

# Future Nillumbik Committee

to be held virtually  
on Tuesday 11 August 2020 commencing at 7:00pm.

## Agenda

**Carl Cowie**  
**Chief Executive Officer**

Friday 7 August 2020

Distribution: Public

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# Future Nillumbik Committee

## Councillors

**Cr Karen Egan (Mayor)** – Bunjil Ward  
Economic Development and Marketing Portfolio

**Cr Jane Ashton** – Sugarloaf Ward  
Environment and Sustainability Portfolio

**Cr Grant Brooker** – Blue Lake Ward  
Community Services Portfolio

**Cr Peter Clarke** – Wingrove Ward  
Planning Portfolio

**Cr John Dumaresq** – Edendale Ward  
Infrastructure Portfolio

**Cr Peter Perkins** – Ellis Ward  
Social Infrastructure Portfolio

**Cr Bruce Ranken** – Swipers Gully Ward  
Finance and Governance Portfolio

## Officers

**Carl Cowie** – Chief Executive Officer

**Blaga Naumoski** – Executive Manager Governance, Communications and Engagement

## Nillumbik Shire Council

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**Nillumbik Shire Council**

**Agenda of the Future Nillumbik Committee meeting to be held  
Tuesday 11 August 2020 commencing at 7:00pm.**

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**1. Welcome by the Chair**

Members of the public are advised the meeting will be livestreamed and recorded and the livestream and video recording will be made publicly available on YouTube and Council's website.

**2. Reconciliation statement**

**The reconciliation statement to be read by the Chairperson**

Nillumbik Shire Council acknowledges the Wurundjeri people who are the Traditional Custodians of this Land. We would also like to pay respect to the Elders both past and present and extend that respect to other Indigenous Australians present.

**3. Apologies**

**Recommendation**

**That** the apologies be noted.

**4. Confirmation of minutes**

Confirmation of minutes of the Future Nillumbik Committee meeting held on Tuesday 14 July 2020.

**Recommendation**

**That** the minutes of the Future Nillumbik Committee meeting held on Tuesday 14 July 2020 be confirmed.

**5. Disclosure of conflicts of interest**

Committee members should note that any conflicts of interest should also be disclosed immediately before the relevant item.

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**FN.019/20      Hurstbridge Men's Shed Issues and Options Paper**

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**Portfolio:      Community Services**

**Distribution:   Public**

**Manager:      Corrienne Nichols, Executive Manager Communities**

**Author:        Vicki Martinez, Youth, Community and Place Coordinator**

**Melanie Holt, Manager Community Partnerships**

**Annie Lee, Place Activation Officer**

**Summary**

In October 2018, the need for a fit for purpose Men's Shed in Hurstbridge was identified as a priority through community feedback and confirmed as part of the Open Space Precinct Plan Graysharps Road, Hurstbridge. On 23 June 2020, Council endorsed Officers to conduct community engagement on the proposed site, 4 Hurstbridge-Arthurs Creek Rd, Hurstbridge.

A Community Consultation and Engagement Plan was developed which included online, hard copy survey, question and answer sessions, face to face and virtual meeting options. The primary aim of the survey was to obtain feedback on the proposed future men's shed site at 4 Hurstbridge-Arthurs Creek Rd, Hurstbridge.

59 survey responses and three submissions were received with 90.4% 'supporting', 4.8% 'not supporting', and 4.8% 'maybe supporting' the site.

The results demonstrate that the respondents are in favour of the site and the project's benefit to the community. Some respondents stated that men's health is a priority and that this project will positively contribute to wellbeing outcomes for men in the local area.

Several respondents identified a number of planning and design considerations which will be taken into account in the next phase of the project.

**Recommendation**

**That** the Committee (acting under delegation from Council):

1. Endorses 4 Hurstbridge-Arthurs Creek Road, Hurstbridge to be the future site for the Hurstbridge Men's Shed.
2. Endorses the establishment of a number of key stakeholder working groups to inform and manage the project: a Project Control Group, a Community Reference Group and a Project Review and Evaluation Panel.
3. Endorses the development of a masterplan and schematic designs to inform overall project elements and costs by February 2021.
4. Notes the lead role the Hurstbridge Men's Shed will play in seeking and securing external funding for the proposed new shed, in consultation with Council Officers.

**Attachments**

1. Hurstbridge Men's Shed Proposed Site Consultation Findings Report

**6. Officers' reports****FN.019/20 Hurstbridge Men's Shed Issues and Options Paper**

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**Background**

1. The need for a fit for purpose Men's Shed in Hurstbridge was identified as a priority through community feedback and as part of the Open Space Precinct Plan Graysharps Road Hurstbridge (October 2018).
2. On 23 June 2020, Council endorsed Officers to seek community feedback on the proposed site, 4 Hurstbridge-Arthurs Creek Rd, Hurstbridge.
3. A Community Consultation and Engagement Plan was developed which included a range of approaches to encourage broad community reach. The methods on offer included the use of the online platform, Participate Nillumbik, face to face conversations, hard copy survey and both on site and virtual question and answer sessions (via registration).
4. 59 survey responses and three submissions were received in total with 90.4% 'supporting', 4.8% 'not supporting' and 4.8% 'maybe' supporting the proposed site location.
5. The feedback indicates that the respondents are in favour of the project and recognised a range of benefits to the community. Respondents highlighted that men's health is a priority and that this project will positively contribute to wellbeing outcomes for men. Respondents identified a number of key planning considerations including: all abilities access; space for storage; adequate parking; and keeping to local character as important.
6. Three submissions were received as part of the consultation process. Responses are addressed in **Attachment 1**.

**Policy context**

7. The project aligns to Council Plan 2017-2021 strategies "1.5 Strengthen the focus on social inclusion, building social capital and connections with community" and "1.6 Ensure that community services, programs and facilities are inclusive and respond to the current and emerging needs." It also aligns to the priority of mental wellbeing within the Municipal Public Health and Wellbeing Plan.

**Budget implications**

8. A Capital Works bid of \$30,000 has been endorsed within the 2020/2021 Council Budget to conduct preliminary investigations.
9. The Hurstbridge Men's Shed are committed to identifying and seeking adequate funding to support the project costs associated with the building of the men's shed.

**Consultation/communication**

10. A Consultation and Engagement Plan was developed in partnership with the Hurstbridge Men's Shed. Participate Nillumbik was used as the primary survey platform and promoted through the Council website, social media channels, e-newsletters and pick up/drop off points at the Eltham, Diamond Creek and Hurstbridge Bendigo Bank branches. The latter option was seen as important to ensure the feedback was accessible to all residents.
11. In addition, Council offered a series of Question and Answer sessions on site and over the phone through a booking system to meet the tightening of COVID-19 restrictions.



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### FN.019/20 Hurstbridge Men's Shed Issues and Options Paper

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These sessions were advertised through social media, Council Website, through community networks and on Participate Nillumbik. Officers also offered the opportunity for one to one meetings at the site for interested parties as requested.

12. Prior to the launch of the consultation, Council Officers engaged with a number of the precinct stakeholders and engaged with local community groups and organisations, advising of the upcoming opportunity to provide feedback on the site.
13. A report has been prepared outlining the consultation results and key finding **Attachment 1**.

#### Issues/options

14. In total, 62 responses were received, a combination of online (Participate Nillumbik) and hard copy responses. Of these, 60.42% identified as 'living in Hurstbridge', 25% in 'Rural Nillumbik' and 14.58% in 'Urban Nillumbik'.
15. All participants were asked to respond to "Do you support a future Hurstbridge Men's Shed to be located at 4 Hurstbridge-Arthurs Creek Road Hurstbridge." Of the 62 responses, 90.4% indicated 'Yes', 4.8% indicated 'No' and 4.8% indicated 'Maybe'. The results depict a significant preference for the nominated site.
16. All respondents were invited to make additional comments. These are fully outlined in **Attachment 1**.
17. Overall the respondents support the proposed site for a fit for purpose Men's Shed and commented that a thriving local community group that engaged and supported men's wellbeing and connection will be a significant asset.
18. Of the 90.4% respondents in favour of the proposed site, the following suggestions were important to consider for future planning: neighbourhood character; provision for covered areas; storage; all abilities access; adequate car parking; and solar panels.
19. Of the 9.6% respondents who responded 'No' or 'Maybe', the following concerns were received: impact on heritage value; adhering to local character; the size of the shed in relation to the site size; loss of open space; environmental impacts; consultation limitations; Hurstbridge Men's Shed membership size; and car parking limitations.
20. Three submissions were received in response to the feedback opportunity. **Attachment 1** includes the submissions and subsequent responses from Council Officers.
21. Feedback collected during the consultation process will be considered in the development of the Masterplan and designs. It is proposed that a Community Reference Group be established to inform the Project Working Group in designing and delivering the Plan. The Master Plan will outline design elements and budget requirements for the build. Further preliminary investigations will be undertaken prior to the development of a Master Plan.
22. The Hurstbridge Men's Shed members recognise they have a lead role in seeking and securing funding from government and philanthropic sources for the project.

#### Conclusion

23. Feedback received will be considered in the development of the site Masterplan and designs. Officers have also identified the important role that Hurstbridge Men's Shed

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and local community stakeholder's play in ensuring the site is appealing, purposeful and meets local need, and as such supports a partnership approach with the establishment of Community Reference Group.

24. The Masterplan and designs will be prepared by February 2021. In parallel, the HMS members will be sourcing funding to support the construction and build.
25. With these elements in place and the evident support for the site and the HMS, this project has the scope of achieving significant community benefit, whilst also addressing growing needs in social connection, reducing isolation and positively impacting men's mental wellbeing.

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FN.020/20 Early Years Services Update

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**Portfolio:** Community Services

**Distribution:** Public

**Manager:** Corrienne Nichols, Executive Manager Communities

**Author:** Narelle Hart, Coordinator Early Years Programs

**Summary**

This report responds to a Committee resolution made at the Future Nillumbik Committee meeting on 9 June 2020 in relation to the Early Years Infrastructure Plan report requesting “a further report to the August Future Nillumbik Committee meeting about Eltham Preschool, Diamond Creek East Preschool, Diamond Creek Occasional and Long Day care and Ferguson Park”.

**Recommendation**

**That** the Committee (acting under delegation from Council) notes the information contained within this report.

**Attachments**

Nil

**Background**

1. On 9 June 2020, the Early Years Infrastructure Plan 2020-2026 (The Plan) was adopted by Council.
2. An amended motion was moved and carried with the resolution that “a further report to the August Future Nillumbik Committee meeting about Eltham Preschool, Diamond Creek East Preschool, Diamond Creek Occasional and Long Day care and Ferguson Park”.
3. The additional report was requested to provide Councillors with an update on:
  - Eltham Preschool and Diamond Creek East Preschool future operations
  - Diamond Creek Masterplan and the option of a Community Hub that could accommodate an expansion of Diamond Creek Occasional Care and Long Day Care Service
  - The expansion of Ferguson Park Preschool at the existing site or through a relocation to Hurstbridge Primary School

**Policy context**

4. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Ensure that community services, programs and facilities are inclusive and respond to current and emerging needs.

**Budget implications**

5. Nil

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**FN.020/20 Early Years Services Update**

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**Consultation/communication**

6. Officers have consulted with the Department of Education and Training and the approved future providers of Eltham Preschool and Diamond Creek East Preschool.
7. Officers have consulted with Council's Strategic Planner overseeing the Diamond Creek Major Activity Centre Structure Plan and obtained an update on the progress of this plan as part of determining options for the expansion of Diamond Creek Occasional and Long Day Care Service.

**Issues/options**

Diamond Creek East and Eltham Preschool

8. At the time of The Plan being presented to Council, Eltham and Diamond Creek East Preschools were part of a state wide Expression of Interest (EOI) process led by the Department of Education and Training. The purpose of the EOI was to find new providers to deliver the preschool programs across the State that Best Chance was divesting from.
9. The EOI process has since closed and the outcome of new providers has been confirmed:
  - Eltham Preschool license will be taken over by YMCA Ballarat from 2021. Discussions relating to facility matters will commence with YMCA Ballarat at this time.
  - Diamond Creek East facility will be taken over by Diamond Creek Memorial Preschool with an extension to their existing license to operate across the two sites from 2021.

Diamond Creek Occasional and Long Day Care Service (DCOccLDC)

10. Future feasibility of an expansion and relocation of DCOccLDC into a community hub will be proposed dependant on the outcome of the Diamond Creek Major Activity Centre Structure Plan and subsequent future planning.
11. Extension of the existing facility DCOccLDC's could be considered however there are limitations with the existing site and availability of the surrounding land.
12. A relocation is the preferred option for this service.

Ferguson Park Preschool

13. Based on enrolment numbers at Ferguson Park Preschool over the last five years, Ferguson Park will be unable to meet their demand when 15 hours of 3 year old kindergarten is implemented.
14. Hurstbridge Preschool, located next door to Ferguson Park Preschool, has been operating below capacity for the last few years.
15. It is projected that the service capacity of Hurstbridge Preschool and Ferguson Park Preschool combined, will ensure that future demand for funded preschool places in Hurstbridge will be met.

**6. Officers' reports**

**FN.020/20 Early Years Services Update**

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16. For this reason, an extension of Ferguson Park Preschool would not be feasible. A partnership approach to service delivery between the two services would be the preferred option.
17. Discussions between Ferguson Park Preschool and Hurstbridge Primary School in relation to a relocation to the school site have not progressed at this point in time.

**Conclusion**

18. Officers will continue to work with services to explore viable options to ensure community need for high quality preschool programs is achieved.

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**6. Officers' reports****FN.021/20 Local Parks Program Park Revitalisation Grant**

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**Portfolio: Social Infrastructure****Distribution: Public****Manager: Hjalmar Philipp, Director Operations and Infrastructure****Author: Nathan Roberts, Recreation and Open Space Planner  
Shannon Maynard, Coordinator Recreation and Leisure  
Heath Gillett, Manager Recreation and Leisure****Summary**

To provide information to Councillors and the community on the Local Parks Program – Park Revitalisation grant available to Nillumbik, and to support the recommended projects for submission and associated procurement plan.

