than indicating that the Council had 'caused' such pedestrian counts to be undertaken by way of its engagement Austraffic, we are of the view that this discrepancy could not, on a reasonable and objective review of the Agenda Report, be said to have a material impact on the Council decision-making in relation to the Crossing. That is, the Council did not simply rely on the expertise of its employees, but also engaged independent, impartial contractors to undertake the pedestrian count on this occasion.
- 7.15 Accordingly, **we find** that the Council's reliance on the data collated by Austraffic is reasonable and appropriate in the circumstances, and adheres to the guidelines provided under the Code.



## 8. SAFETY ISSUES

- 8.1 The First Applicants contend that the proposed location of the Crossing does not account for the safety implications arising from the fact that it is '*adjacent to dwellings with 1.8m high fences*'.
- 8.2 It is the First Applicants' submission that vehicles from nearby dwellings:
- will be reversing from their driveways into a location where students and parents will be congregating around the crossing. The height of the fencing will create a blind spot for larger vehicles...until they are beyond their front boundary/fence line.*
- 8.3 Importantly, whilst the First Applicants provided this information to the Council by way of submission, it has not been supported by any traffic engineering evidence.
- 8.4 It is noted that the Crossing is proposed to be constructed in accordance with the Instrument (and the Code), neither of which prohibit or otherwise require Koala crossings to be constructed in locations without established residential fencing.
- 8.5 Notwithstanding, vehicles from nearby dwellings are already required to be cognizant of pedestrians crossing Young Street at this location, by virtue of the location of the School and the demonstrated number of pedestrians already crossing at the location.
- 8.6 In addition, the Council engaged Tonkin to provide it with an independent report as to the safest and most appropriate location for the proposed crossing (**Appendix 15**). Tonkin **recommended** the option adjacent to 22-24 Young Street.
- 8.7 The First Applicants further submit that the large gum tree adjacent to this location '*has previously dropped limbs*' and that they would expect that the Council has '*undertaken a risk assessment*' in relation to the same.
- 8.8 The Council's Natural Asset Lead has, recently, considered the trees in the vicinity of the proposed Crossing and advised of the necessary measures to be taken by the Council in undertaking the construction of the Crossing. This includes ensuring that all construction works are undertaken using tree sensitive measures to ensure the ongoing integrity of the trees and, in particular, the tree referred to by the First Applicants.
- 8.9 However, notwithstanding the above, it was also recognised that the tree is not a Council owned tree. Rather, it is a tree owned by the School, located on School grounds. It is the School's obligation to ensure the tree does not pose a risk to any person.
- 8.10 In light of the above, we find that the safety issues raised by the First Applicants have been considered by the Council, to the extent reasonably and appropriately necessary in relation to this matter, in determining the most appropriate location for the Crossing. Further, no evidence exists to establish that these matters give rise to a finding that the proposed location of the Crossing is inappropriate.

## 9. LOSS OF PARKING

9.1 The First Applicants state that their Land is [REDACTED] (emphasis in original) (**Appendix 1**).

9.2 On that basis, the First Applicants are reliant on the availability of on-street vehicle parking [REDACTED] (**Appendix 1**) and consider that it is unreasonable for the Council to select [REDACTED] (**Appendix 3**).

9.3 Similarly, the Second Applicants noted in their application for review (**Appendix 2**) that:

*[t]here is no evidence that Council officers considered the impact of loss of on-street parking on [REDACTED] in considering which, of several potential locations, to choose. Examination of the Council's own data would have shown that the proposed 22-24 Young Street location has by far the greatest parking impact, [REDACTED]*

9.4 Contrary to the above, the Council anticipated that the loss of on-street parking would be a point of contention for residents in the Plan (**Appendix 6**) where, it states that:

*...the initiatives will likely result in some loss of on-street parking particularly around the new crossing on Young Street. The local community relies on on-street parking as Parkside residential properties generally do not have ample off-street parking. This may generate significant opposition by local residents who are affected by the project.* (our emphasis)

9.5 Based on the submissions received, [REDACTED] main points of contention in relation to the proposed Crossing.

9.6 Following public consultation and, as a consequence of the First Applicants' submission to the Council, the initial crossing design was amended to include one (1) full time permit park in the design, on the southern side of Young Street.

9.7 However, the First Applicants contend that this is insufficient noting that 'under the Council's current parking policy [REDACTED] can have 7 permits so clearly this does not meet resident's needs'.

