

Policy and Services Committee

to be held at the Civic Centre, Civic Drive, Greensborough
on Tuesday 6 September 2016 commencing at 7pm.

Agenda

Stuart Burdack
Chief Executive Officer

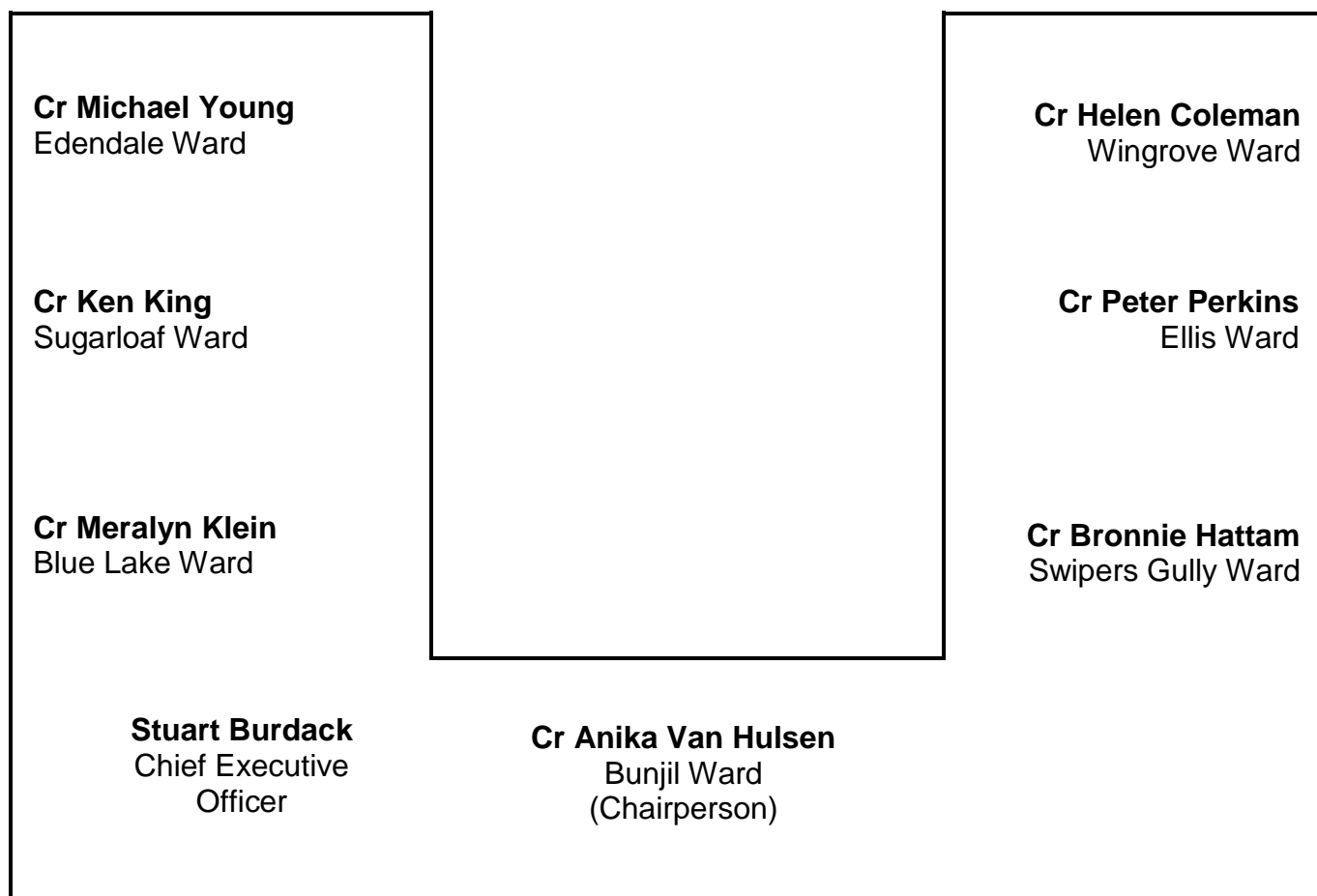
Wednesday 31 August 2016

Distribution: Public

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Domin je ka

Policy and Services Committee seating plan



Visitors in the gallery at Committee meetings are:

- Welcome to copies of the various reports which will be considered by this Committee at the meeting. These are on the table in the foyer.
- Welcome to tea, coffee and water. These are on the table in the foyer near the Council Chamber entry.
- Requested to observe Council deliberations quietly in order for Council meetings to run smoothly.
- Advised that an audio recording of this meeting will be made for the purpose of verifying the accuracy of the minutes.