Grant submissions are due 9 September 2020.

**Recommendation**

**That** the Committee (acting under delegation from Council):

1. Endorses the following projects in order of priority to be submitted for funding through the Local Parks Program – Park Revitalisation:
  - I. Revitalisation of the Eltham Skate Park, up to a total project value of \$600,000.
  - II. Revitalisation of Ryans Reserve in Diamond Creek, up to a total project value of \$500,000.
2. Provides the Chief Executive Officer with delegation to approve contracts associated with any successful applications under the Local Parks Program – Park Revitalisation, up to the total project cost identified in the submission.

**Attachments**

1. Local Parks Program Guidelines Park Revitalisation
2. BMX Consultation Report July 2020

**Background**

1. Parks Revitalisation Grants Program (**Attachment 1**) is part of the Victorian Government's commitment to create more than 6,500 hectares of parklands and trails across Melbourne. It is part of a broader \$154 million Suburban Parks Program investment in new and upgraded parks and trails.
2. The Program is open to all councils in metropolitan Melbourne.
3. Grants of a maximum value of \$300,000 per project are available to successful applicants.
4. Applicants are required to contribute toward the cost of the project at a funding ratio of at least 1:1.

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**FN.021/20 Local Parks Program Park Revitalisation Grant**

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5. Councils can submit up to two project applications under the Program. If two applications are submitted, Council must clearly indicate its preferred project on the application form.
6. Projects are to be delivered by 30 June 2022.

**Policy context**

7. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Ensure that the provision of community infrastructure responds to community needs.

**Budget implications**

8. Matching contribution is required from Council up to \$300,000.
9. An allocation of up to \$550,000 exists (as borrowings) in the 2020/2021 budget to support grant projects such as this.
10. An allocation of \$80,000 exists in the 2020/2021 budget to support landscaping works at Eltham Lower Park.
11. Future budgets would need to accommodate ongoing maintenance and renewal of any new assets.

**Consultation/communication**

12. An online Participate Nillumbik survey related to BMX facilities in Nillumbik has informed the scope of candidate projects.
13. Consultation has also occurred with stakeholders in relation to the Eltham Lower Park, and is the subject of a separate report at Future Nillumbik Committee for 11 August 2020.
14. Consultation has also taken place with local parks program team at Department of Environment, Land, Water and Planning, the administering body of the grants.

**Issues/options**

15. Three candidate projects have been identified, each of which respond to community interest and need. All three candidate projects could be scaled to fit maximum project value under the grant criteria.

**Eltham Skate Park**

16. The Eltham Skate Park grant proposal would allow for the redesign and refurbishment of the skate park, as well as more appropriate shelters and ancillary facilities such as drinking fountains, paths and trails.
17. The need to refurbish Eltham Skate Park is consistent with the findings of a report commissioned by officers in 2018 to understand the status of skating facilities across the Shire. That report identified Eltham as one site that could be upgraded to better accommodate for a broader range of riders.
18. This grant is a significant opportunity to support BMX riders, who have resorted to building unauthorised BMX jumps on public land at different locations in the Shire largely as a result of the lack of facilities.



**6. Officers' reports**

**FN.021/20 Local Parks Program Park Revitalisation Grant**

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19. Council officers are aware of a petition supporting the unauthorised BMX tracks and have engaged with the petition authors and other stakeholders. As part of that engagement, an online survey was undertaken through Participate Nillumbik (**Attachment 2**). Their feedback supports this grant.
20. Overall, the Eltham Skate Park revitalisation project is a good match against the grant criteria.

Eltham Lower Park

21. This grant proposal seeks to deliver outstanding actions from the Eltham Lower Park Masterplan which has recently undergone review.
22. The scope relates to improving the front entrance, restoring the historical gates and significant landscaping and access improvements. There is currently \$80,000 in the 2020/21 budget to deliver landscaping work. This scope could be doubled under this grant.
23. There is also potential to expand the project scope and deliver other actions in the masterplan up to \$600,000 subject to a 1:1 Council contribution (\$300,000).

Ryans Reserve in Diamond Creek

24. Ryans Reserve in Diamond Creek has been identified as a site based on its open space and passive recreation attributes.
25. The playground at Ryans Reserve is listed in Nillumbik's lifetime play strategy implementation plan as requiring replacement, so upgrading the location now would accelerate the program and save future expenditure.
26. The proposed works involved would be the construction of a toilet block, as well as a refresh to the playground, supporting infrastructure, a 3x3 basketball court and scooter loop.

**Conclusion**

27. All candidate projects meet the criteria and could be considered suitable applications.
28. The feedback through the Participate Nillumbik survey has identified BMX, skating, ancillary facilities and basketball as aspects that could be developed as a feature of Nillumbik's parks and open space. This is also consistent with other community feedback received during recent recreation and leisure related grant submissions.
29. Endorse the submissions in priority order and include in the recommendation a plan that demonstrates procurement of relevant contracts through the Council caretaker period.

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**6. Officers' reports****FN.022/20 Eltham Lower Park Masterplan Review****Portfolio: Social Infrastructure****Distribution: Public****Manager: Hjalmar Philipp, Director Operations and Infrastructure****Author: Shannon Maynard, Coordinator Recreation and Leisure  
Heath Gillett, Manager Recreation and Leisure****Summary**

The Eltham Lower Park Masterplan guides the future development of the park, including maintenance and capital investments. A desktop review of the 2008 Masterplan was undertaken to provide a summary of the actions completed.

The review included consultation with key user groups of the park.

An opportunity to understand a potential extension of the Diamond Valley Miniature Railway was also explored.

The review did not support significant deviation from the existing plan and results in a clear list of outstanding works required.

**Recommendation**

**That** the Committee (acting under delegation from Council) notes the Eltham Lower Park Masterplan Desktop Review and accompanying documents including:

- a) Front Entrance Landscape Plan;
- b) Independent Feasibility Study into the Miniature Railway; and
- c) Miniature Railway Expansion Summary.

**Attachments**

1. Eltham Lower Park Masterplan Desktop Review
2. Eltham Lower Park Front Entrance Landscape Plan
3. Eltham Lower Park Miniature Railway Feasibility Study
4. Eltham Lower Park Miniature Railway Expansion Summary

**Background**

1. At OCM February 2018 Council resolved to *'Undertakes further investigation into the future management and tenancy arrangements with the Diamond Valley Railway Inc., for the area depicted as 'Council Managed Land' in Attachment 1, as part of the planned review of the Eltham Lower Park Masterplan.'*
2. The Council Plan states *"2.2.8 Assess and Review Eltham Lower Park Masterplan including the Diamond Valley Miniature Railway"*.
3. The Eltham Lower Park Masterplan was adopted by Council in March 2008.

**6. Officers' reports**

**FN.022/20 Eltham Lower Park Masterplan Review**

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4. The aim of the review into the 2008 Masterplan is to understand the outstanding actions, highlight the priorities and provide recommendations on the next steps should be.
5. A concurrent piece of work has been undertaken to review a possible extension of the miniature railway.
6. The review report is provided as **Attachment 1**.

**Policy context**

7. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Create and activate places and spaces that have good connectivity, provide needed infrastructure and promote social interaction.

**Budget implications**

8. The review was funded by 2019/2020 operating expenditure.

**Consultation/communication**

9. Targeted consultation was undertaken with the user groups of the park, including Diamond Valley Miniature Railway (DVMR), Eltham Lower Park Cricket Club (ELPCC), Eltham Lacrosse Club (ELC), Eltham Horse and Pony Club (EHPC), Eltham Community Action Group (ECAG), Friends of Eltham Lower Park (FELP), Friends of Diamond Creek (FDC).
10. The consultation enabled all groups to participate both in an open meeting forum and via written submissions.
11. Significant internal consultation was also undertaken to ensure a holistic view of planned works at the park.
12. The consultation was collated and forms the basis of the review into Eltham Lower Park Masterplan.

**Issues/options**

13. Council has made some progress in achieving many action items within the masterplan. Some of the improvements seen in the park include:
  - Eastern side toilet removal and upgraded
  - Installation of new playground
  - Installation of a number of shelters
  - Upgrade of cricket nets
  - Improvements to fencing benefiting sporting clubs and safety
  - Upgraded picnic facilities
  - Upgrade to sporting facilities
  - Traffic and access improvements, including new paths and trails
14. There are a number of improvements which are still to be completed, such as:
  - Clarification of off leash dog area

**6. Officers' reports****FN.022/20 Eltham Lower Park Masterplan Review**

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- Improvements to the landscaping around the pavilion
  - Future of the Pony club including potential relocation
  - Improvements to signage
  - Formalisation of car parks in various locations
15. A major action that has not been completed is a site-wide landscape plan.
16. ELP has been a focus of Council's high use site tree risk management program. That has identified a number of hazards that have been mitigated through tree removal or pruning, which commenced with removal of radiata pine in the front section of the park in late 2018.
17. A landscape plan has been developed for the Pines picnic area and the front entrance and this will be implemented in 2020-21 with a Council budget allocation of \$80,000. The plan is shown in **Attachment 2**.
18. With the recent announcement of the Victorian Department of Environment, Land, Water and Planning Parks Revitalisation Grants Program this scope of works could potentially be expanded as shown in **Attachment 2**.
19. Both options include planting 44 trees to replace those removed, irrigation of turf to improve and activate the picnic area, refurbishment and relocation of the original gates.
20. More broadly, there is also an opportunity now to progress the site wide landscape plan. This will need further discussion with key stakeholders including DVMR, FELP and FDC.
21. With respect to the miniature railway, this was a major focus of all stakeholders engaged due to interest by the DVR in an expansion of the railway.
22. To better understand this expansion proposal and to address the Council resolution outlined in (1), an independent feasibility study was undertaken, with full engagement from DVMR. This report also reviewed DVMR's current operations and provided a roadmaps to deliver sustained success. The report is included as **Attachment 3**.
23. Authorities that may have a role in assessing any future expansion application were consulted, Melbourne Water, DELWP, Council's Planning Department, as well as consulting archaeologists.
24. A summary (**Attachment 4**) of the independent review and feedback from relevant authorities indicated that whilst the expansion may be possible, it requires significant work. This would commence with a detailed and comprehensively scoped proposal outlining alignment with statutory expectations.

**Conclusion**

25. Finalise feedback on the Front Entrance Landscape Plan and undertake works before the end of 2020.
26. Commence a site-wide landscape Plan for the entire Eltham Lower Park to consider the additional options raised through this review.
27. Action the outstanding items from the Eltham Lower Park Masterplan highlighted in the desktop review, subject to the annual Council budget review process.

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**6. Officers' reports****FN.023/20 Update on the Local Government Act 2020 Implementation and Compliance****Portfolio: Finance and Governance****Distribution: Public****Manager: Blaga Naumoski, Executive Manager Governance, Communications and Engagement****Author: Katia Croce, Governance Lead  
Heather Holt, Legal Advisor****Summary**

The *Local Government Act 2020* (the Act) was passed by Parliament on 17 March 2020 and received Royal Assent on 24 March 2020.

The Act will be implemented in four stages, based on proclamation dates, delivering to the five key reform themes being:

- Improved Service Delivery;
- Strong Local Democracy;
- Improve Conduct;
- Community Confidence; and
- A new relationship with the State Government.

The first stage enacted the Overarching Governance Principles and five sets of supporting principles to be embedded by councils to underpin accountability and transparency mechanisms for local government across Victoria. These principles will drive Council's approach to engagement with the community, public transparency, financial management, strategic planning and service performance.

The second stage enacted, amongst other things, the requirements for councils to adopt Governance Rules, including an election period policy and a Public Transparency Policy by 1 September 2020.

The Act provides the minimum requirements for inclusion in these documents and sets out that Governance Rules may only be adopted following a process of community engagement.

**Recommendation**

**That** the Committee (acting under delegation from Council):

1. Presents a report to the Ordinary Council Meeting on 25 August 2020 with the following recommendation:
  - a. That Council notes all written and verbal submissions received in respect of the draft Governance Rules and the draft Public Transparency Policy were considered and submitters were provided with the opportunity to be heard by the Future Nillumbik Committee on 11 August 2020.

**6. Officers' reports**

**FN.023/20 Update on the Local Government Act 2020 Implementation and Compliance**

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- b. That Council considers the matters contained in the submissions and Committee's report during finalisation of the Governances Rules and Public Transparency Policy.
2. Recommends the adoption of the Governance Rules and Public Transparency Policy at the Ordinary Council Meeting on 25 August 2020.

**Attachments**

1. Draft Governance Rule - Meeting Procedure
2. Draft Governance Rule - Election of the Mayor and Deputy Mayor
3. Draft Governance Rule - Election Period Policy
4. Draft Governance Rule - Procedure for Disclosure of Conflicts of Interest
5. Draft Governance Rule - Decision-making Policy
6. Draft Public Transparency Policy
7. Submissions
8. Table of issues raised

**Background**

1. The *Local Government Act 2020* (the Act) was passed into legislation on 24 March 2020 and commenced, in part, on 6 April 2020.
2. The first stage enacted the Overarching Governance Principles and five sets of supporting principles to be embedded by councils to underpin accountability and transparency mechanisms for local government across Victoria.
3. The Overarching Governance Principles set out the things that must be considered in decision-making and operations including:
  - The relevant law;
  - Best outcomes for the community, including future generations;
  - Economic, social and environmental sustainability, including mitigation and planning for climate change risks;
  - Engaging the community in strategic planning and strategic decision making;
  - Innovation and continuous improvement;
  - Collaboration with other councils and governments;
  - Ongoing financial viability;
  - Taking into account regional, state and national plans and policies in strategic planning and decision-making; and
  - Transparency of council decisions, actions and information.



