## Diamond Creek Trail Extension (Diamond Creek to Hurstbridge) Incorporated Document

As incorporated by Amendment C108 to the Nillumbik Planning Scheme

May 2016

### 1. INTRODUCTION

This document is incorporated in the Nillumbik Planning Scheme, pursuant to section 6(2)(j) of the *Planning and Environment Act* 1987 and Clause 81.01 of the Nillumbik Planning Scheme, as the Diamond Creek Trail Extension (Diamond Creek to Hurstbridge) Incorporated Document (May 2016).

The Schedule to Clause 52.03 of the Nillumbik Planning Scheme provides that requirements relating to use and development of specific sites may be included in an incorporated document.

This incorporated document sets out the use and development requirements which apply under the Nillumbik Planning Scheme to the land required for the Diamond Creek Trail Extension – Diamond Creek to Hurstbridge.

The control in this document applies to land within the "Project Area" as shown by Figure 1 of this document.

## 2. PROJECT

This incorporated document applies to the construction of an off-road shared use trail between Diamond Creek and Hurstbridge, following the Diamond Creek (the "Diamond Creek Trail Extension – Diamond Creek to Hurstbridge"). The Diamond Creek Trail Extension – Diamond Creek to Hurstbridge includes, but is not limited to the following works:

- Construction of an approximately 3.0m wide off-road shared use trail and separate horse trail.
- Construction of bridges and culverts over the Diamond Creek.
- Construction of access for users and service vehicles to the trail.
- Removal of vegetation within the trail corridor
- Landscaping
- Drainage infrastructure
- Trail furniture (e.g. seating)
- Fencing
- Signage

### 3. PERMITTED USE, DEVELOPMENT AND RELATED MATTERS

Despite any provision to the contrary or any inconsistent provision in the Nillumbik Planning Scheme, a planning permit is not required for the use and development for, and in connection with, the Diamond Creek Trail Extension – Diamond Creek to Hurstbridge. This includes any vegetation removal or lopping, demolition, subdivision or other buildings and works required for, or in association with, the project.

This clause is subject to the conditions in Clause 4 of this document.

#### 4. CONDITIONS

4.1 The development or use of land, including demolition, subdivision and vegetation removal in Clause 4 of this document must be for, or associated with, the use and construction of the Diamond Creek Trail Extension – Diamond Creek to Hurstbridge.

Without limiting the scope of works for, or associated with, the use and construction of the Diamond Creek Trail Extension – Diamond Creek to Hurstbridge, this includes:

- The construction of a shared trail and separate horse trail, including earthworks, associated structures, culverts, kerbs, channels, cuttings, batters and fill etc.
- Landscaping.
- Drainage works.
- Removing, destroying, pruning and lopping of vegetation, including native vegetation.
- Demolition.
- Construction and use of temporary site workshops, storage, administration and amenities buildings and associated vehicle parking
- Fencing
- Constructing temporary access roads, diversion roads and vehicle parking areas
- Subdivision.
- 4.2 The following must occur before the development (including vegetation removal and lopping) starts:
  - a) A response must be provided to the satisfaction of the Responsible Authority to the biodiversity assessment guidelines of Clause 52.17 of the Nillumbik Planning Scheme.
  - b) An ecological assessment must be prepared and approved by the Responsible Authority. The assessment must:
    - 1. Undertake a flora, fauna, aquatic and habitat assessment
    - 2. Identify significant flora and fauna species and ecological communities and document their location
    - 3. Document the current condition of the trail corridor and adjacent riparian zone (e.g. document the presence and extent of pest animals and weeds)
    - 4. Document the likely and potential impacts associated with the development
    - 5. Identify any ecological constraints and mitigation measures
    - 6. Consider impacts to adjacent waterways and riparian land
    - 7. Identify opportunities for the rehabilitation of any degraded riparian land in association with the proposed trail.
    - 8. Provide an accurate account of the implications under Commonwealth policy and State legislation
  - c) An Environmental Management Plan (EMP) must be prepared and approved by the Responsible Authority. The EMP must have regard for the response to Conditions 4.2 (a) and (b) above and must include:
    - 1. Details of the location of new or replacement planting and fencing;
    - Details of planting proposed to satisfy any requirement for native vegetation offset planting, revegetate disturbed areas and/or to provide adequate screen planting for nearby properties.
    - 3. A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, and quantities of each;
    - 4. Planting intended to satisfy any requirement for a native vegetation offset.
    - 5. Planting to revegetate disturbed areas at the completion of trail and any bridge construction;
    - 6. Dates of planting;

- Identification of any vegetation to be removed and details of how any impacts on remnant vegetation, fauna habitats and adjacent areas of ecological and environmental significance are to be reduced;
- 8. Measures to control the spread of environmental weeds;
- 9. Measures for the protection of trees retained within the project area.
- 10. The control of sedimentation and pollution within the project area and in the adjacent areas during development; and
- 11. The ongoing environmental management for the area.
- 12. Details of construction management including:
  - i. An overall construction program.
  - ii. Protection measures for site features to be retained (e.g. fencing, structures, trees).
  - iii. Access points to the construction.
  - iv. Traffic management measures for access of works.

The environmental and construction management measures shown on the approved plan must be carried out and completed to the satisfaction of the Responsible Authority.

- 4.3 The removal, destruction, pruning or lopping of native vegetation must be the minimum reasonably necessary for the construction of the project.
- 4.4 In order to offset the removal of remnant vegetation and/or scattered trees a native vegetation offset is required that meets the following requirements and is in accordance with the "Permitted Clearing of Native Vegetation Biodiversity Assessment Guidelines" and the "Native Vegetation Gain Scoring Manual"

The offset must:

- i. contribute gain of the calculated general biodiversity equivalence units
- ii. be located within the Shire of Nillumbik or the Port Phillip & Westernport Catchment Management Authority Boundary
- iii. have a strategic biodiversity score of at least 80% of the strategic biodiversity score of the clearing site.

The offset provided must be to the satisfaction of the Responsible Authority and may be calculated for each stage of the project.