9.8 Importantly, pursuant to clause 5.3 of the Council's 'Residential On-street Parking Policy' ('the Parking Policy'), in circumstances where there are two (2) vehicles registered at a property, the property will be eligible for:

9.8.1 three (3) parking permits (two (2) fixed and one (1) transferable) if it has no off-street parking (KJL understands that [REDACTED] and [REDACTED]

- 9.8.2 two (2) parking permits (one (1) fixed and one (transferable) if it has only one (1) off-street vehicle park on the property (KJL understands that [REDACTED])).
- 9.9 Of course, while [REDACTED] for seven (7) permits under the Parking Policy, there is no obligation on the Council to provide or otherwise ensure that there are seven (7) on-street parking places located adjacent, or in close proximity to [REDACTED].
- 9.10 Indeed, clause 5.4 of the Parking Policy states:
- Note: The holder of a permit is **not guaranteed a parking space in the street** for which the permit is issued. (our emphasis)*
- 9.11 That is, a permit does not guarantee a parking position **in the same street** for the dwelling for which it is issued.
- 9.12 A copy of the Parking Policy is **Appendix 26**.
- 9.13 The First Applicants have also submitted that the Parkside Primary School Pedestrian Safety Upgrades documentation distributed in August 2018:
- only stated the installation of this crossing would prohibit parking 20m prior to and 10m after the crossing on school days. It did not state that, due to the protuberances, it would result in the permanent loss of 5-6 on-street parks. (emphasis in original)*
- 9.14 Whilst the information distributed by the Council in August 2018 did not expressly identify that on-street car parking places would be lost as a consequence of the Crossing, on any reasonable and objective consideration of the information, it is clear that parking spaces would inevitably be lost. Indeed, this formed the basis of the concerns raised by the First and Second Applicants with the Council.
- 9.15 Accordingly, we do not find that it is reasonable to surmise that '*had this fact been included in the community consultation, additional residents would have opposed the project*' (**Appendix 1**). This submission is speculative at best.
- 9.16 Likewise, we do not consider that, on the basis of reasonable probability, the contention that '*had all the negative impacts been included (like all the potential benefits were) it is clear a greater number of respondents would have opposed the Koala Crossing*' (**Appendix 3**) can be supported. This submission is also speculative and is not supported by the evidence received in this review.
- 9.17 Notwithstanding the above, the First Applicants' also contend that the Council governing body was not made sufficiently aware of the loss of on-street parking on Young Street.
- 9.18 It is their submission that while the Agenda Report (**Appendix 20**) indicated that 30 Young Street was not selected as the preferred location as a consequence of the report prepared by Tonkin (**Appendix 15**), the Agenda Report:
- did not highlight that the Tonkin Consulting report clearly states that it reviewed three potential locations at a concept level from a road safety perspective only and other issues, such as the impact on trees and on-street*



*parking, would need to be considered separately as the preferred design progressed. It is not clear this occurred. It should have been made clear in the report that if the crossing was located at 30 Young Street the crossing would result in fewer on-street parking spaces lost. (emphasis in original)*

- 9.19 On the KJL review of the Agenda Report, it is apparent that the Council was advised that the First Applicants had requested that the crossing [REDACTED]  
[REDACTED]  
[REDACTED]
- 9.20 It is similarly apparent in the Agenda Report that the Council officers sought and subsequently relied upon, an independent report from Tonkin as to the safest and most suitable location for the Crossing to be installed.
- 9.21 Whilst the Tonkin report did not account for the impact that the Crossing would have on on-street parking, it made its assessment based on what location would provide the **safest outcome** for pedestrians, which was, in fact, based on the concerns **raised by the First Applicants** regarding location.
- 9.22 Accordingly, **we find** that it was reasonable for the Council, in all of the circumstances, to determine that the installation of the Crossing adjacent to 22-24 Young Street was the most appropriate location.
- 9.23 With respect to the size of the crossing, the First and Second Applicants are aggrieved by the length of the proposed protuberance, as resulting in the loss of additional on-street vehicle parking. The First Applicants state that the Council has '*spent little effort in designing a Children's Crossing of a size that minimizes the impact on residents' (Appendix 3)*.
- 9.24 The First Applicants contend that DPTI standards '*state the minimum length of a Koala Crossing should be 6 metres and the desirable length can be 12 metres*'.
- 9.25 However, the DPTI standard referred to is the '*Transport SA Road Design Standards Standard Drawing Emu – Koala Crossings Minimum Kerb Extension Details*' being drawing number S-4074. A copy of drawing S-4074 is **Appendix 27**.
- 9.26 Drawing S-4074 indicates in the 'desirable' text box that, for 'Kerb Type 1' (where protuberance is to be backfilled with concrete, as proposed) a 12 metre protuberance length **is the minimum** desirable length, with 14.7 metres being the maximum desirable length.
- 9.27 The proposed Crossing protuberances, at their longest (being on the southern side of Young Street), are approximately 14.4 metres long, being within the 'desirable length' as indicated on drawing S-4074.
- 9.28 While an additional car parking space may be made available if the design is amended, the Council is required to strike a balance between the provision of a car park space and the benefit of additional safety that is derived from the length of the protuberance, as designed.
- 9.29 Noting that the plans have been prepared by Tonkin, which also undertook the independent safety report, it is reasonable to conclude that the design has been prepared as a consequence of safety concerns.