Nillumbik Shire Council

**Agenda of the Policy and Services Committee Meeting to be held Tuesday 6
September 2016 commencing at 7pm.**

1. Welcome and apologies

Welcome by the Chair

Members of the public are advised the meeting will be recorded for the purposes of verifying the accuracy of the minutes.

Apologies

Motion

That the apologies be accepted.

2. Disclosure of conflicts of interest

Committee members should note that any disclosure of conflict of interest must be disclosed immediately before the item in which they have an interest.

3. Confirmation of minutes

Confirmation of minutes of the Policy and Services Committee Meeting held on Tuesday 9 August 2016.

Motion

That the minutes of the Policy and Services Committee Meeting held on Tuesday 9 August 2016 be confirmed.

4. Policy and Services reports

PS.031/16 Amendment C108 Extension of the Diamond Creek Trail to Hurstbridge - Consideration of submissions

File: 40/11/106

Distribution: Public

Manager: Chad Griffiths, Manager Strategic and Economic Planning

Author: Paul Fyffe, Senior Strategic Planner

Nadine Wooldridge, Coordinator Community Leisure

Summary

This report considers submissions received in response to exhibition of Amendment C108 to the Nillumbik Planning Scheme, which proposes to facilitate the extension of the Diamond Creek Trail to Hurstbridge.

Council has been working for over ten years to find a feasible route to extend the Diamond Creek Trail from Diamond Creek to Hurstbridge. Council's 2011 Recreational Trails Strategy confirmed the intention to provide the trail extension and noted that critical sections of land are in private ownership. Work has continued on assessing trail alignment options and in 2013 Council adopted a preferred alignment along the creek corridor. A detailed assessment of this option has led to the current stage with Council endorsing an alignment in February 2016 and resolving in April 2016 to commence a Planning Scheme Amendment (C108) which will reserve the required land.

Amendment C108 proposes to:

- Apply the Public Acquisition Overlay to sections of 12 private properties.
- Insert an incorporated plan into the Nillumbik Planning Scheme, which will provide Council with the necessary planning approval to construct and use the trail (subject to conditions).

Amendment C108 was placed on exhibition from 28 July to 29 August during which time 33 submissions were received. Of these, 12 submissions oppose the amendment, 20 support it and 1 states no objection.

Given the continuing community support for the trail extension, and the net benefit to the community that will accrue from the construction and use of the trail, the project has merit and should be pursued. A key consideration is that the extent of public acquisition of private land has been minimised as far as possible, and does not require the acquisition of any dwellings, or land in close proximity to a dwelling. Accordingly, it is recommended that Council continue to support Amendment C108 in its exhibited form.

As the submissions opposing the amendment disagree with the fundamental alignment of the trail and the acquisition of private land to facilitate its construction, Council can not alter the amendment to the satisfaction of the submitters. Accordingly, it is recommended that Council write to the Minister for Planning and request the appointment of an independent Planning Panel, and refer all submissions received during exhibition to the Panel. Further, it is recommended that Council also refer any late submissions - those received after the end of the exhibition period, but five days before the date of any Directions Hearing - to the Panel.

4. Policy and Services reports**PS.031/16 Amendment C108 Extension of the Diamond Creek Trail to Hurstbridge - Consideration of submissions**

Following the receipt of the report and recommendations of the independent Panel, Council will have the opportunity to determine whether to adopt, change or abandon Amendment C108 in early 2017.

Recommendation

That the Committee (acting under delegation from Council):

- 1. Receives and notes the issues raised by submitters.**
- 2. Requests the Minister for Planning appoint an independent Planning Panel to hear submissions relating to Amendment C108 to the Nillumbik Planning Scheme.**
- 3. Refers all current submissions, and any late submissions received up until five days before the date of the Directions Hearing, to the Panel.**
- 4. Provides a submission to the Panel which generally supports the amendment as exhibited.**
- 5. Receives a further report on the amendment, following the consideration of the Panel and the issuing of its recommendations.**
- 6. Advises the following parties of this resolution:**
 - a) All submitters to Amendment C108**
 - b) All owners of land to which Amendment C108 proposes to apply the PAO.**

Attachments

1. C108 - Proposed Incorporated Plan - Diamond Creek to Hurstbridge Trail
2. Aerial showing the Proposed Trail Alignment and the Proposed Application of the PAO
3. Amendment C108: Summary of Submissions Received

Background

1. At the July 2015 Ordinary Meeting of Council, Council confirmed its commitment to the Diamond Creek Trail extension between Diamond Creek and Hurstbridge as the highest priority of the proposed regional trails in the Nillumbik Trails Strategy 2011.
2. From July 2015 to February 2016 a series of investigations and assessments to determine the best alignment for the trail extension were undertaken. The findings of this work recommended an alignment along the creek that would require the acquisition of some private land.
3. At the February 2016 Ordinary Meeting of Council, Council endorsed the recommended creek alignment for the purpose of community consultation and sought submissions from key stakeholders and community members.

