



Item 7.1 Joint Petition Response - Request to retain the temporary play equipment erected in Murchison Street, St Kilda East and request to stop the removal of a child sized tree, Page Street, Albert Park

Petition 1: Request to retain the temporary play equipment erected in Murchison Street, St Kilda East

A Petition containing 126 signatures was previously received from residents of St Kilda East.

Petition 1 stated the following:-

"I am submitting this petition for consideration in the hope that the City of Port Phillip will support the community's request to retain the temporary play equipment erected in Murchison Street St Kilda East.

On Friday the 3rd July 2020, an official from the Port Phillip City Council attended my property to request the removal of the temporary play equipment (a swing, climbing ladder and rope hanging from the tree on the nature strip. He informed me that an anonymous complaint had been made about the equipment and that council has to act on these complaints. Furthermore, he explained the risks and liability involved should injury occur. I informed my fellow neighbours of this incident via our Murchison Street Whatsapp group and all the responses I received conveyed their disappointment and sadness about the shared play equipment having to be removed.

On Monday the 6th July 2020, I started a petition on the Change.org website (change.org/savetheswing) called "Retain a sense of family and community through locally led initiatives". I shared the petition with you, Mayor Voss, as well as the three Canal Ward Councillors. I also shared the petition on the Murchison Street Whatsapp and email groups, as this directly impacts them too, and we are a close-knit street of neighbours who are passionate about the community in which we live.

Within a few hours my petition received a multitude of signatures and currently, 18 days after it started, it has 120 signatures. I have closed the petition today, the 24th July, in line with council requirements for lodging an online petition.

The request to retain these community led initiatives is made obvious to me especially during the COVID-19 pandemic and subsequent Stage 3 lockdowns we are currently experiencing, as the movements of our children have been so significantly restricted. With no outlet for their abundant energy, it is impacting on their health and mental well-being, as well as that of their parents. These are the main reasons why I believe this proposal is important to the community:

- *The play structures have brought a real sense of community and joy to both the residents on the street as well as community members who pass by.*
- *The City of Port Phillip (hereon referred to as CoPP) is always promoting a sense of place and community and beautiful local initiatives such as these have increased personal and community well-being during the COVID-19 period. Due to the pandemic, children's movements and play have been so limited, and community structures such as these have brought a sense of lightness and joy to the heaviness and anxiety that occupies our everyday. It is so important for children to get out into the fresh air and be able to use their bodies and minds through physical play. In a time of excessive media and technology, we should be inspiring our children to find a lifelong love of*



movement. Stripping children of joy, healthy play, movement and community feels very un-Australian. The world needs all the joy and fun it can mustbr at the moment and the request to have the structures removed seems a bit counterintuitive to the Council's community building values.

- The children on the street who play on and enjoy these community initiatives range in age from 9 months old to 13 years old. As such, parental supervision and child safety is of utmost importance and is the one thing that is upheld when children are using the equipment.*
- Prior to moving to Murchison Street we lived in Middle Park for five years and can recall at least five swing sets on the nature strips in the community. They were shared and enjoyed by all and integrated the community further by creating a sense of family and sharing, which in itself is a valuable lesson for children in their developing years. The immense delight it brought to those who used them made the walks in the neighbourhood that much more pleasurable and allowed greater community engagement, as we got to know our neighbours better, and improved mental wellbeing for both parents and children alike.*

We urge you to reconsider your request to have the play equipment removed and to reflect on the benefits and positive impact such community initiatives have on us all.

We request that the structures and play equipment remain in place on the condition that the residents of Murchison Street tie up the equipment (swing, climbing ladder and climbing rope) when not in use, as has been seen at the front of various homes in the CoPP, as well as to erect a disclaimer notice stating, "Play at your own risk. The CoPP is not liable for injury or accidents that may occur on the equipment."

I have enclosed details of the petition and all the signatures and responses I have received. I would welcome the opportunity to discuss this petition at a council meeting if you would like to do so. Please let me know if you would like me to attend a council meeting or require any more information or an update from the discussions on the subject within the Murchison Street and St Kilda East community.

Thank you for your attention and consideration of this petition and look forward to hearing your response in the future."

Petition 2: Request to stop the removal of a child sized tree, Page Street, Albert Park

A petition containing 333 signatures was previously received from residents in Albert Park.

Petition 2 stated the following:

"This petition is required by Port Phillip Council to stop the removal of a child size tree swing in Page Street Albert Park".

At the Council Meeting on the 2nd September 2020, Council resolved: -

That Council receives and notes the petition and requests officers to bring a report to Council at the earliest opportunity that includes any legal and/or policy mechanisms that Council can implement to allow child swings in nature strip trees.



OFFICER COMMENT

Local Law and Policy Context

During Stage 3 and 4 COVID-19 restrictions under the direction of the Victorian Chief Health Officer regulations, it required land managers to close public playgrounds. With restrictions being eased in October land managers have been able to reopen all our 50 playgrounds and 104 swings to the community.

City of Port Phillip's Local Law 49 (1) restricts the ability of individuals or groups to alter or damage land without approval.

- (1) A person must not interfere with or use Council assets in such a way that:
 - (a) damage or detriment could be caused to Council assets; or
 - (b) any other person could be injured or suffer loss as a result of that interference or use.

Penalty: 20 penalty units

Therefore, clause 49(1) of the Local Law imposes a prohibition on a person from interfering or using a street tree in such a way that damage or detriment could be caused to the tree or any other person who could be injured as a result of that interference or use.

Additionally, Council has a responsibility to manage public safety risks including the risk of tree failures and support our community achieve health, wellbeing and social connectiveness outcomes.