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4. These principles will drive Council's approach to engagement with the community, public transparency, financial management, strategic planning and service performance.
5. The second stage enacted, amongst other things, the requirement for councils under sections 57 and 60 of the Act, to adopt a Public Transparency Policy and Governance Rules, including an Election Period Policy by 1 September 2020.
6. The establishment of the Governance Rules supports the overarching Governance Principles contained within the Act.
7. The establishment of the Public Transparency Policy supports the Public Transparency Principles and Governance Principles contained within the Act.

**Policy context**

8. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Ensure that Council meets its legal responsibilities and manages its risks.

**Budget implications**

9. Implementation of the new Act is a significant undertaking for Council and requires the involvement of officers from across the organisation. The cost associated with the implementation is included within Council's operational budget.

**Consultation/communication**

10. Council has followed a process of public engagement on the five draft Governance Rules and the draft Public Transparency Policy, in order to socialise them with the municipal community and obtain any feedback. This public engagement via Council's Participate Nillumbik platform concluded on Friday 10 July 2020.
11. Primarily community awareness of the consultation and engagement process was undertaken via Council's websites and social media channels. This was supported by direct email to people registered to receive alerts on Participate Nillumbik and Council officers raised awareness through their networks.
12. Two written submissions were received outside the Participate Nillumbik platform (**Attachment 7**); five comments on the Governance Rules and the Public Transparency Policy were received on that platform, of which three were general statements of approval and two addressed specific issues. **Attachment 8** is a table of the issues raised.
13. Local Government Victoria (LGV), in addition to the co-design process provided draft pathway documents to assist councils in achieving the requirements of 1 September 2020. The suite of documents are in line with the pathway documents and guidance material provided by LGV, other municipalities and Maddocks Lawyers.

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**Governance Rules**

14. The *Local Government Act 2020* now mandates in section 60 certain topics for which each Council must create Governance Rules, a new form of administrative document.
15. The Governance Rules must provide for a Council to:
  - a) Consider and make decisions on any matter being considered by the Council fairly and on the merits; and
  - b) Institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered.
16. Council has now created five draft Governance Rules on these topics. These include:
  - Draft Governance Rule – Meeting Procedure (**Attachment 1**);
  - Draft Governance Rule – Election of the Mayor and the Deputy Mayor (**Attachment 2**);
  - Draft Governance Rule – Election Period Policy (**Attachment 3**);
  - Draft Governance Rule – Procedure for Disclosure of Conflicts of Interest (**Attachment 4**);
  - Draft Governance Rule – Decision-making Policy (**Attachment 5**);

**Governance Rule – Meeting Procedure**

17. The draft Governance Rule – Meeting Procedure has been prepared based on best practice model templates provided by LGV, other municipalities and Maddocks Lawyers and incorporates Council's current Meeting Procedures Local Law 2017, with minor changes that are not substantive but which will assist clarity and consistency of approach.
18. Proposed inclusions in the draft Governance Rules – Meeting Procedure since the public consultation period are:
  - Provision for Community Asset Committees – in the event they are established by Council;
  - Joint Council Meetings – reasons for participating and guiding principles;
  - Councillor Attendance Records to make available to the public records of Councillor participation at meetings and Councillor briefings.
  - A strong statement to ensure that before making a decision that affects a person's rights, Council will identify whose rights may be affected and provide an opportunity for that person (or persons) to convey those views regarding the effect on their rights and consider those views.
  - Minor wording changes to address the submission. Refer to **Attachment 8**.

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**Governance Rule – Election Period Policy**

19. The Governance Rules must also include the Election Period Policy. An Election Period Policy primarily governs Council decision making and conduct of Councillors, Council Staff and Candidates in an election period to ensure Council resources are not used to influence the outcome of an election.
20. Council adopted its Election Period Policy in July 2019. As it has been considered recently by Council the key changes proposed to this policy for its inclusion in the draft Governance Rules are reflective primarily only of the changes in legislation and addresses a submission made.

**Governance Rule – Decision Making**

21. Section 60 requires Council to adopt a governance rule for decision making. Officers have included advice from Local Government Victoria regarding Advisory Committees. They play a key role connecting community views and experts with the decision-making process of Council, therefore it is incumbent on Council to include these provisions in the rules.
22. Following the consultation period, a change was only made to the section relating to the role and specific powers of the Mayor to reflect the wording of the Act in its entirety.

**Public Transparency Policy**

23. The draft Public Transparency Policy (**Attachment 6**) is a new policy and supports Council in its on-going drive for good and open governance. The policy is based on sector best practice examples and is consistent with existing practice with no substantive policy or procedural changes.
24. The policy gives effect to the public transparency principles outlined in section 58 of the Act and includes how Council-held information is to be made publicly available unless it is confidential by virtue of legislation or making it available would be contrary to the public interest.
25. The draft Public Transparency Policy is structured to include:
  - Council's Commitment
  - What is public transparency?
  - What will Council be transparent with?
  - When will Council be transparent?
  - When will Council be limited in transparency? (including the public interest test)
  - How will Council be transparent?
  - The principles for transparency.
26. No changes were required to the draft Public Transparency Policy following the community consultation period.

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**Common Seal and Infringements under existing Local Law**

27. Council's current Meeting Procedure Local Law 2017 includes provisions relating to the use of the Council's Common Seal (Section 15) and Penalties for certain matters and behaviour by meeting attendees (Section 16).
28. Section 14(2)(c) of the *Local Government Act 2020* requires that the Common Seal of Council must be used in accordance with any applicable local law and that to remain enforceable, any penalty/infringement imposed by Council must be made under a local law. Accordingly, the Common Seal and Penalty provisions together with the Introductory section, section 1, in the Meeting Procedure Local Law 2017 will be retained and remain operative in conjunction with the Governance Rules as applicable.

**Legal and Risk Implications**

29. Failure to respond to the requirements of the new Act, both in terms of timeliness and content, would represent non-compliance with Council's most significant and important piece of legislation. It is important, therefore, for Council to resolve the items required for implementation by 1 September 2020 while officers continue to work toward implementation of other aspects of the new Act.

**Conclusion**

30. The next scheduled steps for the suite of documents are detailed as follows:
  - Upon considering the written submissions and hearing the verbal responses from submitters at the Future Nillumbik Committee meeting, Council will be asked to adopt the suite of documents including any potential changes arising from public submissions at its Ordinary Council Meeting on 25 August 2020.

**6. Officers' reports****FN.024/20      265 Chapel Lane, Doreen - Disposal of Clean Fill****Portfolio:      Planning****Distribution:   Public****Manager:      Carl Cowie, Chief Executive Officer****Author:        Rosa Zouzoulas, Executive Manager Planning and Community Safety****Summary**

This report responds to the Notice of Motion arising from the 28 July 2020 Ordinary Council Meeting.

Officers note the concerns of the community with regard to the significant volume of fill being imported on land in the Nillumbik Green Wedge. Officers further note the frustration of the community to the lack of policy and certainty in the Planning Scheme and therefore the perceived lack of enforcement by Council to regulate the works occurring at 265 Chapel Lane, Doreen.

As outlined below a number of matters must be considered before Council can determine the path forward. This report highlights the complexity of the matter, and that no one VCAT decision affords Council with the relevant basis upon which to determine the current matter at the aforementioned address, and that a more sophisticated response is required to respond to the difficult questions of characterisation, than relying on individual VCAT determinations.

It is the officers' view that this report appropriately responds to issues raised in the Notice of Motion. The next suggested steps are for Council to:

1. Finalise its review of the hydrological report submitted by ESG to Council to determine if a planning permit is required;
2. Pursue through its legal advisers information that substantiates if the use of the land is agricultural or otherwise;
3. Pursuant to item 2 above, determine if a planning permit is required for the use of the land and therefore a breach of the planning scheme has occurred;
4. Pursuant to items 1 and 3 above, seek legal advice to determine the most appropriate legal path forward with regard to enforcing the planning scheme and exercise the advice without delay.

**Recommendation**

**That** the Committee (acting under delegation from Council):

1. Finalise its review of the hydrological report submitted by ESG to Council to determine if a planning permit is required;
2. Pursue through its legal advisers information that substantiates if the use of the land is agricultural or otherwise;
3. Pursuant to item 2 above, determine if a planning permit is required for the use of the land and therefore a breach of the planning scheme has occurred;

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4. Pursuant to items 1 and 3 above, seek legal advice to determine the most appropriate legal path forward with regard to enforcing the planning scheme and exercise the advice in a timely manner.

**Attachments**

1. Yarra Ranges v Bibiano
2. Calleja Properties v Hume
3. Burns v Hume
4. Creative Landfill v Hume
5. Fleming v Moyne

**Background**

1. In response to recent works at 265 Chapel Lane, Doreen, Council resolved at its 28 July 2020 Ordinary Council Meeting as follows:

**MOVED:** Cr Peter Perkins

**SECONDED:** Cr John Dumaresq

1. **That** Council officers prepare a report for the August FNC on the commercial dumping of soil at 265 and 130 Chapel Lane.
2. The report will detail the history of planning approvals, requests and meetings with officers including the advice to applicants.
3. Council does not support this use within our Green Wedge and requires an explanation to Council and community as to why a permit is not required.
4. Council further requests explanations as to why VCAT decisions on soil dumping in a Green Wedge are not applicable in these circumstances.
5. Council immediately request the Planning Minister to introduce into the schedule for Green Wedge Zone and Rural Conservation Zone a 100 cubic metre limit of clean fill.

**CARRIED UNANIMOUSLY**

**Budget implications**

2. There are no cost implications in preparing this report. The cost of preparing a planning scheme amendment is estimated at \$60,000 - \$80,000 and this cost is not provided for in the Strategic Planning budget.

**130 Chapel Lane, Doreen**

3. The land is located within the Green Wedge Zone (GWZ). The land is also partly affected by the Environmental Significance Overlay (ESO), Schedule 1(clause 42.01).
4. The subject site is approximately 4.83Ha.
5. The proposal for the land was for ongoing earthworks that include land forming, laser grading, levee banks, raised access roads and tracks, storage embankments, channel

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banks and drain banks and associated structures in order to produce set grades of uniform surface that do not change the rate of flow or the discharge point of water across the property boundary.

6. The fill is to be obtained from various development sites and transported to the site by trucks.
7. There are two areas on the land in which the fill is being placed. These two areas are located to the south or rear of the land.
8. The subject land is described as being used for agriculture, used to agist cattle and horses and the cutting of hay.
9. Under the GWZ, a planning permit is not required to carry out works in association with a section 1 use.
10. A permit is required for earthworks under clause 35.04-5 that change the rate of flow or the discharge point of water across a property boundary.
11. Earthworks Solutions Group (ESG) applied to Council for a certificate that the placement of fill on the subject land complies with the requirements of the Nillumbik Planning Scheme and that no permit application is required. The application was made under section 97N (1) (a) of the *Planning and Environment Act 1987*. Council assessed the application under section 97N (1) (b) of the Act.
12. Under section 97N(1) of the Act any person may apply to the responsible authority for—
  - a) *a certificate stating that an existing use or development of land complies with the requirements of the planning scheme at the date of the certificate; or*
  - b) *a certificate stating that a proposed use or development (or part of a use or development) of land would comply with the requirements of the planning scheme at the date of the certificate.*
13. On 28 January 2016, the Tribunal determined an application for a certificate of compliance which considered whether a proposal to fill the land required a planning permit under the Scheme.
14. The Tribunal determined that that proposal required a planning permit under the Scheme. The key reason for the Tribunal's decision was that the evidence did not demonstrate that proposed fill, forming part of the application for a certificate of compliance, would not have changed the rate of flow or discharge rates across the property's boundaries.
15. Council, during the appeal, sought to advance the argument that the use of the land for the importation of fill was an innominate use requiring a planning permit on the basis that the land had not been used for quite some time for an agricultural use.
16. Importantly the Tribunal was satisfied that the filling works would be otherwise undertaken in association with an agricultural use of the land, thereby concluding the use itself in this instance was not an innominate use and did not require a planning permit.

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**265 Chapel Lane, Doreen**

17. The Land is in the GWZ and is partly affected by Schedule 1 to the ESO1.
18. The Land has an overall area of 40.7ha, accommodates an existing dwelling and we are advised by ESG, is used for agricultural purposes.
19. No buildings, works or earthworks are proposed, or have been undertaken, across the part of the Land affected by the ESO1.
20. On 17 April 2019, Council officers attended a pre-application meeting with a representative of ESG relating to a proposal to deposit clean fill to the Land. ESG representatives advised Council the earthworks were to be in association with the agricultural use of the land.
21. Amongst other things, Council indicated ESG needed to supply Council with further information, inclusive of a technical report prepared by a Hydrological Engineer indicating whether the proposed earthworks, necessary for the agricultural use of the land, would change the rate of flow or the discharge point of water across the property boundary.
22. After the meeting on 17 April 2019, Council received an email as follows:

*Proposal is to undertake works approximately in the middle of the site and include placement of clean fill to improve access and safety for splashing and baling for rural property (agriculture use). At the meeting, the owner stated that there is an existing dwelling and up until recently the land also featured cattle grazing. In June 2019, Earth Solutions Group (ESG) requested a planning pre-application meeting with Council to discuss a proposal to place clean fill on the Land.*

*The clean fill would be mostly sourced from nearby residential subdivision estates, and the amount of fill being brought onto the site would include approximately*

*50,000 – 60,000 cubic metres of soil.*

*The proponent identified that access to the site would utilise part of the existing driveway on the land. Access may require earthworks.*
23. On 25 June 2019, Council officers and an ESG representative, attended a second pre-application meeting at Council's offices. As part of the pre-application meeting, ESG provided a hydrologist report demonstrating that *any change to the rate of flow is likely to be imperceptible.*
24. The key elements of the proposal are described in the hydrologist report as follows:
  - a) clean fill will be placed on the land (outside the ESO1 area) to level a section of the site, enable easier farming practices<sup>3</sup> and improve access and safety;
  - b) the fill site will encompass an area of approximately 4.8ha;
  - c) the clean fill will be primarily sourced from nearby residential subdivision estates;
  - d) approximately 50,000 to 60,000 cubic metres of clean fill will be brought onto the land; and
  - e) access to the Land will be provided via an existing driveway.