- 9.30 In this regard, KJL has been advised that Young Street carries approximately 1,200 vehicles per day in a west-bound direction, and approximately 600 vehicles per day in an east-bound direction. As a consequence, reducing the length of the protuberance on the western approach, being the south-western protuberance, was not considered appropriate in the circumstances.
- 9.31 For the avoidance of doubt, KJL understands that, while the Council did consider reducing the length of the north-eastern protuberance, it, ultimately, determined not to do so as it would not have resulted in an additional on-street car parking space.
- 9.32 In light of the above, **we find** that the Council has appropriately and reasonably sought to design the Crossing, taking into account the submissions of the First and Second Applicants and in recognition of the safety outcomes to be achieved by the Crossing.
- 9.33 However, the First Applicants reiterate their submission that there be a reduction to the south-western protuberance length, to accommodate an additional permit park. Currently this protuberance is 6 metres in length with a 3 metre void adjacent. The First Applicants request that the Council re-consider whether this protuberance can be aligned with the north-western protuberance (**Appendix 34**).
- 9.34 Finally, the First Applicants' also have raised concerns in relation to the parking restrictions to be imposed in conjunction with the Crossing.
- 9.35 Importantly, the Code (**Appendix 25**) indicates that there is to be a 'No Stopping on School Days' traffic control imposed with a Koala Crossing.
- 9.36 Noting the First Applicants' concerns, the Council raised this issue with DPTI and it was determined that the parking restriction could have a part-time operation. Namely, that it would operate only between 8:00am and 4:00pm on school days, rather than the blanket parking prohibition provided under the Code.
- 9.37 The First Applicants submit that, even on a part-time basis, the parking restrictions are inconsistent with other Koala Crossings in the area, being 8:00am – 9:00am and 3:00pm – 4:00pm.
- 9.38 However, as outlined above, the Council is required to install the Crossing in accordance with the RTA, the Instrument and the Code. Any variations to the specifications in those documents, including the Code, must be with the permission of the Commissioner of Highways.
- 9.39 The Council has confirmed that it consulted with DPTI (acting on behalf of the Commissioner of Highways) and, while a number of parking restriction options were discussed including limiting the parking controls to peak school times, it was determined that a parking restriction of 8:00am until 4:00pm on school days was a balanced approach in relation to the provision of on-street parking and the need to achieve a safe crossing.
- 9.40 Accordingly, **we find** that the Council has acted appropriately in seeking to reduce the parking restrictions that will be occasioned by the installation of the Crossing.