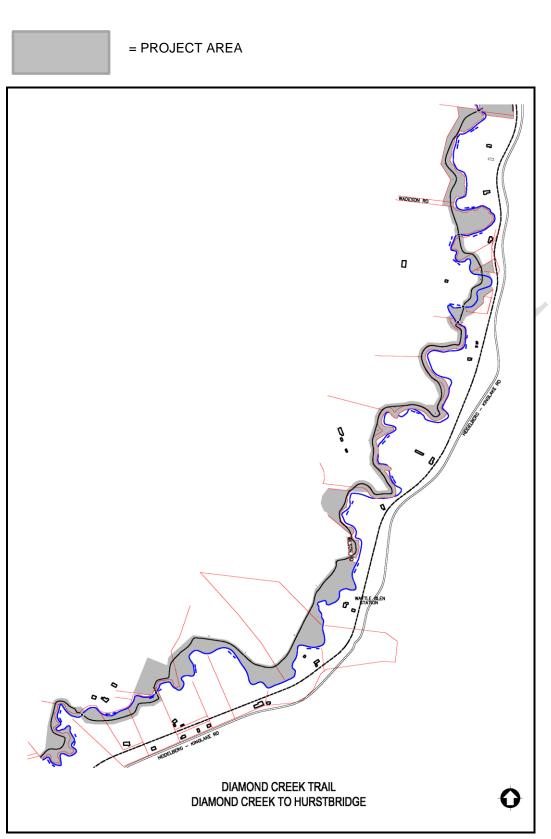
- 4.5 Prior to the removal of any vegetation, evidence that an offset has been secured for that vegetation must be provided to the satisfaction of the Responsible Authority. This offset must meet the offset requirements set out in this incorporated document and be in accordance with the requirements of the "Permitted Clearing of Native Vegetation Biodiversity Assessment Guidelines" and the "Native Vegetation Gain Scoring Manual". Offset evidence must include one of the following:
  - i. a security agreement, to the required standard, for the offset site or sites, including a 10 year offset management plan
  - ii. a credit register extract from the Native Vegetation Credit Register
- 4.6 The development and use of the Diamond Creek Trail Extension Diamond Creek to Hurstbridge must be conducted in accordance with the requirements of the *Aboriginal Heritage Act 2006*, including any requirements pertaining to a Cultural Heritage Management Plan.

## 5. EXPIRY

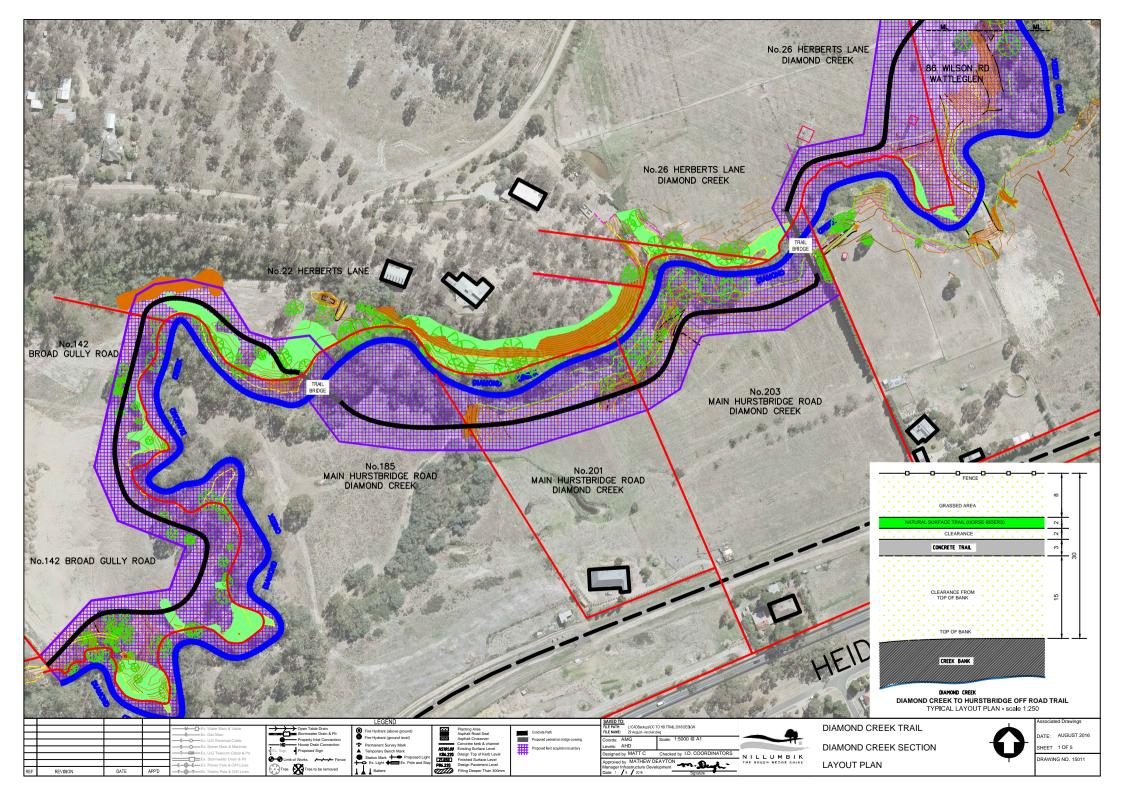
This document expires if any of the following circumstances applies:

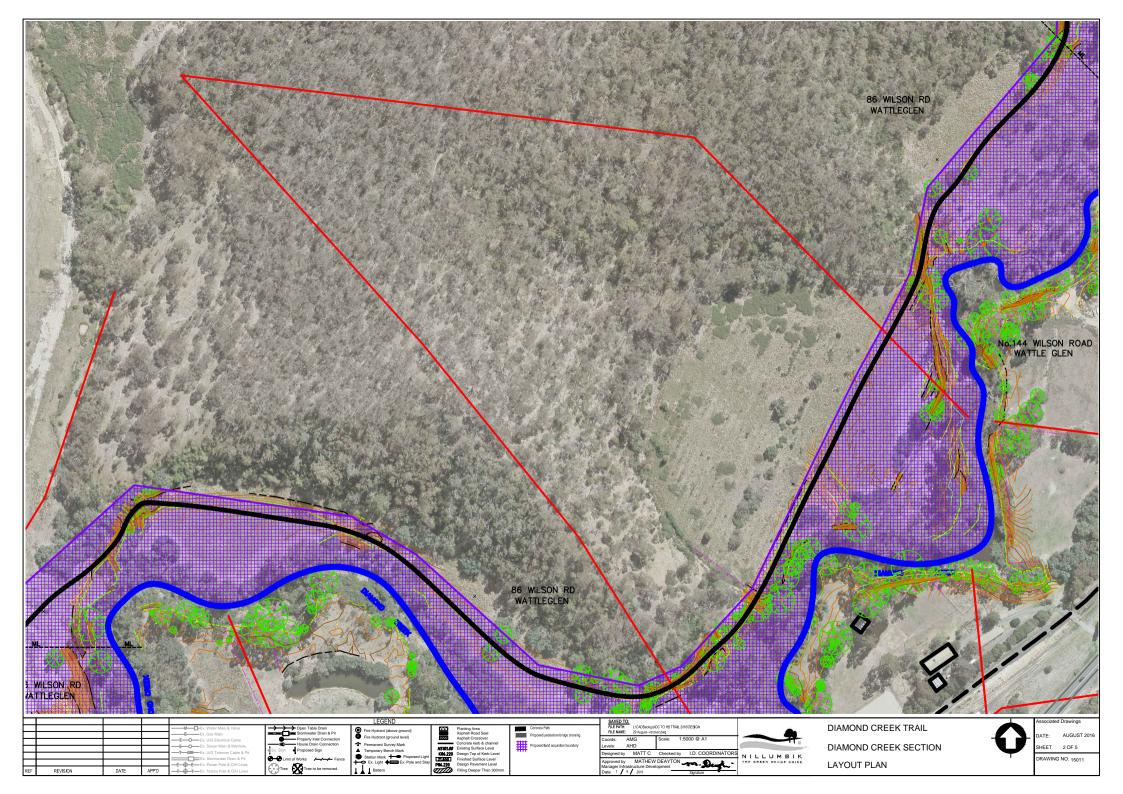
- The development is not started by 31 December 2025.
- The development allowed by the control is not completed by 31 December 2030.
- The use allowed by this control is not started by 31 December 2030.