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25. On the basis of the information provided by ESG, Council formed the view that the works did not require a planning permit under the Scheme.
26. On 9 July 2020, residents of Chapel Lane advised Council of a significant number of trucks unloading fill on the land. Since then, Council has received multiple inquiries from surrounding residents regarding truck movements and amenity impacts.

**Explanation to Council and community as to why a permit may not be required**

27. As stated above the subject land is zoned GWZ. Clause 35.04 is the GWZ in the Nillumbik Planning Scheme.
28. Under the table of uses at clause 35.04-1 of the GWZ:
- 'Agriculture' is a section 1 use;
  - 'Dwelling' is a section 2 use (subject to conditions); and
  - The disposal of clean fill is an innominate use requiring a planning permit (assuming it amounts to a separate use).
29. Clause 35.04-5 of the GWZ1, states that 'earthworks' require a planning permit to the extent specified in the Schedule. The Schedule specifies that earthworks which change the rate of flow or the discharge point of water across the property boundary require a planning permit.
30. Clause 64.01 of the Scheme is also relevant. It states:
- *If land is used for more than one use and one is not ancillary to the other, each use must comply with this scheme.*
31. Accordingly, if the disposal of clean fill is a separate and distinct use that is not ancillary to the use of the land for agriculture and a dwelling, it will require a planning permit under the GWZ as the earthworks would form the primary and dominant purpose for which the works are being undertaken.
32. For Council to determine that the deposit of clean fill on the subject land is ancillary to the dominant use of the land, such as agriculture, and therefore a separate 'use' permit is not required, the earthworks must be intended to improve and reinstate the land for agricultural purposes, being of a nature and scale that is essentially limited to that purpose.
33. On the presently known facts, it is certainly arguable that the real and substantial purpose of the land is for agriculture. However, given most of the information in Council's possession is verbal commentary unsupported by evidence, we require further factual details to establish to the necessary degree that the real and substantial purpose of the use of the land is indeed agriculture.
34. Further to the use of the land, Council must determine if it considers the rate of flow or the discharge point of water across the property boundary require a planning permit. As stated earlier, on the basis of the hydrologist report submitted by ESG to Council at the pre-application meeting and its conclusion, a planning permit may not be required for the earthworks being undertaken on the land. For Council to unequivocally determine that the conclusions of the Water Technology report are accurate and as

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such must review the report inclusive of its assumptions to best determine appropriately.

**VCAT decisions on soil dumping in a Green Wedge**

35. There are a number of VCAT decisions pertinent to soil dumping in a Green Wedge. Of particular relevance are the two red dot decisions:
- Yarra Ranges SC v Bibiano [2016] VCAT 1881 (10 November 2016) – **(Attachment 1)**
  - Calleja Properties Pty Ltd v Hume CC [2016] VCAT 253 (23 February 2016) – **(Attachment 2)**
36. In seeking to fulfil item 4 of the Notice of Motion, officers reviewed the following relevant VCAT decisions:
- Burns v Hume CC [2017] VCAT 448 – **(Attachment 3)**
  - Creative Landfill Pty Ltd v Hume CC [2016] VCAT 1075 – **(Attachment 4)**
  - Fleming v Moyne SC [2016] VCAT 643 – **(Attachment 5)**
37. In responding to item 4 of the Notice of Motion, as to why VCAT decisions on soil dumping in a Green Wedge are not applicable in these circumstances, officers advise all VCAT decisions are applicable in so far as they provide applicable commentary useful to ensuring that officers collate the appropriate information and undertake rigorous reviews to better enable if the use and works on the land require a planning permit or not.

Deputy President Dwyer in Yarra Ranges SC v Bibiano (Red Dot) [2016] VCAT 1881 (10 November 2016) (Bibiano Decision)

38. In this case, the Tribunal considered whether the importation and depositing of clean fill on a significant scale was a separate use of land, one that required a separate permit for 'use', in circumstances where the subject land was being put to another land use.
39. The facts of the case include that approximately 1400 truckloads of clean fill had been deposited on Mr Bibiano's 6.874 ha parcel of land. The Tribunal was satisfied that Mr Bibiano's land was used as a holiday house and hobby farm.
40. Yarra Ranges Council had sought declarations that the scale and nature of the importation and depositing of fill constituted a separate use of land, one requiring a separate permit for 'use'.
41. In this decision, the Tribunal member outlines case law principles relevant to questions about whether certain activities are ancillary or comprise a separate land use. From paragraph 29 he states:

*Some useful principles about ancillary use were summarised by Osborn J. in Hoe v Manningham CC,[4] reflecting and adopting principles established in other quoted cases such as Shire of Perth v O'Keefe, [5] Cascone v City of Whittlesea,[6] Lizzio v Ryde MC,[7] and Northcote Food Wholesalers Pty Ltd v Northcote CC.[8] These principles include the following:*

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*Clause 64 of the planning scheme should be understood as reflecting or amplifying the concept that it is the real and substantial purpose of a land use which determines its character for planning purposes. It amplifies that notion by making clear that even when two or more substantial and distinct activities can be identified upon land, an otherwise not permitted ancillary use may be legitimised by a lawful dominant purpose.*

*It is thus necessary to properly characterise the use of the land, by ascertaining its real and substantial purpose. This will often involve questions of fact and degree.*

*The ascertainment of the purpose of a use may yield the result that more than one separate and distinct purpose is revealed. In this event, the question arises whether one is dominant, and whether the lesser purpose or purposes are ancillary to the dominant purpose.*

*The ordinary meaning of 'ancillary' is accessory or auxiliary. A use may be ancillary to another if it is a reasonable and necessary adjunct to another use, or if it is subsidiary to that other use.*

*There is no single test to determine whether one use is ancillary to another dominant use.*

42. In coming to his decision, the Tribunal drew on the fact that the Bibiano family approached Mr Waring to assist in resolving their drainage issue on their by bringing clean fill rather than Mr Waring approaching them to dispose of fill on behalf of a third-party.
43. When comparing the facts of the Bibiano decision to those in the Calleja case, the following commentary from the VCAT decision relevant:

*Applying these principles, the differences between the decision in Calleja and this case become more obvious. In Calleja, it appears that the Tribunal quite properly characterised the real and substantial purpose of the use of the land in that case as being for the disposal of landfill. There was no other dominant purpose to which this use was arguably ancillary, and the concept of 'ancillary' use was not (and did not need to be) canvassed in that decision.*

44. In this case, it is clear from the evidence that the real and substantial purpose of the use of the Bibiano land over many years is as a dwelling and hobby farm.

*In reaching this initial finding, I agree with Mr Bibiano's advocate that a rural residential holiday house or hobby farm should be characterised differently from a pure farming or agricultural enterprise.*

*The ascertainment of the real and substantial purpose of the Bibiano land however reveals that, in more recent times since 2014, a different and additional activity has been undertaken on the land through the deposit of a significant amount of landfill.*

*The question therefore arises as to whether this activity comprises a distinct and separate purpose of use of the land. If this question is answered in the affirmative, a second consequential question arises as to whether this additional purpose through the deposit of clean fill is a lesser purpose that is ancillary to a dominant purpose of use of the land as a dwelling and hobby farm.*

45. Further, at paragraphs 35 to 36 of this decision the Tribunal member says:

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*The 1400 truckloads of fill deposited on the Bibiano land is a significant quantity, and clearly achieves a benefit for the third party who pays Mr Waring for the disposal of the fill. However, these factors must be balanced alongside the real and substantial purpose that underscores the deposit of the clean fill on the Bibiano land over the past two years. Here, the evidence is that there is a real issue that has arisen for Mr Bibiano in the use and enjoyment of his land, being long-standing drainage issues and erosion. Mr Bibiano has sought to address this and to facilitate the reinstatement of a vehicle/tractor track for access to the northern part of the land for fire protection and weed eradication by means of the fill. Mr Bibiano is not conducting a separate enterprise through the receipt of fill on the land. Rather than there being a 'disposal' of clean fill primarily engineered through Mr Waring or a third party disposing of fill on the land, and using the land essentially as part of a landfill operation, the evidence is that the Bibiano family approached Mr Waring to 'deposit' clean fill on the land to address the drainage and erosion issues. I find that the deposit of the fill in these circumstances is a reasonable and necessary adjunct to Mr Bibiano's use of his land as a dwelling and hobby farm.*

*To the extent the amount of soil brought onto the land to address Mr Bibiano's problem might be said to be excessive, that is perhaps a question of fact and degree. A relatively large volume of soil is clearly required on this site to address the drainage and erosion issues, and the Council produced no quantitative evidence to assist in determining whether the amount deposited here is excessive.*

*However, in any event, this is largely a 'development' issue rather than one relating to the characterisation of the 'use', particularly given the development controls in the GWZ-2 schedule that seek to limit the depth of fill to 1 metre without a permit. Here, the development issue is now being addressed by the parties through the removal of some of the fill and the levelling of the fill to between 500 mm and 600 mm in depth in relevant areas. The fact that an outcome is being negotiated through which the supposedly 'excess' fill is being removed in my opinion bolsters the view that the level of fill that will ultimately remain on the land will be proportionate to the drainage and erosion issues to be addressed, and therefore consistent with the deposit of fill being used primarily for the purpose of addressing that problem.*

46. The Tribunal concluded that the deposit of clean fill on the subject land was ancillary to the dominant use of the land as a holiday house and hobby farm, and did not require a separate 'use' permit. Finding the earthworks were intended to improve and reinstate the land for hobby farming purposes, being of a nature and scale that is essentially limited to that purpose.

Calleja Properties Pty Ltd v Hume CC (Includes Summary) (Red Dot) [2016] VCAT 253 (23 February 2016) (Calleja decision)

47. In this case, the Tribunal, considered whether a permit was required for the importation of clean fill (soil and earth) proposed in part to remediate an existing landfill cap and in part to re-profile the cap, for the subject land in a GWZ.
48. Calleja Properties Pty Ltd proposed to import an estimated 320,000 cubic metres of clean fill and place, compact and contour it into a void space of 230,000 cubic metres, over an existing landfill.
49. In this case, a permit was required under the GWZ for earthworks.

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50. Council also submitted a permit was required for the use of the land, alleging the use would be an innominate use of the land as it was of the view the nominated land uses under the zone did not correctly characterise the use.

51. The decision includes commentary about the correct land use term as the Tribunal was of the view it was important to correctly character the use as:

*...not only for this proceeding but because the Tribunal is aware of an increasing number of applications being dealt with by responsible authorities to undertake similar filling of land using spoil or excess soils (i.e. clean fill) from developments or other sources unrelated to the land proposed to receive the fill.*

52. In considering possible land use definitions, the Tribunal agreed with Council that the definitions of 'refuse disposal', 'transfer station' and 'materials recycling' in Clause 74 of the scheme did not properly describe the proposed activities on the subject land.

53. At paragraphs 64 and 65, the Tribunal said:

*We think the intent is clear, and twofold:*

- *To use the land to accommodate the disposal of clean fill that has been generated from other sites and cannot be accommodated on the source site or otherwise re-used. Put another way, it is use that seeks to place waste on land rather than meet some other form of re-use.*
- *To reshape the land, i.e. a form of earthworks.*

*That said we do not see the second intention as a use of the land rather it is a consequence of the bringing the clean fill on the land, i.e. it is the consequential development of the use activities.*

54. At paragraph 69 the decision reads:

*... we agree that the use is an innominate one, best described however as 'disposal of clean fill' and that the planning permissions being sought are best characterised as:*

- *Use for the purpose of disposal of clean fill.*
- *Development of earthworks.*

55. Having regard to its scale and nature, the Tribunal in the Bibiano decision concluded that the deposit of fill on the land was a reasonable and necessary adjunct to the dominant use of the land for a dwelling and hobby farm. The Tribunal gave weight to the outcome sought to be achieved by the activities, in that the applicant was not undertaking a separate business by receiving fill on the land. The applicant in this instance asked a contractor to deposit fill to address drainage and erosion problems. The Tribunal in its decision sought to clarify the distinction between this case and that of the Calleja on the basis that the amount of fill was less and a different combination of existing land uses applied.

56. With regard to the Calleja case, the Tribunal concluded that the proposal required a planning permit based on the scale and nature of the activity. In this instance the Tribunal decided that the works constituted an innominate use – 'disposal of clean fill' – and for development in the nature of 'earthworks'.