## 10. REMOVAL OF TREES

- 10.1 The First Applicants submit that the installation of the Crossing on Young Street will result in the immediate removal of at least three (3) street trees *'and the eventual removal of 6 trees'* and *'there has been no consultation with the community in relation to the removal of trees'* (emphasis in original) and that *'had this information been included [in the 23 August 2018 letter to residents] it is likely additional residents would have opposed the project'* (**Appendix 1**).
- 10.2 In addition, the Second Applicants state in their application for review that:
- We have noted a number of school crossings in the Unley Council area where mature street trees have been retained. We were further disappointed when the Council officer responding to questions from councilors said the trees would be replaced in other parts of the street. That, of course, does not* [REDACTED]
- 10.3 The Second Applicants also submit that, following the meeting with the Council on 9 May 2019, they *'were led to believe that* [REDACTED] (**Appendix 2**).
- 10.4 KJL has been advised that at least one (1) tree will be removed in the course of the Crossing installation, with another three (3) to be removed in the future.
- 10.5 The Council has three (3) documents which relate to trees in its area, being the *Tree Policy*, the *Tree Management Procedure* ('Tree Procedure') and the *Tree Strategy* ('the Strategy').
- 10.6 A copy of the *Tree Policy* is **Appendix 28**, the Tree Procedure is **Appendix 29** and the Tree Strategy is **Appendix 30**.
- 10.7 Clause 3.5(d) of the Tree Procedure provides that the Council is required to undertake public consultation regarding the removal of trees by providing written notice to *'the ten properties nearest to the tree in question, and to more properties than this when appropriate'*.
- 10.8 Whilst clause 3.5(e) outlines the circumstances where consultation will not be required, including when the tree in question is less than three (3) metres in height or when the Council is implementing approved Streetscape Plans, it appears that the trees in question are required to be the subject of consultation.
- 10.9 Clause 3.14(c) states that 'in this urban environment the removal of trees is sometimes necessary **to facilitate** property development of **the installation of infrastructure**' (our emphasis) and clause 3.24(h) states that 'a tree which is in good condition and which is suited to its location shall not be removed unless clauses...[3.14](d) or (e) of this Procedure apply'.
- 10.10 Clause 3.14(d) relates to vehicle crossovers and is not relevant to the Crossing or this review.
- 10.11 Clause 3.14(e) provides that where trees are to be removed to install infrastructure, the removal may only proceed if:

10.11.1 affected residents have been notified (in accordance with the public consultation requirements set out at clause 3.5);

10.11.2 there are no alternatives to the removal of the tree(s);

10.11.3 the project budget provides for the replacement and maintenance of an appropriate tree or trees; and

10.11.4 the project budget provides for all costs associated with the removal of the tree(s).

10.12 The Council is aware of its requirements to undertake public consultation in relation to the removal of the trees and has confirmed that it has intended to commence this process when it advised residents that the Council had resolved to proceed with the Crossing, but this notification has been delayed as a consequence of this review.

10.13 In the circumstances of this matter, this is a reasonable and appropriate position to take, noting that there would be no utility in expending public funds undertaking public consultation on the tree removal, in circumstances where the Council did not resolve to install the Crossing.

10.14 Accordingly, in the event that the Council does not reverse its decision and it does undertake public consultation on the proposed tree removal and observes the requirements of the Tree Policy, the Tree Procedure and the Tree Strategy, **we find** that the Council has not, at this point, failed to undertake public consultation. It is also noted that the trees have not been removed.

## 11. ADDITIONAL MATTERS

11.1 In addition to the First and Second Applicants' concerns pertaining to the pedestrian survey, safety, parking and trees, concerns have also been raised regarding:

11.1.1 the 'type' of crossing that has been selected;

11.1.2 the length of the fencing that is proposed to be installed; and

11.1.3 the potential relocation of a fire plug.

11.2 With respect to the 'type' of crossing that has been selected, the First Applicants contend that an 'Emu' Crossing '*would be preferred by residents whilst still offering the desired increase in child safety*'. It is further submitted that the Plan indicated there would be consultation as to whether the crossing would be an Emu or a Koala crossing, '*but to our knowledge this never occurred*'.

11.3 While the Plan (**Appendix 6**) states that the type of crossing to be installed was '*Emu or Koala - to be determined and subject to consultation*', it **does not** specify that the 'type' of crossing would be the subject of separate consultation. Rather, properly considered, the Plan confirms that the crossing to be installed would be determined **and then** it would be the subject of public consultation.

11.4 Public consultation **was** undertaken on the proposed Parkside Primary School Pedestrian Safety Upgrades and we find there was no error or oversight in the process. Indeed, we note that if residents or ratepayers held concerns with regards to

the type of crossing proposed, these could be properly raised as part of the public consultation process.