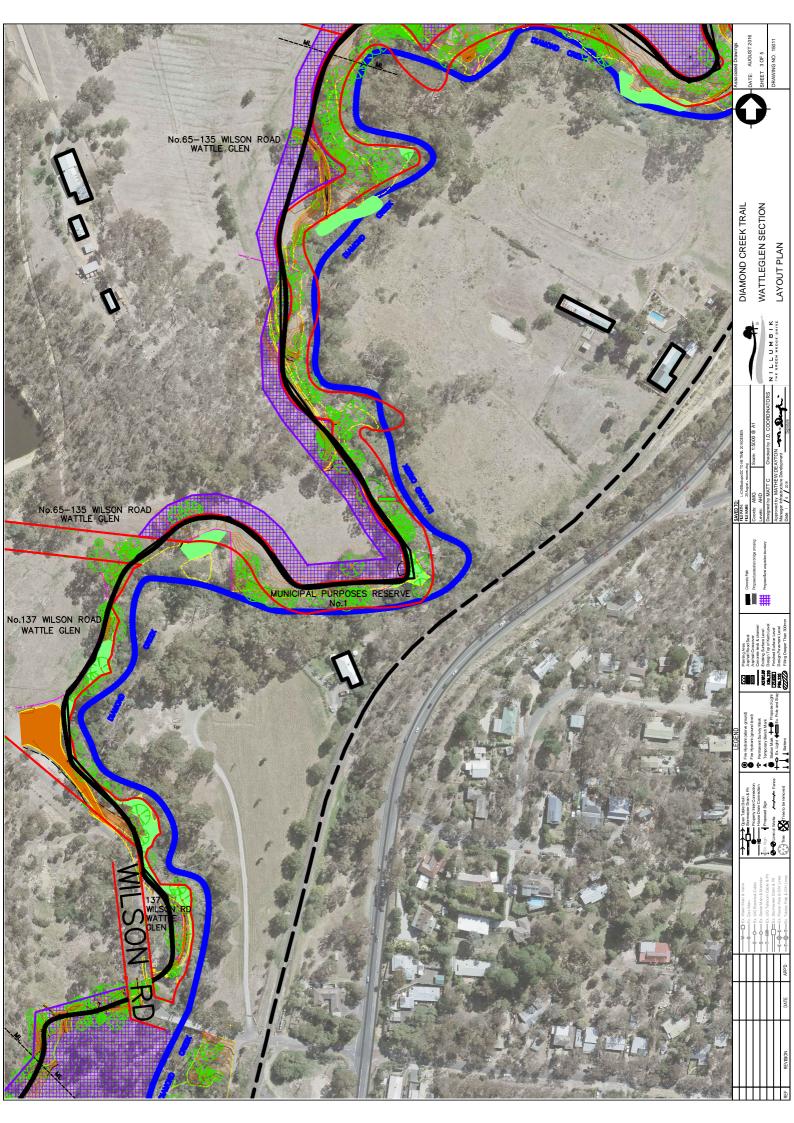
The Minister for Planning may extend the periods referred to if a request is made in writing before the incorporated document expires, or within three months afterwards.