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Burns v Hume CC [2017] VCAT 448

57. In this case the Tribunal considered a proposal to use the subject land for the disposal of 263,000m<sup>3</sup> of clean fill. It is also proposed to construct buildings and works including an access track, wetland and sediment ponds, acoustic mounding and fencing, a work compound, fencing of native vegetation and some drainage works. Anticipated completion of filling was over four years.
58. The subject land is 118.5 hectares located on the north-east side of Konagaderra Road. Konagaderra Creek is a tributary of Deep Creek. Konagaderra and Deep Creeks mark the eastern and much of the northern boundaries of the subject land. A dwelling is located toward the eastern end of the land. The Oaklands Park Estate, a rural living development with expansive communal open space, is to the south of the subject land.
59. The subject site and surrounding land are within the GWZ. A permit is required to use and develop the land for the disposal of clean fill including earthworks in accordance with the provisions of the Hume Planning Scheme.
60. The ESO – Schedule 1 Rural Waterways and Environs applies to part of the subject land. The fill area partly extends over land in ESO1. A permit is required to carry out works including earthworks in the ESO1 area. This area is situated between the Hume and Sunbury growth corridors.
61. Heritage Overlay 267 applies to homestead ruins. The proposed fill and associated works area do not affect the ruins, that is, the fill area is not within the mapped heritage overlay.
62. In considering if the disposal of fill on Green Wedge Land is appropriate the Tribunal made the following comment:
- The proposed landfill is a temporary operation to support urban development, essentially managing a by-product of development. The current planning scheme provides a framework that enables our consideration of the permit application. More specific guidance, as suggested by the Council and respondents, may be beneficial but we are clear on the aims of the GWZ and the strategic and physical contexts within which we must assess the proposal, such as with respect to the values of ESO1 within which the fill area partly falls, and other considerations in the GWZ purpose and decision guidelines.*
63. The Tribunal considered the matter of the loss of agricultural land as a consequence of the imported fill. The Tribunal made the following comment:
- Respondents express concern about the loss of agricultural land as a consequence of the landfill. The subject land is in a degraded state with extensive weed invasion. It is being used for cattle grazing and the intent is for agricultural use to continue outside of the fill area and surrounds. We have not been presented with arguments or material to suggest to us that is not possible, noting an ample water supply is available to the balance of the land. We also have no reason to conclude that the operation of surrounding farms would be adversely affected.*
- Once the fill operation is completed (four years), with rehabilitation and reshaping of the land, the land would continue to be used for farming purposes. The proposed*

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*landfill is a temporary operation which does not preclude future agricultural activity, albeit on varied topography, and into the longer term.*

64. The Tribunal in this case ultimately affirmed Council's decision to refuse a permit on the basis that the use of the subject land for clean fill, did not respond in an acceptable way to the site's physical circumstances and context. Its decision was based not because the use of the land was inappropriate in the GWZ but rather that drainage and surface water flows, posed potential risks to native fauna and flora, and the potential for adverse amenity impacts including the manner in which the proposal would detract from the land's environmental and landscape values based on the objectives of the ESO1.

65. As noted earlier, this site is largely covered by the ESO1 and therefore the fill areas were within the ESO1. The ESO1 has a number of objectives and decision guidelines that when considering the particulars of the application, namely the velocity of stormwater down the face of the fill, the erosion of the outer face of the fill prior to any establishment of grass cover, and the Tribunal's concerns with regard to the silt fencing proposed, the Tribunal stated:

*We are not satisfied that the values identified in ESO1 are acceptably addressed or that the environmental issues cited in clause 35.04-6 have been adequately responded to. Our concerns on these matters cannot be deferred to being addressed by permit conditions.*

The Tribunal further stated that:

*...we are not satisfied that the proposal responds in an acceptable manner to the environmental values of the land and environs or that the management regime proposed is sufficiently resolved to give us confidence that those values will not be adversely affected.*

66. Lastly with regard to concerns raised with the imported fill being contaminated the Tribunal agreed with the findings in the Creative Landfill decision where the Tribunal in that decision said:

*Similarly, in respect to chemical contamination concerns, the quality of the fill is subject to controls under the Environment Protection Act 1970. We proceed on the basis that these controls will apply and that ultimately the importation and placement of contaminated soil is an offence. These are all matters regulated by the Environment Protection Authority under a separate regulatory regime. This regime and a clear permit condition that all fill must meet the regulatory requirements for classification as fill are sufficient to manage a satisfactory outcome.*

Creative Landfill Pty Ltd v Hume CC [2016] VCAT 1075

67. The decision of the Responsible Authority was set aside in this decision and a planning permit was granted for the land at 765-785 Mt Ridley Road, Yuroke in accordance with endorsed plans a conditions set out in the permit. The permit allows the use and development of the land for the disposal of clean fill and earthworks.

68. The subject land is a trapezoidal shaped lot having an area of approximately 103 hectares. Its northern boundary is to Mount Ridley Road, while the remaining boundaries are with adjoining rural landholdings. North of Mount Ridley Road is a more

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intensively settled area of smaller rural residential lots generally of 6Ha in area. The site is vacant rural land with the only development a small dam at the southern end. It contained scattered native trees and some areas of native grasslands in the southern area. The land is used for grazing. The land has a fall of some 10m from north to south. A side slope from east to west steepens near the western boundary as the landform transitions to the deeply incised valley of Deep Creek.

69. The proposal before the Tribunal was to use and develop the land for the 'disposal of clean fill' as set out in the proposal plans with associated 'earthworks' that will involve ground preparation, drainage and other works and the placing and compacting of 500,000m<sup>3</sup> imported clean fill across an area of the land, generally to the east of a Public Acquisition Overlay that runs diagonally from south to north through the property.
70. This proceeding arose from Creative Landfill's application for review when the Hume City Council failed to make a decision about the permit application within the prescribed time.
71. On the basis of amended plans submitted to the Tribunal, the Council supported the granting of a permit subject to conditions. Creative Landfill though opposed some of the proposed conditions and landholders whose properties are in the vicinity of the subject land objected to the proposal being granted a planning permit.
72. The Tribunal considered a number of environmental and amenity matters in coming to its decision, namely noise, dust, and the impact to the landscape. These considerations give weight to the more substantive matter before this Tribunal as to whether the use of the land would have an impact in achieving the objectives of the Zone and thus State and Local Planning Policies as set out in the planning scheme. Whilst planning should protect sites and features of landscape value the Tribunal concluded that the site had limited prominence in the landscape and that the final landform was acceptable and would not be out of place or incongruous within this character.

*While the landform will change, the outcome will not be out of character with the existing character and hence have minimal impact on the local values. The addition of boundary plantings of trees will assist in filtering views of the site. We do not find it is necessary to fully screen such views in light of our findings about the change in landform. Rather we conclude the proposed planting within a 5m wide strip will complement the existing character of the area.*

73. Similarly the Tribunal found that
- The proposed means of diverting and integration of swales into the landform would not affect upstream properties.
  - The works would not change overall runoff conditions over property boundaries.
  - The combination of compacted fill, over dressing of topsoil to reinstate vegetation, proposed slopes and swale drains address the potential for erosion and impacts on water quality.
74. Most importantly this Tribunal at paragraphs 65-72 discussed the agricultural land use impacts this being most relevant to the current proposal at Chapel Lane, Doreen. The Tribunal came to the conclusion that whilst the zone supports agricultural land



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uses, it is not the only purpose of the land and Section 2 uses can be considered, being that they are not prohibited, which on balance of the proposal with remaining land within the lot remaining available for ongoing agricultural use is considered reasonable. This is on the basis that the predominant use of the land is for the importation of fill, a permit required use, not agriculture as claimed in the Chapel Lane matter.

*At paragraph 14 the Tribunal made the following statements:*

*Like all planning zones, a purpose of the Green Wedge is to implement State and Local Planning Policy Frameworks as relevant to that zone and the proposed use and development. The purposes of the zone along with the purposes of Metropolitan Green Wedge land (found in Clause 57 of the scheme) indicate that when so zoned, the land is to be protected from uses and / or development that would diminish, amongst other values, those related to agriculture, the environment and landscape. It is however necessary to understand that purposes of the Green Wedge Zone are not intended to lock land up. The purposes include uses such as agriculture and use and development of mineral and stone resources. Section two, permit required uses, include dwellings, cattle feedlots and other intensive animal husbandry, refuse disposal and so on. As per clause 57, it is not intended that such land be used for urban purposes that could otherwise be located in urban areas. Rather use and development of the land can include rural uses as well as uses and development that might support the use and development of urban areas, but are incompatible with sensitive urban/residential land uses.*

## 75. At paragraph 67-68:

*While we acknowledge that the purposes of the zone support agricultural land uses, we agree with submissions for Creative Landfill that this is not the only purpose of such land. While it is true that using the land to dispose of fill generated from other sites is an innominate use, it is not a prohibited use. We agree with the applicant that the longer term agricultural use will not be affected for this land, having regard to the nature of the works. Further, the extent of works is limited to one area with remaining land within the lot remaining available for ongoing agricultural use.*

*The planning scheme does assign this land a particular strategic value for agricultural productivity. Indeed it is zoned Green Wedge rather than Farming. While identified in the local planning policy framework as a rural area where farming is to be supported, to the north is a rural residential style use of land. To the east of Mickleham Road land is being developed for urban residential use and the property is subject to an acquisition overlay that is intended to support a future arterial road. The particular values for*

## 76. At paragraph 88

*While there will be temporary loss of the land from agricultural use that use can re-establish after completion of the filling. The use and development will also not prevent remaining land from ongoing agricultural use, nor prevent or impact on adjoining agricultural activity.*

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Fleming v Moyne SC [2016] VCAT 643

77. The subject land is an elongated lot of 1.98 hectares that extends some 480m to 500m east to west (its length) and 30m to 60m from north to south (its width). The land was used as a quarry with the pit extending for almost the entire length of the lot and across its width. The pit has reportedly been subject to some infill/rehabilitation however the north face of the pit is some 10m above the present floor level at its highest point. The land is primarily covered with exotic grasses, with some low shrubs scattered within the pit, along the pit walls and the southern boundary line. The pit is located on the south side of Tower Hill, a volcanic crater that is a significant landscape feature in the region.
78. The subject land is located within the Farming Zone (FZ) and is subject to the Significant Landscape Overlay (SLO) (Clause 42.03 and Schedule 6). The proposed use is defined as an innominate use of the land and works in a FZ. Works on land subject to a SLO (Clause 42.03-2 and Schedule 6) and alterations to access a road in a Road Zone Category 1 (Clause 52.29) triggered the need for a planning permit.
79. The proposal sought to transport, deposit, spread and compact clean fill a disused quarry. The filling would continue until the land form was restored to its natural condition. Some 550,000m<sup>3</sup> of fill will be required to achieve the proposed finished landform. The fill was proposed to be brought in over four to five "events per year", with events lasting a few days and up to a few weeks. Each event would involve no more than 30 truckloads of fill being delivered onto the pit floor, with material being spread and compacted.
80. The applicant in this instance operated a construction company, and proposed from time to time to dispose of fill generated from land development works on other construction sites on this land.
81. The Council decided to grant a permit for the disposal of the fill, with the operation subject to a number of conditions said by the Council to address concerns about potential environmental impacts as well as potential amenity impacts to two nearby rural residences.
82. Owners and occupiers of one of these residences disagreed with the Council's decision and sought a review by the Tribunal on the basis that the activities will adversely and unreasonably impact on their amenity. Accordingly this matter was largely concerned with determining what reasonable amenity conditions adjoining land owners should be subject to, living as they do in a working agricultural environment and can these conditions be sustained during the course of the proposed filling activities.
83. The Tribunal stated that:
- This question of amenity impacts raises the further question about what should be the test of reasonable amenity expectations in the context of a rural dwelling located in a working agricultural environment.*

At paragraph 32 the Tribunal states:

*In addressing the question of 'reasonable amenity', I have considered the planning and land use context of the locality. The Farming Zone applies to the quarry site, the Lloyd/Fleming property and to surrounding land to the south, east and west. To the*

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*north and the area encompassing Tower Hill Lake, the land is subject to the Public Conservation and Resource Zone (PCRZ).*

*I agree with submissions that in combination, the purposes and decision guidelines of the Farming Zone and the State and local planning policy frameworks give strong emphasis to planning outcomes that support the ongoing agricultural use of such land. Use of the land for rural lifestyle and residential purposes are not supported or encouraged because of the conflict that arises between agricultural activity and the amenity expectations associated with these uses. One need only look as far as the purposes of the*

*Farming Zone, the associated decision guidelines under clause 35.07-6 and relevant State and Local Planning Policy Frameworks<sup>8</sup> to conclude that this is the case. It is also fair to say that many Tribunal decisions have confirmed this overall planning direction for farming zoned land, as was emphasised by the Council.<sup>9</sup> Nothing in this matter persuades me that I should adopt a different approach.*

*What I have found lacking in this proposal by Rodger Constructions is a recognition of this context, the potential issues raised by the proposed filling activity and a properly presented management regime to deal with such issues.*

84. As stated at paragraph 37 above, all the above-mentioned decisions provide Council with learnings that can be applied to the current matter at 265 Chapel Lane, Doreen. Whilst not one is identical to the matter in question, the underlying matter of appropriately defining the predominant use of the land to determine if a planning permit is required is paramount.
85. The relevance of these decisions to the present works at the abovementioned site, is one of definition. While the volume of fill on the land at 265 Chapel Lane is minimal when compared to the likes of Calleja, it is approximately double the volume considered in Bibiano case. Furthermore, the test as to whether the owner of the subject site in allowing clean fill to be deposited on their land, benefits the owner of the land for a future or current agricultural activity or a third party, will distinguish if the use of the land for the disposal of clean fill – an innominate use or not.
86. Should the use be found to need a planning permit, the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development. Proceeding commentary regarding the volume of fill, the environmental conditions of the land, amenity impacts, the current and future use of the land, State and local planning policy and more, provide the basis upon which to reach a conclusion and to decide an application.

**Proposed Planning Scheme Amendment**

87. The Victoria Planning Provisions provide a range of tools available to Responsible Authorities to ensure the Planning Scheme is appropriate to each local government area. The tools include Zones, inclusive of Schedules to the Zones and Overlays. There is currently no one provision in Planning Schemes to regulate the deposit of clean fill on land particularly in the peri-urban areas of Melbourne. Some Councils have utilised Overlays that require a planning permit for all earthworks.