- 11.5 The First Applicants also contend that the length of the fencing proposed to be installed with the Crossing, is contrary to drawing number S-4074 (**Appendix 27**).
- 11.6 Drawing S-4074 requires there to be a minimum clearance of **0.45mm** between a fence built in connection with an Emu and/or Koala crossing, and an adjacent driveway.
- 11.7 On a review of the plan referred to by the First Applicants, the requirements of S-4074 have been considered. The location of the driveway for 22 Young Street has been identified on the plan using a solid line and the 'existing driveway' (indicated with cross-hatch shading) has been extended slightly beyond the exact driveway location.
- 11.8 For the avoidance of doubt, we have prepared a colour coded copy of the relevant plan where:
  - 11.8.1 the location of the existing driveway is indicated in yellow;
  - 11.8.2 the proposed fence is indicated in green; and
  - 11.8.3 a red line indicates where the fence stops in comparison to where the driveway begins, which appears to be approximately 0.45mm.
- 11.9 A copy of this plan is **Appendix 31**.
- 11.10 In relation to the second part of the First Applicants' contention that the proposed fencing location may, potentially, infringe on the '*future reinstatement of the existing crossover...for 24 Young Street*', this is not a relevant consideration for the purposes of this review.
- 11.11 A review of historical photographs of 24 Young Street indicates that the crossover was removed between November 2007 and March 2013. Google Street View photographs from these dates are **Appendix 32**.
- 11.12 In the absence of any indication that [REDACTED] propose to reinstate the crossover, the minimum distances identified in S-4074 are not triggered.
- 11.13 Notwithstanding the above, the Council has confirmed that it advised both the First and Second Applicants at the meeting held on 9 May 2019 that the proposed fences **will be** set back from the existing crossover at 22 Young Street and from any future crossover at 24 Young Street.
- 11.14 In light of the above, **we find** that the location of the proposed fencing is in accordance with S-4074 and that amendments are not required to be made to the plans.
- 11.15 Finally, the First Applicants assert that the Council has 'ignored' the fact that an existing fire plug will be required to be relocated as a consequence of the Crossing installation.
- 11.16 The Council confirms that the 'fire plug' is, actually, a SA Water man-hole cover ('the man-hole') located directly in front of the pedestrian entry gate to 22 Young Street.



11.17 No evidence has been received as part of this review that the man-hole is required to be relocated.

11.18 Indeed, on a review of the proposed plans, and a Geographical and Services Survey provided by the Council, while the man-hole will be located 'within' the Crossing, it **will not** be obstructed by the concrete protuberances and will remain accessible to SA Water.

11.19 Accordingly, **we find** that it is of no consequence that the plans prepared by Tonkin do not indicate the location of the man hole.

## 12. RELEVANT CONSIDERATIONS AND FINDINGS

12.1 The above matters have been carefully considered as part of the review process, and our findings in relation to each are set out below.

12.2 As to the First and Second Applicants' complaints that the Council failed to take into consideration relevant matters when it resolved to support the installation of the Crossing at 22-24 Young Street, Parkside, **we find** that:

12.2.1 the Council has acted in accordance with the legal framework and has designed the Crossing in accordance with the Code;

12.2.2 it was both reasonable and appropriate for the Council to rely upon the data derived from the pedestrian survey undertaken by Austraffic;

12.2.3 none of the 'safety concerns' raised by the First Applicants give rise to any matters that have not already been considered, or that are otherwise required to be further considered, by the Council;

12.2.4 there is no obligation on the Council to ensure that an equivalent number of on-street carparks are available in the street as there are parking permits issued to residents;

12.2.5 there is no corroborative evidence to support the submission that the inclusion of 'negative impacts' in the August 2018 public consultation documentation would have resulted in increased opposition to the Crossing, particularly noting that the response received by the Council was overwhelmingly in support;

12.2.6 in light of the independent safety report prepared by Tonkin, together with the public consultation results and the pedestrian survey data, it was reasonable for the Council to resolve to install the Crossing and to locate it adjacent 22-24 Young Street, Parkside;

12.2.7 the protuberance lengths proposed by the Council, whilst resulting in the loss of on-road carparking, is reasonable when considered against the requirements set out in drawing S-4074 and in recognition of the safety outcomes required to be achieved by the Crossing;

12.2.8 the 'No Stopping' parking restrictions to be installed in connection with the Crossing are reasonable and the Council acted appropriately in seeking approval from the Commissioner of Highways to reduce the operation of the restrictions;