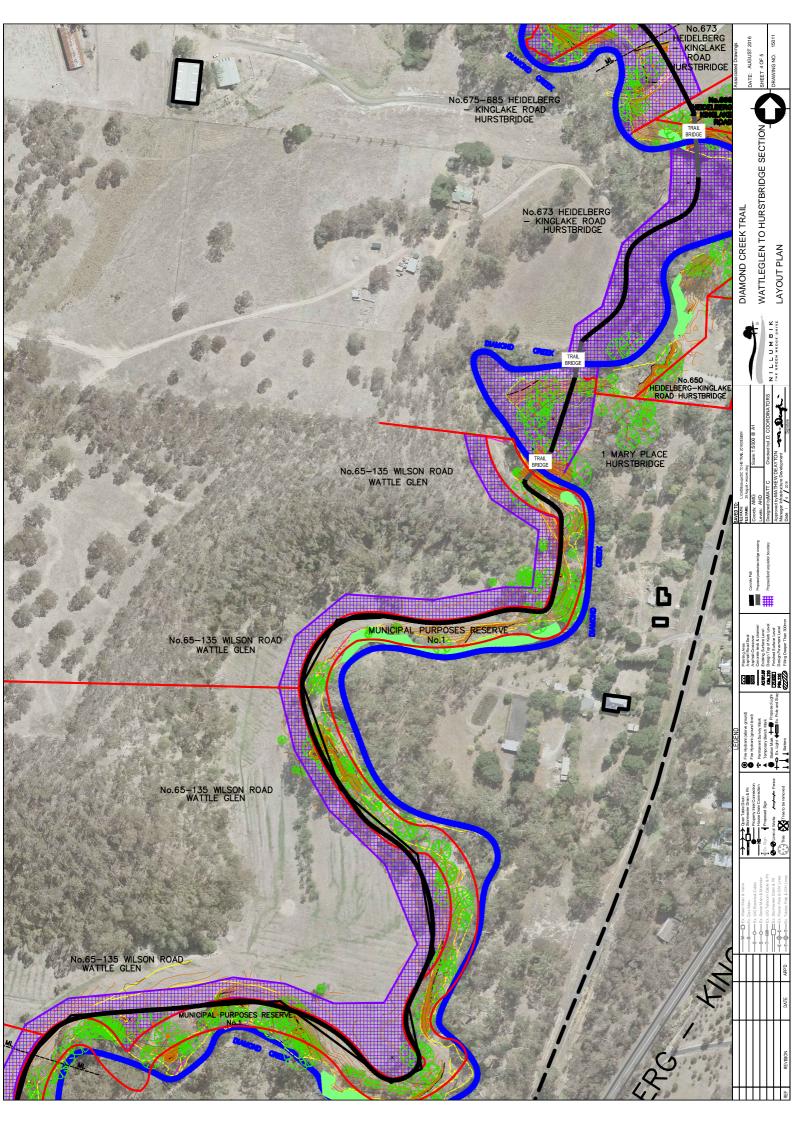


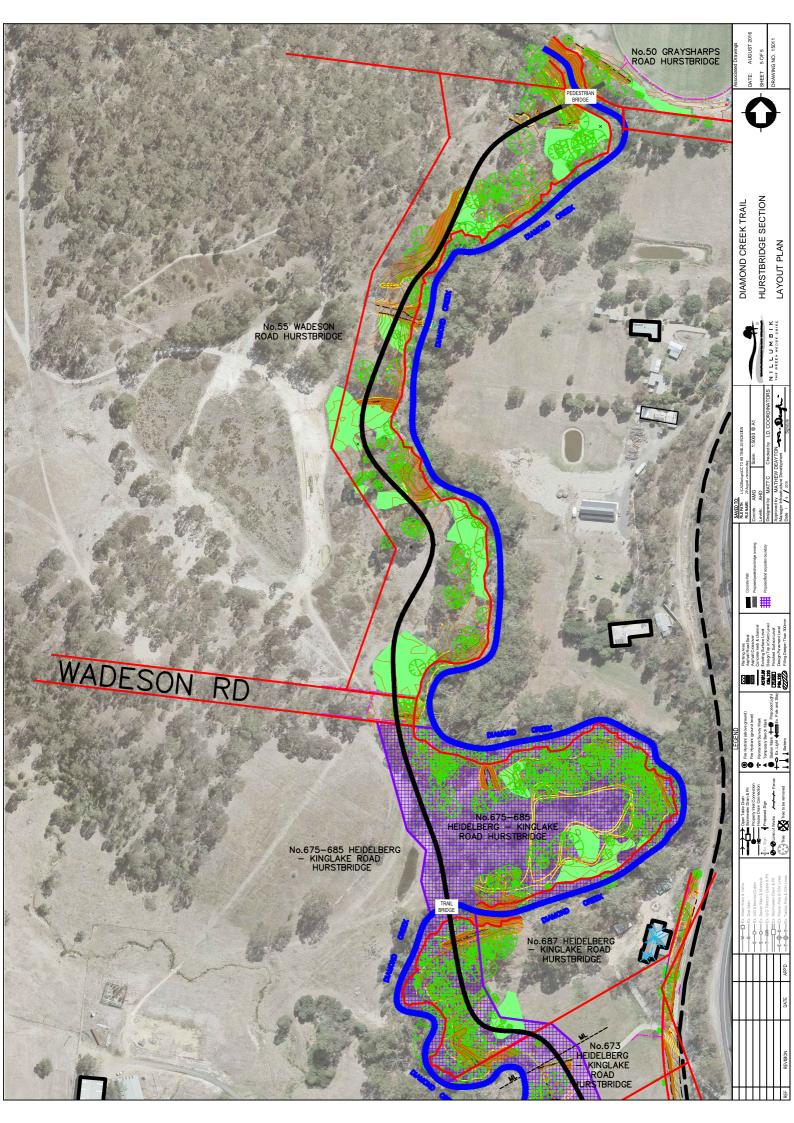
# Figure 1 – Project Area











# C108 (EXTENSION OF THE DIAMOND CREEK TRAIL TO HURSTBRIDGE) - SUMMARY OF SUBMISSIONS

No.	Sumbitter	Stance and Key Points	Officer Response
1	Dieter Bontalik 22 Herberts Lane Diamond Creek 3099	<ul> <li>Opposes the Amendment</li> <li>A road alignment would be far cheaper and not impact so heavily on ratepayers.</li> <li>The planning for residential development of the site is already well advanced. For example, an agreement with Melbourne Water has been reached to fill the flood prone area to allow housing and roads.</li> <li>The extension of Luscombe Drive is to finish in a roundabout on my property in the vicinity of the proposed trail bridge.</li> <li>Acquisition of residential land will be costly.</li> <li>Development and use of a trail through the property will increase the amount of trespassing and theft.</li> <li>The proposed bridges will provide an unauthorised thoroughfare for people to cut across from Broadgully Road, Luscombe Drive and Herberts Lane to Main-Hurstbridge Road and vica-versa.</li> <li>It is unclear how and whether authorities can prevent an increase in illegal access created by the trail.</li> </ul>	<ul> <li>Amendment C108 proposes to apply the PAO to part of the submitter's property.</li> <li>Alignment</li> <li>Council carefully investigated and considered all possible alignments for a safe, environmentally sensitive, feasible and enjoyable trail, whilst also appreciating the need to minimise land acquisition for the trail. These investigations identified the proposed alignment as the best option, for the following reasons:</li> <li>It requires no section of the trail to be aligned along a road, which will provide a far more enjoyable and attractive experience for users and is supported by the community.</li> <li>It makes significant use of existing public land where possible (mostly Council land) to provide the trail alignment.</li> <li>It requires only a portion of 12 private properties to be acquired. Further, land to be acquired is predominantly aligned along a boundary of properties, in most cases at the rear, and away from any dwellings.</li> <li>It minimises environmental impacts by providing an alignment which minimises the need for earthworks and vegetation loss and which provides a sufficient setback from the banks of the Diamond Creek.</li> </ul>

	part of the property which is adjacent to the Diamond Creek. The property is subject to the Development Plan Overlay: Schedule 2 (DPO2), which is applied for the purpose of guiding future subdivision of the site and surrounding land and it is presumed that the owner is suggesting application of the PAO will disrupt prompt subdivision of the property in accordance with the approved Development Plan which underpins the DPO2. However, this is considered not the case for the following reasons:
	• Irrespective of the DPO2 being applied to the site, a planning permit application is still required for a subdivision to be permitted and no application has been lodged with Council, nor is Council aware of any preparations to lodge an application in the immediate future. The Development Plan has been approved since 2003.
	• The approved Development Plan requires that any subdivision provides a corridor of public open space along the property's creek frontage. The proposed application of the PAO has a similar alignment to the proposed open space corridor, except that the PAO affects a notably shorter length of the site's creek frontage.
	• The PAO is being applied to an area which is creek frontage and would unlikely therefore be suitable for residential development.
	Public Access Many properties in the Shire already abut public open space, including the Diamond Creek Trail corridor, without this creating a substantive issue. If

			an issue does present itself, the owners can request that Council, as the public land manager, address the problem. It should also be noted that the trail may increase and improve public surveillance of the creek environs, whereas at the moment people may have significant opportunity to travel unobserved along the creek corridor and to the rear of private properties between Diamond Creek and Hurstbridge.
			Cost Council has prepared budget estimates for the project, as outlined in the briefing report under "Budget Implications".
2	VicTrack Sotiros Katakouzinos Acting, Planning Manager	<ul> <li>Supports the amendment</li> <li>Support is subject to confirmation that the PAO will not be applied to any VicTrack land</li> </ul>	Council wrote to VicTrack to confirm that the PAO is not being applied to VicTrack land.
3	Nathan Panzera 2/16 Rangeview Road Diamond Creek	<ul> <li>Supports the amendment</li> <li>There should be a bridge or similar to access Diamond Creek East Primary School and the high school from the other side of the train tracks</li> </ul>	Noted. This action is supported in relevant Council strategies, but is outside the scope of Amendment C108.
4	Geoff Mosely 90 Boyds Road Hurstbridge	<ul> <li>Supports the amendment</li> <li>The trail provides for a healthy and safe mode of travel</li> </ul>	Noted
5	Sandra Lucas 19 Luscombe Drive Diamond Creek	<ul> <li>Supports the amendment</li> <li>The trail will increase public health and all sections of the community will benefit.</li> </ul>	Noted
6	Wattle Glen Resident's Association	<ul> <li>Supports the amendment</li> <li>The Association has been requesting a trail between Diamond Creek and Hurstbridge for many years</li> <li>The route, while wider than the association expected, will better protect the Diamond Creek</li> <li>The trail will provide Wattle Glen residents with safe and</li> </ul>	<ul> <li>Noted</li> <li>Noted</li> <li>Noted</li> </ul>