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88. The Hume Planning Scheme has a permit requirement for earthworks involving the receipt, importation, stockpiling or placement of more than 100 cubic metres of fill. This requirement was introduced through Amendment C143 to the Hume Planning Scheme. It is the only planning scheme we are aware of that has this permit requirement. We are aware that other Councils have consistently advocated for a similar provision in all peri-urban Planning Schemes. In discussions with Hume Officers, it is evident that this requirement provides the necessary clarity to determine when earthworks trigger the need for a planning permit. This requirement enables earthworks ancillary to farming practices that generally require 100 cubic metres or less of fill, to not be caught up in the regulatory permit process, and continue as of right.
89. The Panel in its Panel report to Amendment C143 of the Hume Planning Scheme, stated the following:

*Land filling has become an environmental, health and safety issue for Council given its role as a growth area and the close proximity between residential development and Green Wedge and rural land with respect to land filling associated with disposing of excess soil material. Much of this activity is unregulated and is of concern to Council regarding environmental impacts to the character of its rural landscape.*

*The key issue of concern from submissions was the impact to routine farming activities becoming caught up in additional permit requirements. This issue can be appropriately managed through the proposed post exhibition change to the permit requirement for earthworks involving a threshold limit above which permits would be required. This will assist in avoiding the need to seek permits for routine farming activities that do not involve large scale land filling earthworks.*

*100 cubic metre analysis:*

*It is clear to the Panel that the concerns of the submissions were based on the difference between what the issue Council was striving to address i.e. large scale land filling in the Green Wedge and rural areas, and what the submissions considered would be the real and much broader effect of the permit requirement for earthworks proposed to be activated by the exhibited version of the Amendment (all earthworks). The Panel acknowledges that Council realised this variation in understanding of the effect the Amendment and the reason for its proposed post exhibition change to the form of the Amendment to impose a new and separate permit requirement for: Earthworks which involve the receipt, importation, stockpiling or placement of more than 100 cubic metres of fill. In this way, Council sought to allay the concerns of the submissions regarding routine farming and other activities involving earthworks from being caught up in the new permit requirements*

*Council's submission outlined that the change to the form of the Amendment clarifies that it is not the intent to capture routine farming activities under the earthworks permit requirements. Council considers that the revised wording provides for a clearer distinction to be made regarding the extent of earthworks that will trigger the need for a planning permit. The use of the words "receipt", "importation", "stockpiling" or "placement" have been chosen because they capture the nature of the practice of unregulated land filling and set it apart from that of genuine and routine farming activities, which are considered to be of a much smaller scale. The selection of the 100*

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*cubic metres threshold was based on factors including, an assessment of earthmoving farming practices and the likely volume of soil movement involved, the level of soil being moved in conjunction with current unregulated land filling sites, and the need to strike a balance between a permit requirement that would capture unregulated land filling, but not routine farming activities. The Panel supports the views of Council in this regard. The Panel considers the combination of the defined term for earthworks under Clause 72 of the Hume Planning Scheme and the shift in providing a threshold to land filling earthworks acts to provide a satisfactory safeguard to ensure unnecessary permits are not triggered for activity normally associated with routine farming and other rural activities. The concerns of the submissions should be allayed by the post exhibition change suggested by Council with respect to introducing a threshold over the extent of earthworks that would require a permit under the GWZ, GWAZ and FZ.*

*Regarding the need for the Amendment, the Panel agrees with Council's concerns over the extent and nature of land filling that is occurring in Hume under the influence of both its role as a growth area and close proximity to rural land available for such activity. The lack of a comprehensive permit requirement for land filling earthworks of a large scale creates problems for Council with respect to managing and regulating such activity in order to safeguard the environment and health and safety of the green wedge and rural community. Having regard to these factors, the Panel considers the Amendment is needed in order to provide Council with the ability to manage the impacts of land filling earthworks.*

90. It is noted that many VCAT decisions have stated that until issues relating to the disposal of clean fill are given State-level consideration, Councils will continue to confront difficult questions of characterisation. Furthermore, Tribunal decisions have consistently reported that the EPA, the Minister for Planning and affected metropolitan fringe councils need to work together towards a more sophisticated response, rather than relying on individual determinations. It should be noted that the proposed amendment will only be able to introduce provisions relating to works or earthworks in the GWZ. Amendments undertaken at the local level cannot amend Statewide planning provisions i.e. the uses allowed in a zone, only the Government can amend such provisions. Accordingly, this amendment at best will allow Council to consider permit applications and decide them appropriately with conditions to regulate amenity and other such concerns.
91. Officers have begun preparing a planning scheme amendment authorisation request in accordance with item 5 of the Notice of Motion.

**Conclusion**

92. At paragraphs 32-34 Officers have sought to describe the further information necessary to inform Council's next steps. In accordance with the VCAT decisions outlined above, the question of characterisation is not an easy determination when considering the current provisions of the Planning Scheme, and Council must ensure the its decision and next steps are sufficiently justified to circumvent an appeal against Council.
93. Council officers have initiated work to prepare a planning scheme amendment that will provide a greater level of clarity in the Nillumbik Planning Scheme and indeed to our community, and to protect our Green Wedge.

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**FN.025/20 Use and development of the land for agriculture (olive grove, lemons and herbs) a restaurant (in conjunction with agriculture), sale and consumption of liquor, associated buildings and works, and the installation and display of business identification signage at 103 Bannons Lane, Yarrambat**

**Portfolio: Planning**  
**Distribution: Public**  
**Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety**  
**Author: Tyson McAdie, Principal Planner**  
**Renae Ahern, Manager Planning Services**

**Application summary**

Address of the land	103 Bannons Lane, Yarrambat
Site area	8.07 hectares
Proposal	Use and development of the land for agriculture (olive grove, lemons and herbs), a restaurant (in conjunction with agriculture), sale and consumption of liquor, associated buildings and works and the installation and display of business identification signage
Application number	530/2019/02P
Date lodged	15/11/2019
Applicant	Professional Consulting Services
Zoning	Rural Conservation Zone (Schedule 3)
Overlay(s)	Environmental Significance Overlay (Schedule 1) Bushfire Management Overlay
Reason for being reported	Called in by Ward Councillor.
Number of objections	Twenty Nine (29)
Key issues	<ul style="list-style-type: none"> <li>• Appropriateness of the use and compliance with Clause 51.02 (Metropolitan Green Wedge Land);</li> <li>• Agricultural Use;</li> <li>• Amenity impacts and noise abatement measures;</li> <li>• Liquor License;</li> <li>• Vegetation Impacts;</li> <li>• Siting and design;</li> <li>• Car parking;</li> <li>• Signage;</li> <li>• Bushfire; and</li> </ul>

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	<ul style="list-style-type: none"><li>• Potential Second Dwelling</li></ul>
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Location map





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<b>Recommendation</b>
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**That** the Committee (acting under delegation from Council) issues a Notice of Decision to Grant a Permit to the land located at 103 Bannons Lane, Yarrambat, for the Use and development of the land for agriculture (olive grove, lemons and herbs), a restaurant (in conjunction with agriculture), the sale and consumption of liquor, associated buildings and works and the construction and display of business identification signage in accordance with the submitted plans and subject to the following conditions:

1. Before the development and use commences, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans received on 13 March 2020 but modified to show:
  - a) An amended Farm Management Plan in accordance with a condition below.
  - b) A Land Management Plan in accordance with a condition below.
  - c) The proposed signage on the site amended to be shown as 'floodlit' in place of 'internally illuminated'.
  - d) Deletion of reference to a second dwelling from the plans and replaced with a reference to an outbuilding.
  - e) A notation on the development plans to indicate that any works to construct the proposed car park within the Tree Protection Zones of trees to be retained will be completed above grade and be of a permeable nature.
  - f) The location of Tree Protection Zones in accordance with conditions below.
  - g) Amended development plans and Traffic Impact Assessment amend as required by a condition below.
  - h) Waste Management Plan in accordance with a condition below.
  - i) Premises Management Plan in accordance with a condition below.
  - j) Bushfire Emergency Plan in accordance with a condition below.
  - k) Plans to demonstrate that the original dwelling on the site was converted into an unhabitable outbuilding as required by Planning Permit 214/2005/05P.
  - l) Development plans to show an effluent envelope of 1700m<sup>2</sup> in accordance with a condition below.
  - m) Landscape plan in accordance with a condition below.
2. The development and use as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
3. The restaurant use approved by this permit must not commence until such time as the agricultural use is established in accordance with the approved Farm Management Plan.
4. The restaurant use approved by this permit must only operate in association with the approved agricultural use to the satisfaction of the Responsible Authority.

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5. The use hereby permitted must not operate on any day with a declared Fire Danger Rating of Code Red.
6. Before the use commences, the owner must enter into an agreement with the Responsible Authority in accordance with Section 173 of the *Planning and Environment Act 1987*. The agreement must provide for, unless with the written consent of the Responsible Authority:
  - The restaurant use approved by this permit must not commence until such time as the agricultural use is established in accordance with the approved Farm Management Plan.
  - The restaurant use approved by this permit must only operate in conjunction with the approved agricultural use.
  - Should the agricultural use on the site cease, the restaurant must cease trading immediately.

Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the same Act prior to the commencement of the development and use.

The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.

7. Prior to the development commencing all trees within 10 metres of the proposed car parking area / any driveway works marked on the endorsed plans as being retained must have a Tree Protection Zone to the satisfaction of the Responsible Authority. The fencing associated with this Tree Protection Zone must meet the following requirements:
  - a) Extent  
 The tree protection fencing is to be provided to the extent of the Tree Protection Zone, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009)  
 If works are shown on any endorsed plan of this permit within the confines of the calculated Tree Protection Zone, then the Tree Protection Fencing must be taken in to only the minimum amount necessary to allow the works to be completed.
  - b) Fencing  
 All tree protection fencing required by this permit must be erected in accordance with the approved Tree Protection Zone.  
 The Tree Protection Fencing must be erected to form a visual and physical barrier and must be a minimum height of 1.5 metres and of chain mesh or similar fence with 1.8 metre support posts (e.g. treated pine or similar) every 3-4 metres, including a top line of high visibility plastic hazard tape erected around the perimeter of the fence.

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c) Signage

Fixed signs are to be provided on all visible sides of the Tree Protection Fencing clearly stating "Tree Protection Zone – No Entry", to the satisfaction of the Responsible Authority.

d) Irrigation

The area within the Tree Protection Zone and Tree Protection Fencing must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.

e) Provision of Services

Unless with the prior written consent of the Responsible Authority, all services (including water, electricity, gas and telephone) must be installed underground, and located outside of any Tree Protection Zone, to the satisfaction of the Responsible Authority.

f) Access to Tree Protection Zone

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

8. Prior to the commencement of the approved works (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the erected tree protection fences must be inspected and approved by the Responsible Authority.

Once erected to the required standard, the tree protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority.

9. The following actions must not be undertaken in any tree protection zone as identified in this permit, to the satisfaction of the Responsible Authority:
- a) Materials or equipment stored within the zone;
  - b) Servicing and refuelling of equipment and vehicles;
  - c) Storage of fuel, oil dumps or chemicals;
  - d) Attachment of any device to any tree (including temporary service wires, nails, screws or any other fixing device);
  - e) Open cut trenching or excavation works (whether or not for laying of services);
  - f) Changes to the soil grade level;
  - g) Temporary buildings and works; and
  - h) Unauthorised entry by any person, vehicle or machinery.

10. Before the use and development commences, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this

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permit. The plan must show the provision of landscaping for the access, car parking and restaurant areas and detail:

- a) A survey of all existing vegetation and natural features;
- b) The area or areas set aside for landscaping;
- c) A schedule of all proposed trees, shrubs/small trees and ground cover. This schedule shall include a mixture of plants selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing;
- d) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material;
- e) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill;
- f) Appropriate irrigation systems; and
- g) Regard to Bushfire Risk Management within the car parking areas.

11. Prior to the development and use commencing, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed as evidence of its approval. The plan must specify:

- a) The details and location of bin storage and bin collection areas to the satisfaction of Council's Infrastructure Maintenance Section (if a Council collection).
- b) The details and location of bin storage and bin collection points by a private waste contractor (if not a Council collection).
- c) Access route and method of access for the vehicles collecting waste.
- d) Details and location of bin storage areas for the proposed restaurant.
- e) Odour control from bin storage areas.

The approved Waste Management Plan must be carried out and completed to the satisfaction of the Responsible Authority.

12. Before the development and use commences, an amended Farm Management Plan prepared by a suitably qualified and experienced consultant must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and form part of this permit. The plan must be in accordance with the existing plan dated November 2019 but amended to show:

- a) Identify the overall number of each species of plants to be planted;
- b) Identify actions required as part of 'Stage 2';
- c) Details of proposed irrigation and drainage methods;
- d) Integrated pest management techniques to ensure a healthy insect, microbe and plant diversity;
- e) Details of proposed methods of plant renewal should any plantings die or are

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not productive; and

- f) Identify any existing wildlife corridors and methods for wildlife to move throughout the site.

The approved Farm Management Plan must be carried out and completed to the satisfaction of the Responsible Authority.

- 13. Before the development and use commences, a Land Management Plan shall be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and form part of this permit. The plan must show:

- a) Any domestic garden zone
- b) Restaurant zone;
- c) Any effluent zone;
- d) Areas where construction work is to occur and vegetation and soil disturbance may occur;
- e) Areas where no construction work is to occur and vegetation destruction and soil disturbance is not to occur;
- f) Erosion control;
- g) Measures to protect and enhance waterways;
- h) Measures to protect and enhance remnant vegetation;
- i) Measures to control identified noxious and environmental weeds;
- j) Measures to control pest animals.
- k) Details of how fire safety issues will be addressed throughout the property.

The approved Land Management Plan must be carried out and completed to the satisfaction of the Responsible Authority.

- 14. Before the development and use commences, a Premises Management Plan must be submitted to and approved by the Responsible Authority. All activities forming part of the permitted use must comply with the endorsed plan. The plan must include details on:

- a) Security, staffing, and other measures which are designed to ensure the orderly arrival and departure of patrons;
- b) Signage to be used to encourage responsible off-site patron behaviour;
- c) The training of staff in the management of patron behaviour;
- d) The responsible service of alcohol;
- e) Waste collection;
- f) Staff communication arrangements;
- g) Complaint procedures;
- h) Measures to control noise emissions from the premises;

The Premises Management Plan may be amended from time to time with the prior written consent of the Responsible Authority.