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4. A total of 195 submissions were received, of which 91 per cent supported the trail extension and the preferred creek alignment. Reasons cited in these submissions for supporting the proposed trail included improved health and well-being, connecting townships, safer transport to schools and shops, economic opportunities for local businesses and providing a trail in a natural setting.
5. At the April 2016 Ordinary Meeting of Council, after considering submissions received, Council resolved to confirm its support for the creek alignment and resolved to take the necessary steps to commence and exhibit Amendment C108 to the Nillumbik Planning Scheme, which proposes to:
 - Apply the Public Acquisition Overlay: Schedule 4 (Local Government) to land required to construct the trail.
 - Insert an incorporated document Attachment 1 into the Nillumbik Planning Scheme, which will provide planning permission for future use and development of the trail, subject to conditions.
6. A map showing the proposed trail alignment and which indicates the proposed application of the PAO is provided as Attachment 2.
7. Council received authorisation from the Minister for Planning to commence the amendment on 31 May 2016 and the amendment was exhibited from 28 July to 29 August 2016.

Policy context

8. This report directly supports the achievement of Council Plan 2013-2017 strategy:
 - We will provide recreation and sports facilities and services to enhance social participation and to help our community be active and healthy.

Budget implications

9. The budget allocated for the trail extension project has been required for legal advice, valuations, strategic report development and surveys. The cost for completing Amendment C108 is estimated at \$50,000, which has been provided for in the 2016-2017 budget.
10. A strategic report prepared by GTA Consultants estimated the cost for a number of alignment options of the proposed trail extension. The estimate for the proposed trail along the creek corridor which includes construction, land acquisition, design and supervision and contingency is \$11.05 million.
11. Council allocated \$500,000 in 2015-2016 capital works program towards the construction of the Diamond Creek Trail project with further allocations in the Major Projects Plan including \$2 million in 2016-2017 and \$2.5 million, which includes \$1.25 million of grant funding in 2018-2019. The balance of funding, approximately \$6.05 million will need to be funded from future Council allocations or grants and the project construction staged to suit available funding.

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12. The Diamond Creek Trail extension project is expected to be delivered with the support of external funding. There may be opportunities to seek funding through Sport and Recreation Victoria (SRV) or through federal sources such as National Stronger Regions Funding. It should be noted that these sources, which will require matching Council contribution, will require the whole project to be ready to construct before being considered for funding.
13. The Northern Regional Trails Strategy has recently been completed and endorsed by Council. This document, which confirms the Diamond Creek Trail extension as a high priority, will be used to advocate for funding for trail delivery across the northern region.

Consultation/communication

14. Two weeks prior to exhibition of Amendment C108, Council provided the owners of private land which is affected by the amendment with a letter that:
 - Provided an update on the Diamond Creek Trail Extension Project.
 - Provided an indicative timeline for the project.
 - Explained Council's intention to commence Amendment C108 to the Nillumbik Planning Scheme and to advise that exhibition would be commencing shortly.
 - Provided an indicative aerial of each property which detailed the proposed trail alignment and application of the Public Acquisition Overlay (PAO).
 - Provided a contact officer within Council.
 - Extended an invitation to meet with Council officers to discuss the amendment and any concerns and issues the owner may have with the amendment.
15. Amendment C108 to the Nillumbik Planning Scheme was placed on public exhibition from 28 July to 29 August 2016, which involved the following notification:
 - A letter of notification was posted to:
 - All owners and occupiers of land to which the amendment proposes to apply the Public Acquisition Overlay (PAO).
 - All owners and occupiers of properties within 100 metres of the proposed amendment area.
 - The prescribed Victorian Government ministers.
 - Public authorities, including Melbourne Water, CFA, Public Transport Victoria, AusNet, VicRoads and Native Title Victoria.
 - Notice of the Amendment appeared in the *Diamond Valley Leader* on 27 July 2016 and the *Government Gazette* on 28 July 2016.
 - Information was placed on Council's website, as well as on the relevant Victorian Government website.

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- Council emailed participants of the Diamond Creek Trail Survey (conducted in June 2015) to advise that Amendment C108 was on exhibition. The email was sent to 1,372 people and organisations.
16. In addition to all the above, Council wrote to the owners of private properties affected by the amendment on 16 August to:
- Remind them that the exhibition period would close on 29 August 2016.
 - To advise of the likely date the matter would be considered by Council's Policy and Services Committee.
 - To re-iterate the invitation to meet with Council officers regarding the amendment.
17. Council's public notification for the amendment has been above and beyond what is required by the *Planning and Environment Act 1987*, particularly in relation to the information and correspondence provided to the owners of the 12 affected properties.