There are three options available to Council to respond to these petitions:

1. Do nothing;
2. Amend the Local Law; or
3. Amend the Nature Strip Guidelines.

The option to do nothing will result in no change and the affixing of swings to a Council tree will be prohibited.

The second option is to amend the Local Law to allow the affixing of a swing to a Council tree. The amendment of the local law will allow a permit to be granted with conditions which will provide for the regulation of the activity and the minimisation of risk (both to the tree and to others) of using street trees for the affixing of a child's swing. To amend the Local Law Council will need to comply with Part 5 of the Local Government Act 1989 (LGA 1989). The making of a Local Law must comply with the statutory requirements including the passing of a resolution by Council to advertise and consult with the community in relation to the Local Law. In relation to consultation Council will need to comply with Council's Community Engagement Policy pursuant to Division 1 of Part 3 of the Local Government Act 2020 (LGA 2020). Council must consider any submissions and hear any person who wishes to be heard on the Local Law. It is estimated that the preparation of an appropriate Local Law, preparation of Council report, Council resolution to consult with the community, consideration of submissions, and making of the Local Law typically takes around 6 months to complete.

The third option is to amend Council's current Nature Strip Guidelines to include the use of street trees. Conditions similar to a permit process mentioned above would make persons automatically exempt from clause 49 of the Local Law if they complied with the Nature Strip



Guidelines relating to the use of street trees. This option does not provide for a permit to be required to use a street tree but would allow a resident to use a street tree if certain conditions are met. This process makes it easier for the resident and requires the resident correctly assessing and complying with the Guidelines. The Nature Strip Guidelines is an incorporated document in the Local Law and accordingly, any amendment to the Guideline would require community consultation. Accordingly, the Council is bound by the requirement to comply with Council's Community Engagement Policy consult pursuant to the LGA 2020. Again, this process is likely to take around 6 months to complete.

It's noted that in this instance, Section 11(2)(j) of the Act prohibits the CEO from being delegated the power to make, amend or revoke a local law.

Our current approach of not allowing swings and fixtures in trees, to address the potential risk and damage of swings in trees through our Local Law 49 is consistent with our neighbouring Councils at Bayside, Stonnington and Kingston.

Tree Play Equipment

The installation of play equipment within trees, including but not limited to tree houses, ladders (fixed and unfixed) and climbing steps that are fixed to trees presents unacceptable risks to our tree assets and public safety. It is difficult to have mitigation strategies to prevent unauthorised use by individuals. The structures that we have seen built are often made poorly and would not pass a simple safety assessment.

Tree swings are often attached to weak limbs, or have very low weight tolerance ropes, and could be misused by people for whom the swing was not intended, if left unattended.

Council builds nature-based playground structures with many opportunities for children to climb, swing and play.

For these reasons Officers recommend that tree swings, ladder, tree houses and related infrastructure should not be permitted to be installed or attached to, or placed on, street trees and other Council assets.

Options relating to tree swings only:

If Council wishes to allow tree swings to be affixed to Street Trees, the following could be done to meet minimum legal and safety requirements;

- A Change to the Local Law, either through the Nature strip guidelines (six to nine-month process) or part of the formal review of the local law due to commence in late 2022 for adoption prior to September 2023.
- A site-specific risk assessment that considers the risks of a swing at that location and potential other infrastructure like a soft fall zone be documented and submitted by the applicant.
- A mitigation strategy would be required to prevent circumstances where the swing is left out overnight and used by persons other than intended children which may result in adverse consequences. E.g. removal of the swing when not in use.
- A permit process would be required including an arborist inspection to determine suitability of tree and a prescribed re-inspection regime. If there was any risk of branch failure a permit would not be granted or immediately revoked on public safety grounds.

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Noting these requests are predominantly for private benefit, officers recommend that the costs associated in granting a permit should be borne by the applicant rather than by Council. The direct cost to Council would be approximately \$500 with an ongoing inspection cost of \$100 annually.

Even with above measures, Council would still be exposed to personal injury or property damages claims. This would leave Council financially and reputationally exposed.

Last year Council paid out \$152,000 comprising both under excess settlement costs paid directly to customers and excess amounts paid to insurers for property damage and personal injury claims. Claims settled through our insurer/s for the 12-month period to 30 June 2020 resulted in an additional \$338,070 paid out by our insurer. Preliminary advice is that our insurers will not cover Council if the Local Law was amended to allow swings.

An alternative for Council to consider is increasing our provision of swings at our future parks and playground upgrades where these risks can be managed in accordance with Australian standards. At Council playgrounds we ensure Council's risk exposure is covered by using equipment that is compliant, inspected weekly, independently assessed for compliance annually, proven through standards testing and regularly maintained.

OFFICER RECOMMENDATION

That Council:

1. Thanks the community for their petition and acknowledge the community benefits and social connectiveness these assets have created.
2. Notes that the current infrastructure constructed or attached to trees is not in accordance with Local Law 49 and cannot be supported or retained.
3. Notes that Officers have considered the legal and/or policy mechanisms that Council could implement to allow child swings in nature strip trees.
4. Notes that Officers advice is that the safety, legal and financial risks to Council cannot be sufficiently mitigated to implement those legal and/or policy mechanisms.
5. Resolves to leave the Local law unchanged so that swings and other structures in trees on nature strips are not allowed.
6. Notes any other sites or future installations within trees will also be asked to remove for consistency.
7. Requests Officers to consider increasing swing infrastructure as part of our future parks and playground upgrade projects.

TRIM FILE NO: F20/1

ATTACHMENTS Nil