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15. Before the development and use commences, a Bushfire Management Plan (BEP) prepared by a suitably qualified and experienced person, must be submitted to and approved by the Responsible Authority. All activities forming part of the permitted use must comply with the endorsed plan. The plan must include details on:

- a) Premises details
  - Describe property and business details.
  - Identify the purpose of the BEP stating that the plan outlines procedures for:
    - i. **Closure of premises** on any day with a Fire Danger Rating of Code Red.
    - ii. **Evacuation** (evacuation from the site to a designated safer off-site location).
    - iii. **Shelter-in-place** (remaining on-site in a designated building).
- b) Review of the BEP
  - Outline that the plan must be reviewed and updated annually prior to the commencement of the declared Fire Danger Period.
  - Include a Version Control Table.
- c) Roles & Responsibilities
  - Detail the staff responsibilities for implementing the emergency procedures in the event of a bushfire.
- d) Emergency contact details
  - Outline organisation/position/contact details for emergency services personnel
- e) Bushfire monitoring procedures
  - Details the use of radio, internet and social networks that will assist in monitoring potential threats during the bushfire danger period.
  - Describe and show (include a map) the area to be monitored for potential bushfire activity.
- f) Action Statements – trigger points for action
  - i. Prior to the Fire Danger Period
    - Describe on-site training sessions and fire equipment checks.
    - Identify maintenance of bushfire protection measures such as vegetation management.
  - ii. Closure of premise during forecast Fire Danger Rating of Code Red days
    - Outline guest notification procedures and details of premises closure (including timing of closure).
  - iii. Evacuation
    - Identify triggers for evacuation from site. For example, when

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evacuation is recommended by emergency services.

- Details of the location/s of the offsite emergency assembly location.
- Transport arrangements for staff and guests including details such as:
  - o Number of vehicles required
  - o Name of company providing transportation
  - o Contact phone number for transport company
  - o Time required before transportation is likely to be available
  - o Estimated travelling time to destination
- Actions after the bushfire emergency event.

## iv. Shelter-in-place

- Show the location and describe the type of shelter-in-place.
- Triggers for commencing the shelter-in-place option.
- Procedures for emergency assembly in the shelter-in-place building.

The Bushfire Emergency Plan may be amended from time to time with the prior written consent of the Responsible Authority.

16. The development and use hereby permitted must be managed so that the amenity of the area is not detrimentally affected, through the:
- a) Transport of materials, good or commodities to or from the land;
  - b) Appearance of any building, works or materials;
  - c) Emissions of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - d) Presence of vermin.

All to the satisfaction of the Responsible Authority.

17. Unless with the prior written consent from the Responsible Authority, the use hereby permitted may only operate between the following hours:
- Sunday: 8am to 10pm.
  - Good Friday & ANZAC Day: 12 noon to 10pm.
  - Any other day: 12 noon and 10pm.
18. No more than 150 patrons shall be permitted in the restaurant at any one time, to the satisfaction of the Responsible Authority.
19. The predominant activity carried out on the premises, must be the preparation and serving of meals for consumption on the premises to the satisfaction of the Responsible Authority.
20. The premises must not be used for the purpose of a 'function centre' as defined under the Nillumbik Planning Scheme.
21. External lighting sources and their intensity, location and containment, for purposes of safety and security, must be of a type that will not adversely affect the amenity of

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the neighbouring land or the locality due to unreasonable illuminance, glare or spill, to the satisfaction of the Responsible Authority.

22. Before the restaurant use approved by this permit commences, an Acoustic Assessment and report of the as-constructed development must be submitted to the Responsible Authority for approval. The assessment, prepared by a suitably qualified and professional acoustic engineer, must review the function and operation of the as-constructed development and any operational process or procedure manuals. The assessment must confirm that that the development and associated processes and procedures provides the necessary acoustic treatments, and has operational processes and procedures in place to ensure that:
- a) The noise emissions from the operation of the use do not impact adversely on the reasonable amenity of any adjoining or nearby property.
  - b) The noise emissions from the operation of the use comply with the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1;
  - c) All noise emanating from any mechanical plant (air conditioners, refrigeration plant, etc.) complies with the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1;
  - d) An acoustic assessment (taken during the evening – between 9pm & 10pm) of decibel readings of nearby dwellings of the vehicle movements within the car parking area.
  - e) Recommendations provided to mitigate any unreasonable noise impacts to adjoining dwellings, this may include acoustic screening or other similar measures, to the satisfaction of the Responsible Authority.
  - f) Should the acoustic assessment require additional acoustic screening measures, amended plans must be submitted to and approved by Responsible Authority prior to installation.

When approved, the assessment will be endorsed as evidence of its approval.

23. Any recommendations or requirements of the Acoustic Assessment required by Condition 22 must be implemented prior to the commencement of the use and thereafter maintained in accordance with the approved Acoustic Assessment to the satisfaction of the Responsible Authority.
24. The use must not commence until the Acoustic Assessment has been approved to the satisfaction of the Responsible Authority.
25. Noise levels emanating from the premises must not exceed those required to be met under the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 and in the event of the Responsible Authority receiving justifiable complaints regarding noise from such sources, the onus will be on the permit holder to prove compliance with the relevant policy to the satisfaction of the Responsible Authority.
26. No external sound amplification equipment or loud speakers are to be used for the



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purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the Responsible Authority, unless with the prior written consent of the Responsible Authority.

27. No live music is permitted.
28. All external plant and equipment (including air condition and mechanical ventilation systems) must be acoustically treated, appropriately positioned or placed in soundproof housing to reduce noise to a level satisfactory to the responsible authority.
29. All security alarms or similar devices installed on the land must be of a silent type in accordance with any current standard published by Standards Australia International Limited and be connected to a security service, to the satisfaction of the Responsible Authority.
30. Prior to the commencement of any works on the site, the development plans and the submitted traffic assessment be amended to show:
  - a) Driveway grades are to be shown on the plan in accordance with Design standard 3 clause 52.06-9. Corner splays are to be demonstrated as per Design Standard 1.
  - b) Car parking on a grade must comply with AS2890.1:2004 and AS2890.6:2009.
  - c) A maximum grade of 1 in 16 where parking is perpendicular to the grade and 1 in 20 where it is parallel with the grade. In addition, grade of 1 in 33 is to be provided for the DDA parking space.
31. Prior to the commencement of the restaurant use approved by this permit, the carpark must be constructed (including line marking) including an all-weather surface and appropriate drainage to the satisfaction of the Responsible Authority.
32. Vehicle parking must only occur within delineated car parking areas to the satisfaction of the Responsible Authority.
33. The development hereby permitted must not cause any nuisance or loss of amenity in any adjacent or nearby land by reason of the discharge of stormwater.

Stormwater is to be absorbed on-site in accordance with the Shire of Nillumbik's "Drainage to Unserved Allotments" document, and all works are to be carried out to the satisfaction of the Responsible Authority.
34. All sewage and sullage waters shall be treated in accordance with the requirements of the *Environment Protection Act 1970*. All wastewater shall be disposed of within the curtilage of the land and sufficient area shall be kept available for the purpose of wastewater disposal to the satisfaction of the Responsible Authority. No wastewater shall drain directly or indirectly onto an adjoining property, street or any watercourse or drain to the satisfaction of the Responsible Authority.
35. Approval of wastewater disposal must be obtained from Council (Environmental Health) prior to a Building Permit being issued.
36. All effluent from the Restaurant must be disposed of within the designated LCA effluent envelope of 1700m<sup>2</sup> to the satisfaction of the Responsible Authority.

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The LCA effluent envelope of 1700m<sup>2</sup> must be shown on the endorsed Plans.

37. Secondary treatment of wastewater followed by sub-surface irrigation must be installed within the designated effluent envelope to the satisfaction of the Responsible Authority.
38. The permit holder must ensure that a current maintenance agreement is in place for the septic tanks system. Servicing must be completed by a competently trained person or servicing agent at least once every three (3) months, with a copy of the report sent to the Council (Environmental Health).
39. If in the future the existing septic system cannot effectively treat and contain wastewater on-site due to the increased wastewater load, the septic system and disposal area must be upgraded in accordance with the requirements of the *Environment Protection Act 1970* and to the satisfaction of the Responsible Authority.
40. The layout and construction of the premises, must comply with the Food Safety Standard 3.2.3 *Food Premises and Equipment* to the satisfaction of Council's Environmental Health Unit.
41. Air-Conditioning and other plant and equipment installed on the subject building(s) shall be so positioned and baffled so that noise disturbance is minimised, to the satisfaction of the Responsible Authority.
42. Unless with the prior written consent of the Responsible Authority, the commercial waste collection must not occur outside the following hours to the satisfaction of the Responsible Authority:
  - a) For one collection per week, between 6.30am – 8pm Monday to Saturday and between 9am – 8pm Sundays and public holidays.
  - b) For two or more collections per week, between 7am – 8pm Monday to Saturday and between 9am – 8pm Sundays and public holidays.To the satisfaction of the Responsible Authority.
43. Unless with the prior written consent of the Responsible Authority, deliveries to the restaurant hereby approved must not occur outside the following hours:
  - a) Between 7am – 6pm Monday to Saturday and between 9am – 6pm Sundays and public holidays.
44. The premises must provide and maintain a suitable area for the storage and cleaning of rubbish receptacles, as shown on the endorsed plans. The waste storage area must be appropriately located and of sufficient size to contain all refuse bins used on the premises, to the satisfaction of the Responsible Authority.
45. Mechanical ventilation systems must be positioned so as not to cause a noise or environmental nuisance to adjoining properties, to the satisfaction of the Responsible Authority.
46. The location, size, supporting structure and details of the signs as shown on the endorsed plans, must not be altered unless with the prior written consent of the Responsible Authority.

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47. The sign(s) must not contain any flashing or moving light, to the satisfaction of the Responsible Authority.
48. The sign(s) must not be illuminated by internal light unless with the prior written consent of the Responsible Authority.
49. The sign(s) must be constructed and maintained to the satisfaction of the Responsible Authority.
50. Unless with the prior written consent of the Responsible Authority, the sign(s) may only be illuminated between the permitted operating hours of the restaurant specified in condition 15 of this permit to the satisfaction of the Responsible Authority.
51. This permit will expire if one of the following circumstances applies:
  - The development is not commenced within 2 years of the date of this permit;
  - The development is not completed within 4 years of the date of this permit;
  - The approved use is not commenced within 2 years of the completion of the development;
  - The use ceases for more than two years;
  - The permission for the signage expires 15 years after the permit issue date.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.

**NOTES:**

During the course of the approved construction work, a copy of this permit and the endorsed plan(s) must be kept on-site and made available for inspection by Council officers.

Failure to undertake the requisite tree protection fencing in accordance with the conditions of this permit will result in the issuing of Planning Infringement Notices to the land owner, occupant (if this is a different person), and the person or company undertaking the works on-site. The minimum penalty on the Planning Infringement Notice for land owners and occupants will be \$826 for the land owner and occupant, and \$1652 for any company which may be undertaking works on-site.

Applicants who wish to allow smoking in outdoor dining and drinking areas need to ensure that the area/s comply with the requirements outlined in the *Tobacco Act 1987*. This may involve seeking independent legal advice, where necessary.

Prior to undertaking any construction works on the food premises, approval should be obtained from a Council Environmental Health Officer.

The premises is required to be registered with Council (Environmental Health) under the *Food Act 1984*.

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**Attachments**

1. Site and surrounds
2. Aerial map
3. Plans
4. Farm management business plan
5. Land capability assessment
6. Planning report
7. Traffic engineering assessment

**Subject site and surrounds**

1. The key features of the subject land and surrounds are as follows:
  - The subject site is particularly described as LP099600.
  - The subject site is located to the north east corner of Bannons Lane and Edward Henty Drive. The site is occupied by a single dwelling which is located at a setback of 202 metres from Bannons Lane, 38 metres from the western boundary and 107 metres from Edward Henty Drive.
  - The site is rectangular in shape and has 171 metres of frontage to Bannons Lane, 428 metres of frontage to Edward Henty Drive giving the site an overall area of 8.07 hectares.
  - The existing dwelling on the site is double storey and is accessed via an existing driveway and vehicle access located on Edward Henty Drive, the driveway meanders up the site to the location of the existing dwelling.
  - There are various outbuildings located in the general proximity of the dwelling. The site is undulating with the dwelling being sited at the highest point of the site. The land generally falls from the area of existing dwelling.
  - Both Bannons Lane and Edward Henty Drive contain roadside vegetation comprising of either canopy trees or shrubs.
  - Properties to the west of the site have frontages to Bannons Lane to the south and Laurie Street to the north, and comprise rural residential properties which are generally four hectares in size.
  - The properties to the east and north of the site are of similar size to the subject site in size and use.

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- The area south west of the site comprises Golf Links Drive and Jerry Drive and is located within the Low Density Residential zone.
- The area to the south-east of the site is located within the Rural Conservation Zone and comprises lots of differing sizes.

**Details of proposal**

2. Refer to the attached plans.
3. It is proposed to use the land for the purposes of agriculture, a restaurant (in conjunction with agriculture), carry out buildings and works and the construction and display of internally illuminated signage
4. Key features of the proposal include:

Agriculture:

- It is proposed to use the eastern side of the lot for agricultural purposes. A total of four hectares of the site is to be set aside for agricultural use, which is broken up into three separate paddocks.
- The submitted farm management plan indicates that 62 olive plants and 16 lemon trees will be planted.
- It is submitted that the produce from the proposed olive and lemon trees on the site will be utilised within the proposed restaurant on the site.
- An area is also set aside for future agricultural use on the site, this use has not been identified.