Submissions received

18. Council has received a total of 33 submissions to the Amendment of which 12 oppose the Amendment, 20 support it and one states no objection.

Opposing submissions

19. Submissions opposing the amendment have been received from:
- The Nillumbik Ratepayers Association
 - Owners of eight of the 12 properties to which C108 proposes to apply the PAO, including one submission from each of the following:
 - Dieter Bontalik of 22 Herberts Lane, Diamond Creek
 - Anne Stoneman of 673 Heidelberg-Kinglake Road, Hurstbridge
 - RJ and KB Stoneman of 673 Heidelberg-Kinglake Road, Hurstbridge
 - Andrew Bean of 65-135 Wilson Road, Wattle Glen
 - Mr and Mrs Halliwell of 201 Main-Hurstbridge Road, Diamond Creek
 - Mr A and Mrs C Borgolotto of 203 Main-Hurstbridge Road, Diamond Creek
 - Douray Pty Ltd of 86 Wilson Road, Wattle Glen
 - Mecone Pty Ltd representing the owners of 142 Broadgully Road and 26 Herberts Lane, Diamond Creek
 - Three other Shire residents
20. The grounds given for opposing the amendment, include:
- An alignment which does not require the acquisition of land, or as much acquisition, is possible and should be pursued

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- The proposed alignment and application of the PAO contradicts and disrupts planning undertaken for future development at 22 and 26 Herberts Lane and 142 Broadgully Road, Diamond Creek
- The cost of the trail, including land acquisition, is going to be far in excess of the projected cost.
- The trail will attract illegal activities (e.g. vandalism and the dumping of rubbish) adjacent to private property and will attract trespassers onto private property.
- The PAO should not be used to acquire land for recreational purposes, but rather should only be used for “essential purposes” only.
- The proposed incorporated plan provides insufficient regulation in terms of not requiring Council to obtain a planning permit for construction of the trail and allowing too long a timeline for completion of the project
- The proposed application of the PAO to 673 Heidelberg-Kinglake Road, Hurstbridge will land-lock the property

Supporting submissions

21. Council has received submissions supporting the amendment from:

- The Nillumbik Bicycle User Group
- The Wattle Glen Residents’ Association
- The Hurstbridge Traders Association Inc.
- VicTrack
- Public Transport Victoria
- The Nillumbik Horse Action Group
- The Creek Trailblazers Inc.
- The owners of 675-685 Heidelberg-Kinglake Road, which is one of the properties to which the Amendment proposes to apply the PAO
- Eleven other Shire residents and one resident of Clifton Hill

22. Amongst these submissions, points raised in support of the amendment include:

- The shared trail will benefit all members of the community, support public health and provide a safe mode of travel.
- The proposed trail corridor will assist in protecting the Diamond Creek, including by allowing more intensive, knowledgeable and co-ordinated management.
- The linkage between local sporting centres/grounds, townships and rural areas will be a wonderful community asset.
- The trail will give residents of Wattle Glen safe and enjoyable access to Diamond Creek in one direction and to Hurstbridge in the other.

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- The proposed trail alignment provides good access to the Wattle Glen Memorial Reserve and oval. Further, the oval is being developed as a soccer facility, so the trail will enable children to ride bikes to the oval for training and soccer matches.
 - The proposed trail will link well with the Green Wedge Trail, which will provide a walking trail from the Melbourne CBD to Kinglake
 - There is long-standing community support for a trail to Hurstbridge, including significant demand from cyclists and walkers for an off-road trail which extends from the city to Hurstbridge
 - The proposed alignment will pass through a beautiful riparian environment
 - The present trail terminates in Diamond Creek and an extension beyond the Urban Growth Boundary to a rural cycling environment is required
 - Hurstbridge is a good destination for a cycling path due to the café, the railway station and the opportunities for rural cycling beyond the township.
 - The railway station at Hurstbridge will provide users the opportunity to travel by train one way and cycle or walk the other.
 - 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.
 - The proposed trail extension will be well-utilised and people will appreciate a safe, scenic route away from traffic and hazards
 - For equestrians, the trail will provide a safe riding route away from busy roads and associated hazards – just for the enjoyment of trail riding or for riding to club grounds.
 - For cyclists, the trail will provide an alternative to road-riding and for families with younger cyclists, an opportunity to learn on a safe trail away from road traffic.
 - The proposed alignment will provide an easier gradient, which will make the trail more accessible.
 - As the trail enters semi-rural and rural areas of the Shire, it is important and appropriate that Council has proposed that horse riding is provided for along the proposed extension.
 - It is anticipated that landowners whose land will be acquired will be fairly compensated for their loss and that they will still retain a rural property.
 - It is pleasing to see that Council, after considerable study, is taking action to make the trail extension a reality.
23. A summary of all submissions received is provided as Attachment 3. The key issues raised in submissions opposing the amendment are responded to as follows.
24. An alignment which does not require the acquisition of land, or as much acquisition, is possible and should be pursued.