- 12.2.9 the Council has not erred in its failure to undertake public consultation in relation to the proposed tree removals, noting the trees have not been removed, the Council is aware of its obligations under the Tree Procedure, and it intends to undertake such following the outcome of this review; in the event that the Council decision is not reversed
- 12.2.10 the Council did not specify that it would undertake consultation on the 'type' of crossings to be installed as part of the project but, rather, advised that the type of crossing to be installed was '*to be determined and subject to consultation*' (our emphasis);
- 12.2.11 the fencing to be installed in connection with the Crossing is to be installed in accordance with drawing S-4074, inclusive of the requisite distances from crossovers; and
- 12.2.12 it is of no consequence to the Council decision in relation to the installation of the Crossing, as well as its proposed location, that the Tonkin plans did not identify the man-hole on Young Street, as it will not be obstructed by the Crossing.

### 13. CONCLUSIONS AND RECOMMENDATIONS

- 13.1 Taking the above into account, **we find** that the Council did not act unlawfully or unreasonably in resolving to install the Crossing, at the location adjacent to 22-24 Young Street.
- 13.2 Further, while we understand the First and Second Applicants oppose the type and location of the Crossing, we **do not find** that the Council has failed to take into account relevant considerations in making its decision and has, at all times, sought to work constructively with the First and Second Applicants to reduce the impact that the Crossing may have.
- 13.3 We recommend the Council give further consideration as to whether a reduction to the south-western protuberance length of the Crossing, to accommodate an additional permit park, can be safely accommodated in the design.
- 13.4 We recommend that in considering whether to make this Report publicly available, that the Council resolves to make publicly available a redacted copy of the Report and Appendices.
- 13.5 Irrespective of the manner in which the Council resolves to determine this matter, it is acknowledged that the First and Second Applicants have recourse to the Ombudsman if they remain dissatisfied.

Yours sincerely  
KELLEDYJONES LAWYERS



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Yours sincerely  
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## **APPENDICES**

<b>Appendix 1</b>	First Applicants' Review Application
<b>Appendix 2</b>	Second Applicants' Review Application
<b>Appendix 3</b>	First Applicants' Review Submission
<b>Appendix 4</b>	City of Unley: <i>Procedure for Internal Review of a Council Decisions</i>
<b>Appendix 5</b>	'Fund My Neighbourhood' Program Application
<b>Appendix 6</b>	City of Unley: <i>Local Area Traffic Management Plan- Zone 2- Parkside</i>
<b>Appendix 7</b>	Council letter to Residents: <i>'Parkside Primary School Pedestrian Safety Upgrades'</i>
<b>Appendix 8</b>	Second Applicants' Council submission: <i>School Pedestrian Safety Upgrades</i>
<b>Appendix 9</b>	First Applicants' Council submission: <i>School Pedestrian Safety Upgrades</i>
<b>Appendix 10</b>	Young Street Pedestrian Count Data
<b>Appendix 11</b>	First Applicants' Diagram: Alternative Location for Crossing
<b>Appendix 12</b>	First Applicants' email to the Council
<b>Appendix 13</b>	Council Notice: <i>School Pedestrian Safety Upgrades</i>
<b>Appendix 14</b>	Email from Cr Anastassiadis to the First Applicants
<b>Appendix 15</b>	Tonkin Consulting Report: <i>Safety Assessment of Alternative Locations for the Crossing in Young Street</i>
<b>Appendix 16</b>	Email Council to First and Second Applicants: Copy of the Council's pedestrian count information
<b>Appendix 17</b>	Letter from Parkside School Principal to Parkside Ward Elected Members.
<b>Appendix 18</b>	Email exchange between General Manager, City Development and First Applicants
<b>Appendix 19</b>	City of Unley: <i>Deputation Request Form</i>
<b>Appendix 20</b>	City of Unley: Agenda Report- Item 1450, Council Meeting, 29 April 2019
<b>Appendix 21</b>	City of Unley: Council Minutes- Item 1450, Council Meeting, 29 April 2019
<b>Appendix 22</b>	Email exchange between General Manager, City Development and Second Applicants
<b>Appendix 23</b>	Minister for Transport and Infrastructure: <i>Instrument of General Approval and Delegation to Council – Use of Traffic Control Devices, Road Closure and Granting of Exemptions for Events</i>
<b>Appendix 24</b>	Tonkin Consulting: <i>Traffic Impact Statement</i>
<b>Appendix 25</b>	<i>Manual of Legal Responsibilities and Technical Requirements for Traffic Control Devices – Part 2 – Code of Technical Requirements: "Koala Crossings"</i>
<b>Appendix 26</b>	City of Unley: <i>Parking Policy</i>
<b>Appendix 27</b>	<i>Transport SA Road Design Standards Standard Drawing Emu – Koala Crossings Minimum Kerb Extension Details: Drawing No. S-4074.</i>
<b>Appendix 28</b>	City of Unley: <i>Tree Policy</i>
<b>Appendix 29</b>	City of Unley: <i>Tree Management Procedure</i>
<b>Appendix 30</b>	City of Unley: <i>Tree Strategy</i>
<b>Appendix 31</b>	Proposed Plan for Koala Crossing at Young Street
<b>Appendix 32</b>	Historical photographs of 24 Young Street: Removal of Crossover
<b>Appendix 33</b>	Second Applicants' Further Submission
<b>Appendix 34</b>	First Applicants' Further Submission
<b>Appendix 35</b>	Letter from Mr Peter Doupe, Director of Austraffic, to Council