		<ul> <li>enjoyable access to both Diamond Creek and Hurstbridge</li> <li>The proposed trail will link with other trails such as the Green Wedge Trail</li> <li>The trail will link well with the Wattle Glen oval and war memorial. The oval is currently being redeveloped as a soccer venue, which means children will be able to use the trail to get to soccer training and matches.</li> <li>The trail will support public health objectives</li> </ul>	<ul> <li>Noted</li> <li>Noted</li> <li>Noted</li> </ul>
7	Nillumbik Bicycle Users Group (NillumBUG)	<ul> <li>Supports the amendment</li> <li>There is a long-standing pent up demand by cyclists for an offroad trail extending from the Main Yarra Trail, the Diamond Creek Trail and then onto Hurstbridge</li> <li>The trail will travel along beautiful riparian environment that will benefit from a more intensive, knowledgeable and co-ordinated management</li> <li>An extension of the trail network beyond the Urban Growth Boundary is needed</li> <li>Hurstbridge is an attractive village and destination with coffee shops, resting spots and roads that offer pleasant cycling trips to other destinations</li> <li>The rail service to Hurstbridge allows the opportunity for trail users to return south by train, which would facilitiate longer oneway trips by cyclists and other users.</li> <li>There has been strong community support for a trail to Hurstbridge over a very long period.</li> </ul>	<ul> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> </ul>
8	Wayne Lascelles Panton Hill	<ul> <li>Opposes the amendment</li> <li>Compulsory acquisition of land should only be for essential services and not for recreation purposes</li> </ul>	<ul> <li>The purpose of the PAO is to provide public authorities and Councils with a mechanism to acquire land, which is needed for the public's benefit. Whilst the PAO is often applied to land required for road-widening or freeway extension, it is also totally acceptable to propose the PAO be applied to land which is required for public park land, footpaths or recreation facilities. For example:</li> <li>Parks Victoria has applied the PAO to numerous properties in the Shire to acquire land for</li> </ul>

	national park
	national park
	<ul> <li>Council has previously applied the PAO to acquire land for Council reserves</li> </ul>
	• Stonington City Council recently completed an amendment (C184), which applied the PAO to suburban land required for a proposed pedestrian link.
	A key test which is applied to a proposed application of the PAO is whether the intended benefit is sufficient in comparison to the impact on affected property owners to warrant application of the PAO. The application of the PAO proposed by C108 is considered warranted for the following reasons:
	• The proposed trail will provide a significant extension to the Diamond Creek Trail, which will be available for use by cyclists, walkers, horse-riders and other users
	• It will link Hurstbridge and Wattle Glen into the trail network.
	• It will provide Hurstbridge as a final destination on the trail, which offers significant opportunities for businesses in Hurstbridge and the Hurstbridge community in general.
	<ul> <li>It will place more land along the Diamond Creek into public ownership, which will allow more effective and co-ordinated management of environmental values by public managers</li> </ul>
	• The proposed acquisition of land only affects a part of 12 properties and does not require the acquisition of any dwellings or land in tight proximity to dwellings.
	The statutory land acquisition process has legal

			requirements to ensure affected land owners are properly financially compensated for both application of the PAO and acquisition of their land.
9	Hurstbridge Traders Association (HTA)	<ul> <li>Supports the amendment</li> <li>The HTA committee has agreed to support the Amendment to enable future development of a public shared trail from Diamond Creek to Hurstbridge</li> </ul>	Noted
10	Carolyn Johnston 486 Eltham-Yarra Glen Rd Kangaroo Ground	<ul> <li>Supports the amendment</li> <li>The proposed extension would be well utilised and would be appreciated for providing a safe, scenic route away from traffic and road hazards</li> <li>As the trail enters in to the semi-rural and rural areas of the Shire, it is also important that equestrian activity is acknowledged and catered for in this section of the trail.</li> </ul>	<ul><li>Noted</li><li>Noted</li></ul>
		<ul> <li>The inclusion of a reserve for horse and pony riding is well supported, not only by horse riders, but also by many locals who understand the need for safe riding routes away from busy roads.</li> </ul>	Noted
		<ul> <li>The trails proximity to the Hurstbridge railway station will enable users to use train travel one way and walk or cycle the other.</li> <li>Further, it will complete a great Melbourne trail route.</li> </ul>	Noted
		<ul> <li>The extension will be a wonderful community asset by providing linkages between local sporting grounds/centres, townships and rural areas.</li> </ul>	Noted
		<ul> <li>It is pleasing that the Council has decided on a final route for the extension and is taking action to make the extension a reality.</li> </ul>	Noted
11	Nillumbik Horse Action Group (NHAG)	<ul> <li>Supports the amendment</li> <li>NHAG, which represents equestrian interests in the Shire of Nillumbik, supports the provision for horse and pony riders alongside other user groups for the length of the trail</li> </ul>	Noted
		Shared-use recreation trails are an asset to the liveability of the Shire, particularly in relation to community, connectivity, fitness	Noted

		<ul> <li>and family. Further, the trails provide linkages between townships, sports grounds/centres and rural areas.</li> <li>For equestrians, the trail will provide a safe riding route away from busy roads and associated hazards.</li> <li>For walkers and runners, the trail will offer further safe, scenic routes for exercise. Community volunteer groups like Parkrun will have this as an additional option.</li> <li>For cyclists, the trail offers an alternative to road-riding and for families with younger cyclists, an opportunity to learn on a safe trail away from road traffic.</li> <li>For those that live out of the area, the proximity to railway stations enables walking and cycling through localities not normally accessible without a car.</li> <li>For the environment, the acquisition of land along the Diamond Creek will provide the benefit of consistent creek management via the Shire's environmental department.</li> <li>NHAG are pleased that the proposed extension will follow the creek-side option.</li> <li>NHAG acknowledges that affected landowners may not support the amendment, but it is anticipated that they will be fairly compensated for their loss.</li> </ul>	<ul> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> </ul>
12	Creek Trailbrazers Inc	<ul> <li>Supports the amendment</li> <li>The organisation has over 1600 members and would like to support this important step in acquiring land for the extension of the Diamond Creek Trail to Hurstbridge</li> </ul>	Noted
		• The Creek Trail Blazers Committee seeks a sandstone coloured concrete that will enhance the look of the trail.	<ul> <li>Noted. The colour of the asphalt will be determined at a later stage in the Diamond Creek Trail Extension Project.</li> </ul>
13	Sharon Turner 63 Taylor Road Hurstbridge	<ul> <li>Supports the amendment</li> <li>The amendent should be supported so that the process of establishing the recreation trail can continue.</li> </ul>	Noted
14	Graham Skinner 556 Heidelberg-Kinglake Road Wattle Glen	<ul> <li>Supports the amendment</li> <li>The cycle path will facilitate a large number of the community to participate in mental and physical exercise and will provide pedestrian access to Hurstbridge, other than along the very</li> </ul>	Noted