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- 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:
 - 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.
 - It makes significant use of existing public land where possible (mostly Council land) to provide the trail alignment.
 - 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 in all cases away from any dwellings.
 - 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. It is noted that Melbourne Water, who is the public authority responsible for the Diamond Creek, has no objection to the Amendment.
25. The proposed alignment and application of the PAO contradicts and disrupts planning done for future development of land at 22 and 26 Herberts Lane and 142 Broadgully Road, Diamond Creek
- The three properties referred to are 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 owners are suggesting application of the PAO will disrupt the subdivision of the property in accordance with the approved Development Plan which underpins the DPO2.
 - However, the proposed application of the PAO will not disrupt subdivision in accordance with the DPO2 for the following reasons:
 - Irrespective of the DPO2 being applied to the properties, a planning permit is still required to subdivide each property in accordance with the Development Plan and none of the properties have such a permit with regards to the particular land in question. The DPO2 was adopted in 2003.
 - The approved Development Plan requires that subdivision of each property significantly contributes to a corridor of public open space adjacent to the Development Plan area's creek frontage. The Development Plan identifies a future shared path within the proposed open space to provide a pedestrian/cycle connection from the Diamond Creek to the broader Development Plan area.
 - The proposed application of the PAO has a similar alignment to the proposed open space corridor.

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- The PAO is being applied to an area which is creek frontage and due to both environmental and flooding concerns, would not necessarily be suitable for residential development. Further the proposed PAO land at 26 Herbert's Lane largely includes land within an electricity power easement, which will also present any issues for any housing proposed at that location.
 - No evidence has been provided, nor is it likely, that the proposed acquisition of the land will prevent the reasonable and orderly subdivision and development of the three properties for residential purposes, nor reduce the potential financial return from such a subdivision.
26. The cost of the trail, including land acquisition, is going to be far in excess of the projected cost.
- Council has carefully completed budget estimates for the project, as outlined in this report under 'Budget Implications'.
 - It is noted that some submissions opposing the amendment have requested a rate at which compensation for acquisition should be determined, such as a rate which uses residential or part residential zoning. Negotiations regarding rates of compensation will be conducted at a later point in the Diamond Creek Trail Extension Project and in accordance with the statutory processes for ensuring adequate compensation.
27. The trail will attract illegal activities (e.g. vandalism and dumping of rubbish) adjacent to private property and will attract trespassers onto private property.
- 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, take necessary action. It should also be noted that the trail may increase and improve public surveillance of the creek environs, whereas at the moment people may well have significant opportunity to travel unobserved along the section of creek corridor between Diamond Creek and Hurstbridge, which is adjacent to private properties.
 - As part of the project, Council will fence off the trail corridor from abutting properties and where necessary provide screen planting within the corridor.
28. Land should only be acquired for essential purposes and not recreation
- 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 appropriate to propose the PAO be applied to land which is required for public park land, footpaths or recreation facilities. For example:
 - Parks Victoria has applied the PAO to numerous properties in the Shire to acquire land for national park
 - Council has previously applied the PAO to acquire land for Council reserves

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- 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 impact on affected property owners is warranted in comparison to the community benefit sought by acquiring the land. The application of the PAO proposed by C108 is considered warranted for the following reasons:
 - The proposed trail will provide a significant and aesthetic extension to the Diamond Creek Trail, which will be available for use by cyclists, walkers, horse-riders and other users
 - It will link Wattle Glen and one of the major townships, Hurstbridge, 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.
 - It will provide a continuous cycling trail, which is aligned along waterways, from the Melbourne CBD to Hurstbridge. The trail will follow the Main Yarra Trail from the CBD to Eltham Lower Park and then follow the Diamond Creek Trail to Hurstbridge.
 - It will connect with a number of existing and proposed regional and local trails, such as the Kinglake Way and the Green Wedge Trail.
 - 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
 - The proposed acquisition of land only affects a part of 12 properties and does not require the acquisition of any dwellings or land in close 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.
29. The proposed incorporated plan provides insufficient regulation in terms of not requiring Council to obtain a planning permit for construction of the trail and allowing too long a timeline for completion of the project.
- Council still requires full and proper planning approval for the construction and use of the trail. In this instance, Council is seeking to employ an option available in Victorian Planning Schemes to obtain the planning permission via an incorporated document, rather than through a planning permit. For a large and long-term project such as the Diamond Creek Trail extension, using an incorporated document allows a broader, more strategic, co-ordinated and efficient planning assessment process to be conducted.