## DECISION REPORT

**REPORT TITLE:** RECOMMENDATION TO VARY COUNCIL  
DECISION C0031/19 (24 JUNE 2019) –  
DECLARATION OF GENERAL RATES

**ITEM NUMBER:** 2.2

**DATE OF MEETING:** 08 JULY 2019

**AUTHOR:** TAMI NORMAN

**JOB TITLE:** EXECUTIVE MANAGER, OFFICE OF THE CEO

**ATTACHMENTS:** NIL

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### 1. EXECUTIVE SUMMARY

On 24 June 2019 Council adopted the 2019-20 Annual Business Plan and Budget, and at 2.3 of the Resolutions, declared the General Rates to apply for the 2019-20 rating period.

Subsequent to the finalisation of the minutes, as part of the preparation for rates generation, it became evident that there was an error in the differential rate to be applied to land with a land use of Commercial Shop, Industry Light, Industry – Other, Primary Production, Vacant Land or Other. The rate in the dollar declared was 0.004280, whereas the rate in the dollar required to meet the adopted Annual Business Plan and Budget is 0.004820.

This report seeks a decision from Council to vary the Declaration of Rates item to apply the correct rate in the dollar amount.

### 2. RECOMMENDATION

That Council resolution C0031/19 – Declaration of General Rates, of the Council Meeting of 24 June 2019, be **varied** as follows (*bold text to be inserted, strikethrough text to be deleted*):

#### **ITEM 4.7**

#### **2019-20 ANNUAL BUSINESS PLAN AND BUDGET ADOPTION**

#### **2.3 Declaration of General Rates**

That for the year ending 30 June 2019 the Council declares differential general rates, based on the capital value of the rateable land subject to the rate and varying according to the use of the land, pursuant to Sections 153 (1)(b) and 156(1)(a) of the *Local Government Act, 1999* and regulation 14(1) of the *Local Government (General) Regulations 2013* and otherwise resolves as follows:



- (a) In respect to land with a land use of Residential, a differential general rate in the dollar of 0.002411.
  - (b) In respect to land with a land use of Commercial Shop, Industry Light, Industry – Other, Primary Production, Vacant Land or Other, a differential general rate in the dollar of ~~0.004280~~ **0.004820**.
  - (c) In respect to land with a land use of Commercial Office or Commercial Other, a differential general rate in the dollar of 0.005705.
- 

### **3. RELEVANT CORE STRATEGIES/POLICIES**

#### 4. Civic Leadership

4.1 We have strong leadership and governance.

### **4. BACKGROUND**

#### Legislative Provision

Section 21 of the *Local Government (Procedures at Meetings) Regulations 2013* provides:

**21 – Chief Executive Officer may submit a report recommending revocation or amendment of council decision**

- (1) The chief executive officer may submit a report to the council recommending the revocation or amendment of a resolution passed since the last general election of the council.
- (2) The chief executive officer must ensure that the report is placed on the agenda for the meeting at which the report is to be considered.

This provision enables a recommendation to amend a previous decision of council to be placed on the Council agenda by the CEO, and accordingly this report recommends to Council that decision C0031/19 – Declaration of General Rates be varied.

### **5. DISCUSSION**

#### Council Decision – C0031/19 – Declaration of General Rates

At the 24 June 2019 Council Meeting Council endorsed the 2019-20 Annual Business Plan and Budget, which included the Declaration of General Rates for 2019-20 rating period.