		busy main road.	
15	Andrew Bakos 1 Gaston Road Eltham	<ul> <li>Supports the amendment</li> <li>The trail extension is a much needed asset for the Shire</li> <li>The proposed alignment gives the best, least challenging gradient, which thereby makes the trail more accessible to a wider range of users.</li> <li>The proposed extension will link Hurstbridge to the CBD via the trail network and offers opportunities to provide links further afield, such as to the Warburton Trail.</li> <li>The proposed extension will assist tourism.</li> </ul>	<ul> <li>Noted</li> <li>Noted</li> <li>Noted</li> <li>Noted</li> </ul>
16	Public Transport Victoria (PTV)	<ul> <li>Supports the amendment</li> <li>The proposed area of PAO4 does not impact on the rail corridor</li> <li>PTV supports the delivery of sustainable transport infrastructure to facilitiate walking and cycling, and therefore supports the Amendment on the condition that there is no run-off from the shared trail onto the rail corridor.</li> </ul>	<ul> <li>Noted</li> <li>Noted. More specific technical design of the trail will be conducted at a later stage and at the point, the trail will be designed to prevent run-off onto the rail corridor.</li> </ul>
17	Christine Challis 12 Abbott Grove Clifton Hill	<ul> <li>Supports the amendment</li> <li>The amendment will have overwhelming positive benefits to the wider communities of Hurstbridge, Wattle Glen, Diamond Creek and citizens further away.</li> <li>The owners of the affected properties will be duly compensated, whilst still retaining a rural property.</li> </ul>	<ul><li>Noted</li><li>Noted</li></ul>
18	Sarah Shine 43 Meander Road Hurstbridge	<ul> <li>Supports the amendment</li> <li>The trail will be an asset to the community</li> </ul>	Noted
19	Chris Ingram 45 Coolaroo Avenue Hurstbridge	<ul> <li>Supports the amendment</li> <li>The trail will benefit public health, local traders and tourism</li> </ul>	Noted
20	Nicky and Anthony Bourne 675-685 Heidelberg- Kinglake Road, Hurstbridge	<ul> <li>Supports the amendment</li> <li>The submitters have been long-time supporters of the trail and are happy to have part of their land acquired for the trail</li> </ul>	<ul> <li>Noted. The Amendment proposes to acquire part of the submitters property for the trail.</li> </ul>
		• The proposed extension will be a fantastic for families	Noted

21	Nillumbik Ratepayers Association	<ul> <li>Opposes the amendment</li> <li>Several of our members are detrimentally affected by this proposal.</li> </ul>	<ul> <li>Noted. The statutory process for acquiring land requires affected landowners to be adequately compensated for application of the PAO and acquisition of their land.</li> </ul>
		<ul> <li>We have no issue with Council wanting to implement the construction of a recreational trail, but such a trail should be on public land that is currently in public ownership.</li> </ul>	<ul> <li>After long and extensive investigations, including community consultation, Council has determined to follow a creek alignment. It is not possible to provide a creek alignment without acquiring some private land. In all cases the proposed acquisition does not require the acquisition of any dwellings or land in close proximity to dwellings.</li> </ul>
		<ul> <li>It is a gross invasion of privacy to acquire private land for this purpose particularly as the project is dependent on external funding, and is not for an essential service.</li> </ul>	• It is entirely appropriate for Council to acquire land for the trail, including by use of the PAO. For an explanation of this matter see the response to Submission No. 8 above
		<ul> <li>For some, the proposed public acquisition creates not only legal problems but also legal liability problems</li> </ul>	<ul> <li>When the trail is constructed it will be solely on public land, not private land.</li> </ul>
		<ul> <li>The timelines nominated for completion of the project are an excessive imposition on affected landowners.</li> </ul>	• The proposed incorporated plan is valid until 2030 and the timelines can then be extended by the Minister for Planning. An end date of 2030 is considered fair and realistic as within that time Council has to both acquire

<ul> <li>It is apparent that a thorough evaluation of the works required and associated accessibility issues has not been undertaken. This is detrimental to materially affected landowners who may be exposed to such disruption for the next 14 years until 2030 and possibly beyond.</li> </ul>	<ul> <li>the land and construct the trail. Further, it is appropriate and common practice for an incorporated plan to provide scope for an extension to the timeline if required. Significantly, a third party, the Minister for Planning, decides whether a request for an extension to the timeline should be granted.</li> <li>Council has already undertaken the investigations it needs to have completed for this particular step in the project, and has set aside further more detailed investigations, which pertain more to construction of the trail, to when land has been acquired. This means that the further investigations can be conducted when Council owns the land, which will significantly reduce, or remove any imposition on private land owners.</li> <li>Once Council has acquired the land, the only further work for the project which may cause disruption to adjacent land owners is the actual construction of the trail. Construction at each section</li> </ul>
	of the trail. Construction at each section of the proposed trail will be done in a timely manner and every effort shall be taken to reduce the potential imposition on adjacent landowners.
The NRA is concerned that the proposed Incorporated Document allows Council access onto private land to	The proposed construction of the trail and other works would not be

undertake significant construction and other works without a permit, which will deny affected landowners natural justice.	undertaken until after the land in question is within public ownership.
<ul> <li>We suggest the following alterations and or additions to the incorporated document</li> <li>1. That land be purchased at an average 80% of the Residential 1 prices of Diamond Creek and Hurstbridge combined per hectare.</li> <li>2. If an individual title (with a dwelling), is affected by this Amendment, and can be accessed via direct access from another road/road easement then that access should be 'made good', with permits etc, by Council at no expense to the landowners, including access to the current dwelling.</li> <li>3. If an individual title (with a dwelling) would be 'landlocked' then council, at the request of the owner, purchase the whole of that landlocked title, such purchase again be at the 80% average as above.</li> <li>4. That the incorporated document be altered to read that any access will only be with the written agreement of landowners at mutually agreed to times and conditions.</li> </ul>	<ul> <li>The proposed incorporated plan is a planning document and cannot pertain to matters pertaining to compensation, which are handled separately under relevant legislation. This legislation provides a statutory process to ensure affected landowners are adequately compensated for application of the PAO to their land and the acquisition of their land. The process has regard for such matters as the zoning of the land in question and the impact of the acquisition on the operation of the property.</li> <li>The matter of Council accessing private land is outside the scope of the proposed incorporated plan and is a matter handled by particular legislation. It is important to note that construction of the trail will only commence once Council has acquired the land in question.</li> </ul>
5. That all 'agreements', where significant construction	<ul> <li>The timelines contained in the proposed incorporated plan are considered fair and reasonable in terms of providing Council sufficient time to complete the project without</li> </ul>