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- It should be noted that the proposed incorporated plan only allows construction and use of the trail subject to a significant number of conditions and requirements being completed and adhered to. There are in particular a significant number of environmental conditions.
 - 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 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. A third party, the Minister for Planning, and not Council, decides whether a request for an extension to the timeline should be granted.
30. The proposed application of the PAO to 673 Heidelberg-Kinglake Road will land-lock the property
- The driveway for 673 and 675-685 Heidelberg-Kinglake Road passes through land which Council proposes to acquire and use as part of the trail corridor. If, as proposed, this section of driveway becomes part of the trail corridor, Council will ensure access is retained for the properties through the corridor. This will likely entail the placement of some infrastructure to protect the safety of trail users and users of the driveway.
 - It should be noted that:
 - It is not an unusual situation for a driveway to pass through a trail corridor. For example, there are examples of this occurring on other Shire trails and it occurs on the Warburton Trail.
 - The Hurstbridge railway line already passes through the driveway a short distance to the east of the proposed trail corridor. In short, a public transport corridor already exists across the driveway.
31. For the all the reasons stated above, none of the issues raised against Amendment C108 are considered to warrant any changes to the amendment and it is recommended that Council proceed with the Amendment as exhibited.

Request for an Independent Planning Panel

32. The *Planning and Environment Act* 1987 requires that if Council wishes to proceed with an amendment and is unable to resolve the concerns of submitters to the submitters' satisfaction, it must resolve to request that the Minister for Planning appoint an independent Planning Panel and refer submissions to that Panel.
33. As detailed above, certain submissions are fundamentally opposed to the amendment. For example, certain submissions oppose use of the PAO to acquire land for a recreational trail and certain other submissions oppose the proposed application of the PAO to the submitters' land. Neither of these concerns can be addressed to the submitters' satisfaction without pursuing a 'non-creek' alignment, which would involve abandoning the amendment.

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34. There are the following advantages in having a Planning Panel consider the amendment:
- It provides for an independent review of Council's decision and the strategic basis of the amendment, which is often appreciated by all parties, including submitters. On this point, it is emphasised that a number of submissions opposing the amendment, including from affected landowners, state that they wish for the amendment to be considered by an independent planning panel.
 - Panel Members have technical expertise relevant to the amendment and can recommend potential improvements.
 - Council retains ultimate authority to adopt (potentially with changes) or abandon the amendment at a later date, following the recommendations of the Panel.
35. Considering all the above, it is recommended that Council request the Minister for Planning appoint an independent Planning Panel to consider Amendment C108.

Conclusion

36. In response to exhibition of Amendment C108, the merits and benefits of the proposed amendment (and alignment) have received a significant level of support from the community and public authorities, including from some of the owners of a property affected by the amendment. On the other hand, Council has also received a number of submissions, including from the owners of a number of affected properties, which are fundamentally opposed to the amendment.
37. None of the grounds raised in opposing submissions are considered to warrant changes to the Amendment. In particular, the proposed application of the PAO is considered appropriate when viewed against the significant benefits anticipated from the trail, the intended role of the PAO, the compensation available to landowners and the fact that the extent of proposed acquisition of private land has been minimised as far as possible, and does not require the acquisition of any dwellings, or land in close proximity to a dwelling.
38. Given the continuing broad community support for the trail extension, and the net benefit to the community that will accrue from the construction and use of the trail, it is recommended that the extension of the Diamond Creek trail to Hurstbridge along a creek alignment remains a project that has merit and should be pursued. Accordingly, it is recommended that Council continue to support Amendment C108 in its exhibited form.
39. After considering the submissions received, it is recommended that Council write to the Minister for Planning and request the appointment of an independent Planning Panel, and refer all submissions received during exhibition to the Panel. Further, it is recommended that Council also refer any late submissions - those received after the end of the exhibition period, but five days before the date of any Directions Hearing - to the Panel. This will provide an opportunity for all parties to present their position to an independent body of experts, who will then provide Council with their considerations and recommendations.

4. Policy and Services reports

PS.032/16 Hillmartin Lane Area, Diamond Creek - Special Charge Scheme

File: H/062**Distribution:** Public**Manager:** Conal Creedon, General Manager Infrastructure Services**Author:** Anita Devi, Project Engineer**Summary**

Council at its July 2016 Ordinary meeting (Item OCM.123/16) resolved to commence the statutory process by issuing a notice of intention to declare a Special Charge Scheme for the Hillmartin Lane area, Diamond Creek following the completion of the consultation process.