Subsequent to the finalisation of the minutes, as part of the preparation for rates generation, it became evident that there was an error in the differential rate to be applied to land with a land use of Commercial Shop, Industry Light, Industry – Other, Primary Production, Vacant Land or Other. The rate in the dollar declared was 0.004280, whereas the rate in the dollar required to meet the adopted Annual Business Plan and Budget is **0.004820**.

A variation to the previous decision of Council is required to ensure the delivery of the 2019-20 Annual Business Plan and Budget is not impacted by an insufficient amount of general rates income to be generated should the rate in the dollar not be changed from 0.004280 to 0.004820.

#### Proposed Variation to Council Resolution C0031/19

It is proposed to simply vary the Council resolution by inserting the correct rate in the dollar amount, and deleting the incorrect figure as follows:

### **2.3 Declaration of General Rates**

That for the year ending 30 June 2019 the Council declares differential general rates, based on the capital value of the rateable land subject to the rate and varying according to the use of the land, pursuant to Sections 153 (1)(b) and 156(1)(a) of the *Local Government Act, 1999* and regulation 14(1) of the *Local Government (General) Regulations 2013* and otherwise resolves as follows:

- (a) In respect to land with a land use of Residential, a differential general rate in the dollar of 0.002411.
- (b) In respect to land with a land use of Commercial Shop, Industry Light, Industry – Other, Primary Production, Vacant Land or Other, a differential general rate in the dollar of ~~0.004280~~ **0.004820**.
- (c) In respect to land with a land use of Commercial Office or Commercial Other, a differential general rate in the dollar of 0.005705.

Legal advice has confirmed that the most appropriate process is to amend the rate in the dollar value, as opposed to revoking and redeclaring the rate in the dollar for the differential rate to be applied to land with a land use code of Commercial Shop, Industry Light, Industry – Other, Primary Production, Vacant Land or Other.

## **6. ANALYSIS OF OPTIONS**

### Option 1 –

That Council resolution C0031/19 – Declaration of General Rates, of the Council Meeting of 24 June 2019, be **varied** as follows (*bold text to be inserted, strikethrough text to be deleted*):

### ITEM 4.7

#### 2019-20 ANNUAL BUSINESS PLAN AND BUDGET ADOPTION

### 2.3 Declaration of General Rates

That for the year ending 30 June 2019 the Council declares differential general rates, based on the capital value of the rateable land subject to the rate and varying according to the use of the land, pursuant to Sections 153 (1)(b) and 156(1)(a) of the *Local Government Act, 1999* and regulation 14(1) of the *Local Government (General) Regulations 2013* and otherwise resolves as follows:

- (a) In respect to land with a land use of Residential, a differential general rate in the dollar of 0.002411.
- (b) In respect to land with a land use of Commercial Shop, Industry Light, Industry – Other, Primary Production, Vacant Land or Other, a differential general rate in the dollar of ~~0.004280~~ **0.004820**.
- (c) In respect to land with a land use of Commercial Office or Commercial Other, a differential general rate in the dollar of 0.005705.

This option provides for the correction of an error in the Declaration of General Rates and enables the collection of funds required to meet the endorsed 2019-20 Annual Business Plan and Budget.

The process and variation proposed meets legislative requirements and ensures that the Declaration of Rates can be actioned in a timely manner by the Administration.

Option 2 –

1. The report be received.

This option will result in an insufficient amount of general rates revenue being generated compared to the adopted Budget (the difference is about \$360K).

**7. RECOMMENDED OPTION**

Option 1 is the recommended option.

**8. POLICY IMPLICATIONS**

**8.1 Financial/Budget**

- If the Council resolution C0031/19 – Declaration of General Rates, of the Council Meeting of 24 June 2019 is not varied, it will result in an insufficient amount of general rates revenue being generated compared to the adopted Budget (the difference is about \$360K).

**8.2 Legislative/Risk Management**

- Legal advice has been sought with regard to the appropriate process to correct the previous resolution of Council, and the advice has been applied in the preparation of this Report.

**9. REPORT CONSULTATION**

Consultation is not required

10. **REPORT AUTHORISERS**

<b>Name</b>	<b>Title</b>
Nicola Tinning	Acting Chief Executive Officer