works have not been commenced, be renegotiated every three years including compensation.	unnecessarily delaying the project in requiring further planning approval. The matter of compensation is outside the scope of an incorporated document.
<ul> <li>In the interests of procedural fairness Council should not enjoy exemptions from requiring a planning permit to enter and or conduct works.</li> </ul>	• Council still requires full and proper planning approval for the construction and use of the trail. In this instance, Council is seeking to employ the option available in Victorian Planning Schemes to obtain the planning permission via an incorporated document, rather than through a planning permit. For a project such as the Diamond Creek Trail extension, using an incorporated document allows a broader, more strategic and efficient planning assessment process to be conducted.
• Council is already constructing bicycle lanes and a footpath along the Heidelberg-Kinglake Road from Mannish Road to Silvan Road. These works should be extended into Hurstbridge, this would adequately serve as recreational trail, therefore eliminating the need for the costly compulsory acquisition of private land, particularly when the trail is reliant on external funding. This should adequately serve as a recreational trail.	<ul> <li>Footpaths are being constructed between Silvan and Mannish Roads to provide pedestrian access primarily to Wattle Glen train station. The footpath will be between 1.2 and 1.5m and only suitable for pedestrians.</li> <li>The on-road cycle lanes project will seal the existing road shoulder which provides for commuter, experienced and competitive cyclists. This is important infrastructure which will improve both cyclist and motorist safety along this stretch of road, however as</li> </ul>

		<ul> <li>The Nillumbik Ratepayers Association strongly objects to proposed Amendment C108 and requests a Panel.</li> </ul>	<ul> <li>this is on an 80kph road this is not suitable as a family recreation trail</li> <li>Noted. The officer recommendation is that Council requests the Minister for Planning appoint a Panel to consider the Amendment.</li> </ul>
22	Andrew Moharic 23 Upper Road Wattle Glen	<ul> <li>Supports the amendment</li> <li>Submission simply states support for the planned trail</li> </ul>	Noted
23	Colleen Hackett	<ul> <li>Supports the amendment</li> <li>Wishes to continue their support for an extension to the Diamond Creek Trail to Hurstbridge, which continues the general alignment of the existing trail for much of the way to Melbourne, following the waterways and parklands.</li> <li>Acknowledgement should be made of the land owners who have said "yes" to the trail right from the beginning and who have shown commendable community spirit.</li> </ul>	<ul> <li>Noted</li> <li>Noted</li> </ul>
24	Anne Stoneman 673 Heidelberg-Kinglake Road, Hurstbridge	<ul> <li>Opposes the amendment</li> <li>Council is well aware of the submitter's objections to the proposed trail alignment</li> <li>In addition, the submitter is opposed to the proposed acquisition of the owners land located on the east side of the Diamond Creek, particularly as this will "landlock" the property by acquiring land currently used to provide access to the property.</li> <li>The amendment should be modified to not include land at 673 Heidelberg-Kinglake Road.</li> </ul>	<ul> <li>Noted. Amendment C108 proposes to apply the PAO to a portion of 673 Heidelberg-Kinglake Road.</li> <li>The proposed application of the PAO will include land used as a driveway for 673 and 675-685 Heidelberg-Kinglake Road. Council will ensure access is retained for these properties.</li> </ul>

25	RJ and KB Stoneman 673 Heidelberg-Kinglake Road, Hurstbridge	<ul> <li>Opposes the amendment</li> <li>Requests a planning panel to consider the amendment</li> <li>The amendment will "landlock" the property (see the summary and response to the previous submission)</li> <li>The proposed incorporated plan does not adequately consider and deal with the issue of how access will be gained to the submitter's property for the purpose of constructing the trail.</li> <li>The amendment should be modified to not include land at 673 Heidelberg-Kinglake Road.</li> </ul>	<ul> <li>Amendment C108 proposes to apply the PAO to a portion of 673 Heidelberg- Kinglake Road.</li> <li>See the response to the issue of access in the preceeding submission (No.24).</li> <li>The incorporated plan has regard for planning matters relevant to the Nillumbik Planning Scheme. Access for construction purposes will not commence until the land in question has been acquired.</li> </ul>
26	By Mecone on behalf of National Property Group: Owners of 142 Broad Gully Road and 26 Herberts Lane, Diamond Creek	<ul> <li>Opposes the amendment</li> <li>Notes that 142-152 Broad Gully Road is subject to an application for a planning permit for residential subdivision and development</li> <li>Land at 26 Herberts Lane, Diamond Creek has been subject to a number of pre-application discussions with Council and planning permit applications for residential subdivision and development are iminent.</li> </ul>	<ul> <li>Amendment C108 proposes to apply the PAO to part of 142 Broad Gully Road and 26 Herberts Lane</li> <li>The land is the subject of a planning permit applicaton as mentioned. However, the site is subject to the DPO2 which requires land, similar in alignment to the proposed PAO, to be provided as an open space contribution. It is Council's intention that this land will be used for the recreational trail and that the land will be obtained either through the application being approved and successfully transferring the public open space or, if need be, Council acquiring the land through the PAO.</li> </ul>

		<ul> <li>The proposed PAO land for 26 Herberts Lane is largely under electricity easements and would be unsuitable for residential development. Also, much of this part of the property is also identified as future public open space.</li> </ul>
		• The proposed PAO land on both properties is adjacent to the creek, which likely poses significant constraints for development. The suitability of the PAO land for residential development will be considered in the process for determining compensation.
	<ul> <li>Objects on the following grounds:         <ul> <li>The exhibited material lacks sufficient information to adequately and clearly determine the impacts the proposed PAO4 will have on current and future planning permit applications for the land. The maps provided with the Amendment documentation do not clearly set out the extent or dimensions that the Overlay extends into each of the two properties. More detailed plans are requested, which clearly show the depth of the proposed PAO4 into each site.</li> </ul> </li> </ul>	• The owners were provided with aerials before exhibition commenced which clearly showed the proposed PAO against the features of the site (e.g. the creek, trees etc). Further, the exhibition material provided with the statutory amendment notification included the proposed planning scheme maps. The owner has not approached Council prior to or during the exhibition period to seek more information regarding the proposed application of the PAO, despite receiving letters just prior to and during the exhibition period which offerred a meeting to discuss any issues.