Council's notice of the intention to declare a scheme was publicly advertised in the *Diamond Valley Leader* newspaper on 3 August 2015. A letter and notice of the proposal was sent to all property owners with a liability under the scheme. Council has received two submissions from the property owners of 13-27 Hillmartin Lane and 97-107 Hillmartin Lane and two objections (and submissions) to the scheme from property owners of 29-47 Hillmartin Lane and 139-151 Ironbark Road. This represents four submissions and two objections from 4 of the 38 affected properties.

This report proposes that the Committee recommends to Council that it formally declares the Hillmartin Lane Area Special Charge Scheme.

Recommendation

That the Committee recommends to Council that:

1. It notes that four submissions and two objections were received for this scheme.
2. Having considered these submissions and objections at the Committee meeting of 6 September 2016, gives notice under section 163(4) of the *Local Government Act 1989* of the declaration of a Special Charge for the purpose of constructing Larch Crescent, Sutherland Road (between Larch Crescent and Diamond Creek Road), Hillmartin Lane, Fielding Road and Starling Road.
3. It incorporates the following outline of declaration:
 - a) The Special Charge in (2) above shall apply to the properties in Hillmartin Lane area, Diamond Creek as detailed in Attachment 1.
 - b) The apportionment of costs to each property is based on the formulae outlined in the report and shown in Attachment 3.
 - c) The total estimated cost to each property is outlined in Attachment 2 and may be paid as a lump sum or by quarterly instalments over a 10 year period with interest as provided by section 163(1)(b) of the *Local Government Act 1989*.

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PS.032/16 Hillmartin Lane Area, Diamond Creek - Special Charge Scheme

- d) The interest rate applicable to instalments paid by each due date is to be one per cent greater than the rate applying to Council in relation to funds borrowed for this project.
 - e) The Special Charge for the Hillmartin Lane area, Diamond Creek Special Charge Scheme shall remain in force for 10 years.
 - f) The total estimated project cost is \$773,303.31 with a benefit ratio of 'one' (100 per cent). The total amount of \$773,303.31 is to be levied under this Special Charge.
 - g) Within 12 months of the completion of works a final cost statement will be issued to all of the property owners in the Hillmartin Lane Area Special Charge Scheme and any adjustments to liabilities will be made at that time.
4. The submitters and objectors be advised of Council's decision and the reason for the decision.

Attachments

- 1. Properties included in proposed scheme
- 2. Apportionment to affected properties
- 3. Guidelines for apportionment of costs for road construction

Policy context

- 1. This report directly supports the achievement of Council Plan 2013-2017 strategy:
 - We will provide a safe and accessible network of local roads, footpaths and trails.

Budget implications

- 2. Council has incurred a cost for the survey and design of the scheme. If the scheme proceeds, this cost will be recovered when construction commences and the charge is levied.

Consultation/communication

- 3. Consultation was carried out in accordance with the Council's Special Rates and Charges Policy and Procedure. Information sessions for all residents and meetings with task group members to finalise design details for the streets were held. All affected property owners have been advised of Council's intention to declare the scheme and their rights to make submissions or objections to this.

Issues/options

- 4. Council resolved to give notice of its intention to declare the Hillmartin Lane Area Special Charge Scheme, Diamond Creek on 26 July 2016 (Item OCM.123/16). Property owners were notified of the resolution via public notice in the *Diamond Valley Leader* newspaper on 3 August 2016. A letter and notice of the proposal was sent to all property owners with a liability under the scheme.

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5. Both the public notice and the letter sent to property owners advising of Council's intention to declare a scheme outlined the rights of any person to make a submission under section 223 or an objection under section 163B of the *Local Government Act 1989*, in relation to this Special Charge Scheme. Submissions and objections were to be made in writing by 31 August 2016.
6. Correspondence representing two submissions from the property owners of 13-27 Hillmartin Lane and 97-107 Hillmartin Lane and two objections from 29-47 Hillmartin Lane and 139-151 Ironbark Road representing two objections and two submissions were received by Council. A copy of the submissions and objections has been separately circulated to all Councillors.