		<ul> <li>Extending the proposed PAO4 over identified developable land within the General Residential Zone would reduce the development outcomes for these portions of the land</li> </ul>	<ul> <li>As mentioned above the PAO is being proposed to land which is predominantly, if not completely, nominated for public open space by the DPO2 and/or is heavily constrained in its development potential by being under power lines etc.</li> </ul>
27	Damien and Elizabeth Murray	Opposes the amendment	Noted
28	Melbourne Water	No objection	<ul> <li>Noted. Melbourne Water is the public land manager responsible for the Diamond Creek</li> </ul>
29	Andrew Bean 65-135 Wilson Road Wattle Glen	<ul> <li>Opposes the amendment</li> <li>Opposes for the following reasons: <ul> <li>Council already has an existing reserve adjacent to the creek which is more than adequate to accommodate a creek side trail</li> <li>The proposed acquisition removes a large section of the most arable land on the property</li> <li>The access restricts access to the remaining creek flats</li> <li>The compulsory acquisition is for a "frivolous project" that has not been properly planned or costed</li> </ul> </li> <li>The PAO should not be applied to 65-135 Wilson Road and the amendment should be considered by an independent planning panel.</li> </ul>	<ul> <li>Amendment C108 proposes to apply the PAO to the submitter's property.</li> <li>The existing reserve is too narrow to provide the trail corridor and maintain a suitable, environmentally sensitive setback from the Diamond Creek</li> <li>The productive capacity of the land will be considered in regards to providing adequate compensation.</li> </ul>

30	lan and Oriana Halliwell 201 Main-Hurstbride Road Diamond Creek	<ul> <li>Opposes the amendment</li> <li>Requests the amendment is considered by an independent planning panel</li> <li>Our previous objections and issues with the proposed trail extension have not been fairly heard</li> <li>The proposed incorporated document lacks transperancy and aims to give the Nillumbik Shire Council far reaching controls and powers which will be to the detriment of adjacent landowners</li> <li>The submitter's property (201 Main-Hurstbridge Road) should be removed from the amendment.</li> <li>The location of the proposed trail: <ul> <li>is too close to the submitters propety and will impact on the amenity and privacy of the dwelling.</li> </ul> </li> </ul>	<ul> <li>Noted. Amendment C108 proposes to apply the PAO to the submitters' property.</li> <li>Council has considered carefully all issues and objections raised to the proposed trail and has extended several invitations to the submitters to discuss their issues with the proposed trail alignment.</li> <li>The shortest setback of the proposed PAO land to the submitters dwelling is approximately 95-100 metres. Further, there will be a further setback of approximately 8 metres between the edge of the proposed Council land and the edge of the actual trails. It is intended that screen planting will be established in that 8 metre setback where appropriate. The trail corridor will be fenced.</li> </ul>
		<ul> <li>will decrease the safety of residents and increase the likelihood of theft, negative surveillance and attack for the residents and landowners. Information relevant to identifying the likelihood of a crime issue should be made public.</li> </ul>	<ul> <li>See the officer response to Submission No1 in regard to the issue of safety and illegal activities along the trail corridor.</li> </ul>
		<ul> <li>will reduce the available land for grazing which can assist in managing the property against the threat of bushfire.</li> </ul>	<ul> <li>Council will manage the trail corridor to mitigate against the threat of bushfire.</li> </ul>
		<ul> <li>will encourage people to take short-cuts through private properties in order to access the trail or</li> </ul>	The trail corridor will be properly fenced.

		nearby roads from the trail	
		<ul> <li>Council has never fully considered or appreciated the advantages (e.g. lower costs) of a road alignment option and the issues associated with a creek alignment (e.g. safety for residents).</li> </ul>	• Council has fully considered a road alignment, but the option is considered a far poorer one to a creek alignment, particularly in terms of the quality of the trail experience.
31	Mr A and Mrs C Borgolotto 203 Main-Hurstbridge Road	Opposes the amendment	<ul> <li>Amendment C108 proposes to apply the PAO to the submitters' property.</li> </ul>
	Diamond Creek	<ul> <li>The trail will restrict their ability to graze the land and the grazing is necessary for safety reasons.</li> </ul>	• The trail corridor will be properly fenced by Council to prevent free movement of stock. Sections of the existing metropolitan trail network frequently abutt grazing land (e.g. sections of the Main Yarra Trail).
		• There is already a problem at the site with people illegaly entering the land to access the VicTrack land and the trail will only exacerbate this issue, as people will access the site to gain access to and from the bicycle trail.	<ul> <li>The trail corridor will be properly fenced.</li> </ul>
		<ul> <li>The proposed trail alignment will increase fire hazards for the community.</li> </ul>	• The trail alignment may increase public surveillance along the creek corridor, which perhaps could potentially reduce fire risks.
		<ul> <li>The proposed incorporated document lacks transparancy and aims to give the Nillumbik Shire Council far reaching controls and powers which will be to the detriment of adjacent landowners</li> </ul>	<ul> <li>The proposed incorporated plan sets a significant series of conditions on Council's ability to construct the path to ensure the path is sensitive to environmental and other</li> </ul>
		<ul> <li>The amendment should be modified to not include land at 203 Main-Hurstbridge Road</li> </ul>	considerations.

32	Sue McKinnon 201 Hilderbrand Road Cottles Bridge 3099	<ul> <li>Opposes the amendment</li> <li>The trail has merit, but the proposed incorporated plan is not appropriate for the following reasons: <ul> <li>It will prevent the wider community from being consulted on aspects of trail's design, such as the surface material through the Greysharps Rd Recreation Precinct</li> <li>Council should have to gain a planning permit for any works in the environs of the Diamond Creek, which are environmentally sensitive and flood prone</li> <li>Requiring Council to obtain a planning permit would ensure that the community has the opportunity to be consulted on the whole of the trail project.</li> <li>Council is currently progressing amendments which will change the application of overlays to land within the proposed trail corridor and the community should not be expected to agree to supporting the incorporated document until knowing the final details of these modifications.</li> </ul> </li> </ul>	<ul> <li>Design criteria has been determined based on Melbourne Water Trail guidelines, consistency with existing regional trail infrastructure and maintenance requirements of the completed trail</li> <li>As mentioned above, the proposed incorporated plan sets a significant series of conditions on Council's ability to construct the path to ensure the path is sensitive to environmental and other considerations.</li> <li>Recgonising the size and extent of the trail project, a clear objective of the proposed incorported plan is to provide a more efficient, co-ordinated and strategic assessment regarding the granting of planning permission for construction of the trail.</li> </ul>
33	Douray Pty Ltd, Raymond John Maino and Valerie Isabella Maino 86 Wilson Road Wattle Glen	<ul> <li>Opposes the amendment</li> <li>The proposed alignment is seriously sub-optimal from the perspective of public safety, excessive cost, impacts on environmental and landscape values and inconsistent approaches to, and inaccurate assessment in relation to, land acquisition requirements.</li> <li>Alternatives which appear to avoid many of these issues have not been sufficiently assessed.</li> </ul>	<ul> <li>Amendment C108 proposes to apply the PAO to the submitter's property – 86 Wilson Road</li> <li>Council has carefully considered various options for the trail, including road alignments or alignments which make use of VicTrack land. All of these alignments have presented a significant issue, which has rendered</li> </ul>

	the option far less achievable or less optimal than the proposed creek alignment.
<ul> <li>The trail extension through the submitter's property will result in the loss of the owner's entire creek front access.</li> </ul>	• The compensaton process will consider the loss of creek frontage and whether this poses a particular loss for the property owner and one for which there needs to be a particular level of compensation.