Summary of submissions and response to submissions

7. Issues raised in the submissions and objections are summarised below, followed by an officer's response.
8. Property was purchased without knowledge of the scheme, which would have affected the owner's decision to buy. The estimated liability for the property was not indicated on the Land Information Certificate issued by Council, which was requested during the property sale process. This owner also did not receive the initial questionnaire and was not able to vote against the scheme.
 - Officers Comment: Council records indicate a land information certificate for the property in question was issued on 8 October 2016, which was during the consultation phase of the scheme. All the activities during this phase are considered investigation, as the scheme may or may not proceed based on the outcome of the intention to declare and the submissions/objections processes. Therefore, the estimated liability for the property would not have shown up on the information search. With regards to the voting, properties will occasionally be sold during the consultation phase of a scheme after the voting has occurred. However, Council's requirement that a scheme have a minimum of 60 percent support ensures that a majority of support is maintained in this situation.
9. No benefit is received by property as it only has rear access to the road to be constructed.
 - Officers Comment: All costs were apportioned in accordance with Council's Guidelines for Apportionment of Costs for Road Construction (Attachment 3). Properties with only rear access to the road being constructed are apportioned half an access benefit unit and half the rate for road abuttal.
10. Distribution of costs is unfair as two properties have been apportioned side abuttal to Fielding Road, which they do not access. Therefore, Fielding Road should either be excluded from the scheme or the abutting property owners should not be apportioned for side abuttal to it.
 - Officers Comment: Properties with front as well as side access to the road being constructed are apportioned one benefit unit only and half the rate for side abuttal plus full rate for frontage in accordance with Council's Guidelines for Apportionment of Costs for Road Construction (Attachment 3). The scheme approved by Council for consultation and the design agreed upon by the task group included Fielding Road. Council officers also consider it necessary to include Fielding Road in the scheme for maintenance purposes.

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11. Road sealing will encourage increased through traffic and hoon behavior. Therefore, traffic calming measures should be included as part of the scheme. Also, the narrow and undulating nature of the roads involved will result in an increased safety issues.

- Officers Comment: Traffic calming was discussed as an option with the task group. However, as a consensus could not be reached, a follow up questionnaire was sent to all property owners involved in the scheme, to determine the level of support to include speed humps in the design. The results of the traffic calming questionnaire are shown in table 1 below:

Table 1 – Results of traffic calming questionnaires

	Traffic calming	No traffic calming	No response	Total
Votes	7	22	9	38
Percentage	18%	58%	24%	100%

- Results of the survey indicated the level of support was not sufficient to include traffic calming measures in the scheme.
- Due to the improved nature of the road surface, it is typical for a small increase in traffic volumes and speeds as a result of road construction, which is why Council carries out traffic counts on the road before and after construction. Should significant changes in traffic conditions occur following construction, Council can investigate traffic calming measures in accordance with Council’s Local Area Traffic Management Policy.
- Council officers have also included measures in the design to address safety concerns. These measures include: road widening at critical areas, trimming vegetation to increase sight distance, altering the give-way priority at two intersections and installing a street light at one intersection.

12. Fifty kilometer per hour speed restriction signs should be installed along Hillmartin Lane.

- Officers Comment: Speed limits signs are Major Traffic Control Devices under the Road Safety (Road Rules) Regulations and the written consent of VicRoads is required to erect new signs. VicRoads’ position on the signing of default speed limits is quite clear; that signs should not be installed unless there may be confusion on the speed limit of the road. There are ‘50kmh Area’ signs at each entry to this group of roads.

13. Road sealing will increase the illegal dumping of rubbish

- Officer comment: There is no evidence to support this suggestion and it is not considered to be a reasonable justification for not proceeding with the scheme. The illegal dumping of rubbish can be reported to Council or the Police if it occurs. However it is treated as a separate issue from road construction.

14. The special benefit of the road construction is considered to be improved access and amenity to property owners and the residents in the scheme. There is no Council

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land, non rateable land or Crown land within the scheme and the standard of the road will not need to increase beyond the normal residential standard in the area. Considering this, it has been determined that there is no special benefit to the community and no special benefit to properties not included in the scheme. Therefore, the benefit ratio is 'one' (100 per cent).

15. Having considered the submissions and objections, it is recommended that the Committee recommend to Council that it formally declare the Special Charge Scheme for the construction of streets in Hillmartin Lane area, Diamond Creek.
16. If Council resolves to proceed with the Special Charge Scheme, property owners will be sent a notice advising of the formal declaration and outlining their appeal rights to the Victorian Civil and Administrative Tribunal (VCAT).
17. Tenders for the construction of the road will be called subject to any appeal to VCAT.

Conclusion

18. Council has commenced its statutory obligations in relation to the Hillmartin Lane Area Special Charge Scheme, particularly to afford any affected person the opportunity to have their objections or submissions heard by Council. The issues raised in the four submissions and two objections have been discussed above and are not considered grounds for varying or abandoning the scheme. It is recommended that the Committee recommend to Council that it formally declare the Special Charge for the construction of streets in Hillmartin Lane area.

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5. Supplementary and urgent business

6. Confidential reports

Nil