Restaurant:

- Use of the site for a restaurant which will have a maximum capacity of 150 persons.
- The proposed restaurant will be located within the existing shed located to the north-west of the existing dwelling.
- The restaurant is proposed to operate during the following times:
  - Sunday: 8am to midnight.
  - Good Friday & ANZAC Day: 12 noon to midnight.
  - Any other day: 12 noon and midnight.

Liquor License:

- The application comprises the sale and consumption of liquor on the site in accordance with the hours and patron numbers above.
- The applicant has sought an on premises liquor license.

Buildings and works:

- The existing farm shed on the site is proposed to be retro fitted to be used as a restaurant.

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- The existing shed is 24 metres long and 12 metres wide, this area will comprise the main area of the restaurant.
- The application proposes a roofed external seating area which will be located to the east of the existing shed. This area will be 24.9 metres long and 4.4 metres wide, with a maximum height of 3.3 metres. Fixed glazing will be provided at either end of this area.
- An extension to the shed to the south-west side is proposed which will be 5.9 metres long and 5 metres wide, with a maximum height of 3 metres. This area is proposed to be the entrance to the restaurant.
- A number of existing elements to the shed will be removed.

### Signage:

- It is proposed to construct two business identification signs on the site.
- A sign is proposed adjacent to the existing vehicle crossing on Edward Henty Drive and is to be completed in contemporary materials which comprise ironbark sleepers, a corton steel frame with lettering cut out to indicate the name of the premises. The lettering is proposed to be internally illuminated. The signage component of this structure will be 2.1 metres in width and 350 millimetres in height.
- A proposed sign above the parapet to the proposed restaurant entrance is also to be of similar materials and internally illuminated. This sign will be 1.5 metres in width and 250 millimetres in height.

### **Planning history**

5. Planning permit 214/2005/05P was issued in 2005 for the Development of the land in the form of a dwelling and conversion of the existing dwelling into an uninhabitable outbuilding.

### **Planning controls**

#### **Zoning**

6. Under the Rural Conservation Zone (Schedule 3) a planning permit is required for agriculture and a restaurant use under Section 2 of the Zone. A planning permit is also required for buildings and works associated with these uses.

#### **Overlays**

7. The site is partially affected by the Bushfire Management Overlay. The proposed restaurant is not located within this area, however a small section of the car park is. As such, the Bushfire Management Overlay is a permit trigger for a section of the car park only.

The site is partially affected by the Environmental Significance Overlay (Schedule 1), the area of the proposed works is located outside of this overlay and does not require a planning permit.

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**Particular provisions**

8. Clause 51.02 – Metropolitan Green Wedge Land
9. Clause 52.06 - Car Parking  
Clause 52.05-14 – Advertising Signs
10. Clause 52.27 – Licensed Premises

**General provisions**

11. Clause 65 (Decision Guidelines) outlines general decision guidelines that must be considered when assessing an application. These guidelines include the purpose of the zone or other provision, the orderly planning of the area, and the effect on the amenity of the area.

**Relevant planning policies**

12. Planning Policy Framework relevant to this application include:
  - Clause 12.03-1S – River corridors, waterways, lakes and wetlands;
  - Clause 12.05-2S – Landscapes;
  - Clause 13.02 - Bushfire
  - Clause 13.05 – Noise;
  - Clause 13.05-1S – Noise abatement;
  - Clause 14.01-1R – Protection of agricultural Land – Metropolitan Melbourne;
  - Clause 15.01-6S – Design for rural areas;
  - Clause 17.01 – Employment;
  - Clause 17.02-1S – Business;
  - Clause 17.04-1S – Facilitating Tourism; and
  - Clause 17.04-1R – Tourism in Metropolitan Melbourne
13. The Municipal Strategic Statement (MSS) clauses and Local Planning Policies which are relevant to this application include:
  - Clause 22.04 – Siting and design policy for buildings and works in non-urban areas;
  - Clause 22.09 – Signage policy; and
  - Clause 22.13 – Wildfire Management Policy.

**Policy context**

14. The Rural Conservation Zone, State Planning Policies and Council's Siting and Design Policy for Buildings and Works in Non-Urban Areas, seek to ensure that the

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development and use of land is consistent with sustainable land management and land capability practices, and takes into account the conservation values and environmental sensitivity of the locality. This needs to be balanced against the strong focus of both State and Local Policies for economic development, which includes strengthening existing enterprises which respect for the Shire's environmental, social and economic development priorities.

More specifically, proposed uses which offer opportunities in relation to tourism, employment and economic benefit are encouraged provided they result in an appropriate outcome in relation to the conservation values and environmental sensitivity of the locality.

**Public consultation****Advertising**

15. The application has been advertised by way of the posting of notices to the owners and occupiers of neighbouring properties and the erection of two on site notices.

**Objections**

16. As a result of advertising, a total of twenty nine (29) written objections have been received. The issues identified in the objections can be summarised as follows:

- The proposal is not consistent with the objectives and requirements of the Rural Conservation Zone.
- The proposed restaurant use on the site does not have a legitimate relationship with the proposed agricultural use and is prohibited under the provisions of Clause 51.02 (Metropolitan Green Wedge Land).
- The proposal to use the existing second dwelling on the site as a manager's cottage is not appropriate.
- The proposed noise resulting from the proposed restaurant is not appropriate, nor are the proposed hours of operation. Live music is not appropriate.
- The application states that the property has been used for extensive agriculture for a number of years which is not accurate.
- The proposal will result in an unacceptable increase in traffic movements in the local road network.
- The site is not well located in terms of live music as there are a number of dwellings in proximity to the site.
- The proposal will be a risk to vehicle and pedestrian safety in the locality.
- The proposed restaurant would be detrimental to the flora and fauna in the area due to the increased light pollution and littering.



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- The proposal is not consistent with findings by the Victorian Civil and Administrative Tribunal in relation to similar applications considered in relation to the requirements of Clause 51.02 (Metropolitan Green Wedge Land).

**Planning application conference**

17. No planning application conference was held for this application due to the current State of Emergency in effect.

**Referrals**

**Internal**

18. The application was referred to various business units or individuals within Council for advice on particular matters. The following is a summary of the relevant advice:

Council Unit	Comments
Infrastructure Development	<p>Council’s Development Engineer has the assessed the proposal and has provide permit conditions in the event a planning permit is issued.</p> <p><u>Planners note:</u> Conditions provided had requested conditions in relation to the construction of a vehicle crossover. The application seeks to utilise the existing crossover on Edward Henty Drive and the condition is not required in this instance.</p>
Traffic and Transport	<p>Council’s Traffic and Transport Engineers have assessed the submitted Traffic Assessment Report prepared by Traffix Group and have provided the following comments:</p> <ul style="list-style-type: none"> <li>• Car parking requirement as per table 1 of Clause 52.06 is 0.4 car spaces per patron. Car spaces required is calculated to be 60. Proposed onsite car parking provision of 60 car spaces is satisfied.</li> <li>• Existing driveway is to be retained for the proposal. Access way width is proposed to be increased to 6m allowing both ways traffic. Swept paths are demonstrated for a B99 and MRV for the loading/unloading vehicles and satisfied.</li> <li>• Sight distance assessment has been carried out by Traffix Group at the existing entry/exit from Edward Henty Avenue and it is in accordance with Figure 3.2 ‘Sight Distance Requirements at Access Driveways’ of AS2890.1:2004.</li> <li>• Proposed car spaces are in accordance with Australian Standard for Off-Street Parking (AS2890.1:2004) and Design Standard 2 of Clause 52.06-9.</li> <li>• DDA compliant spaces are to be constructed in</li> </ul>

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Council Unit	Comments
	<p>accordance with AS2890.6:2009. A bollard is to be installed on the shared space as per the standard drawing on AS2890.6:2009.</p> <ul style="list-style-type: none"> <li>• Disabled car space is to be appropriately signed and located.</li> <li>• Allocated staff car spaces are to be appropriately signed.</li> <li>• Car park proposed to be constructed with gravel, parking spaces are to be designated through the use of spike-down pavement markers and/or wheel stops. Pavement markers and wheel stops are to be maintained throughout the restaurant life span to comply with onsite safety.</li> <li>• Internal wayfinding signage to be included directing patrons to each of the parking areas</li> <li>• Car parks and access ways are to be lit during night operations as per relevant lighting standards.</li> <li>• Car space grade and driveway grades are unclear on the plans. Driveway grades are to be shown on the plan in accordance with Design standard 3 clause 52.06-9. And also corner splays are to be demonstrated as per Design Standard 1.</li> <li>• Car parking on a grade must comply with AS2890.1:2004 and AS2890.6:2009.</li> <li>• A maximum grade of 1 in 16 where parking is perpendicular to the grade and 1 in 20 where it is parallel with the grade. In addition, grade of 1 in 33 is to be provided for the DDA parking space. Plans must show this requirement.</li> </ul> <p><u>Traffic Generation and impacts</u></p> <ul style="list-style-type: none"> <li>• The traffic consultant has conducted a recent traffic count on Edward Henty Avenue near the crossover to the subject site from 1st to 7th February 2020. The counts recorded an average daily weekday two-way volume of 334 vehicles. Morning peak inclusive of 116 vehicles in the morning peak (8-9am) and 21 vehicles in the afternoon peak (3-4pm).</li> <li>• Traffic report has provided traffic generation data expected from the subject site.             <ul style="list-style-type: none"> <li>- 10 vehicle movements in the morning peak hour (all arrivals),</li> <li>- 57 vehicle movements at the lunchtime peak on a weekend, split as 48 arrivals and 9</li> </ul> </li> </ul>

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Council Unit	Comments
	<p>departures, and</p> <ul style="list-style-type: none"> <li>- 14 vehicle movements in the afternoon peak hour (all arrivals).</li> </ul> <ul style="list-style-type: none"> <li>• The proposed peak hour traffic generation would not create detrimental issues to the traffic volume on Edward Henty Avenue.</li> <li>• It was noted that a private contractor is proposed to be used for waste removal. A Waste Management Plan showing swept paths for the waste trucks are required to be submitted.</li> </ul>
Environmental Health	No objection, conditions provided in the event a planning permit is issued.
Environmental Planning / Land Management officer	<p>The submitted Farm Management Plan has been assessed by Council's Environmental Planner and Land Management officer.</p> <p>Comments received in relation to the proposed Farm Management Plan are as follows:</p> <ul style="list-style-type: none"> <li>- The plan outlines a proposal to plant an olive and lemon orchard and to grow herbs.</li> <li>- There is reference to the remainder of the agricultural land but it is unclear how this will be used.</li> <li>- The plan should show greater detail in relation to identification of current weeds, control strategies, timing for control plus a plan for new and emerging weeds which can be expected for a venture such as this.</li> <li>- The number of trees (Olives and Lemons) to be planted should be included, method for planting, extent of disturbance to the soil etc.</li> <li>- Some of the property contains scattered remnant vegetation. Detail on how this vegetation is to be protected should be provided. For example, where native trees are within areas proposed for planting, there should be no machinery activity or fertiliser within the TPZ of those trees. Similarly for grazing areas, how is native vegetation to be protected? It would be great if some replanting of native species could also be included</li> </ul>
Building	No objection.
Economic Development	Economic Development and Tourism are supportive of this application.

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Council Unit	Comments
	<p>It meets the objectives outlines in the Nillumbik Economic Development Strategy 2020 - 2030 (draft) in particular:</p> <p><b>Objective 3.</b> Facilitate economically and environmentally sustainable use of land within the Shire’s Green Wedge</p> <p><b>Objective 4.</b> Showcase Nillumbik’s visitor, recreation and cultural economy.</p> <p>Given the works that will be undertaken on Yan Yean Road it may impact access and directional signage once established but should be considered.</p>

**External**

19. The application was referred to the CFA for comment, who did not object or provide mandatory conditions. Requirements for a Bushfire Emergency Plan were recommended.

**Planning assessment**

**Introduction**

20. The following have been identified as the key planning issues in relation to the assessment of this planning application:

- Appropriateness of the use and compliance with Clause 51.02 (Metropolitan Green Wedge Land);
- Agricultural Use;
- Amenity impacts and noise abatement measures;
- Liquor License;
- Vegetation Impacts;
- Siting and design;
- Car parking;
- Signage;
- Bushfire; and
- Potential Second Dwelling

21. Assessment of these issues, together with a response to objections received, will be discussed in the remainder of this report.

**Appropriateness of use / Compliance with Clause 51.02 - Metropolitan Green Wedge Land**

22. The proposal for the use and development of the land for agriculture (olive and lemon grove), a restaurant (in conjunction with agriculture), sale and consumption of liquor,

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associated buildings and works and the installation and display of internally illuminated business identification signage must be assessed against the objectives and decision guidelines of the Rural Conservation Zone (Schedule 3).

The Rural Conservation Zone seeks to provide for agricultural uses consistent with the conservation of environmental and landscape values of the area, to protect and enhance natural resources and the biodiversity of the area, and to encourage development and use of land which is consistent with sustainable land practices. The Rural Conservation Zone (Schedule 3) also specifically seeks to conserve and permanently maintain the existing rural character by encouraging protection of the environmental landscape.

To assess the appropriateness of the proposed, the Responsible Authority must consider (amongst other items) the capability of the land to accommodate the proposed use or development, whether the use or development protects and enhances the environmental, agricultural and landscape qualities of the site and surrounds and whether the proposed use will have an adverse impact on surrounding land uses.

The proposed use is considered appropriate in light of the surrounding land uses. The overarching purpose of the zone is to preserve the existing rural character through the preservation of existing environmental and landscape qualities.

The subject site has an overall area of 8 hectares, the development of the proposed restaurant is to utilise an existing shed on the site for the proposed restaurant. It is proposed to use the area between the existing dwelling and the shed as the area of car parking. In this regard the proposal will have a limited physical impact on the site above what is already existing.

Aside from the proposed alterations to the existing shed to accommodate the restaurant, the only physical works required are the construction of the proposed car parking area. These areas are generally clear of vegetation, however there are lines of native trees located in the vicinity of the proposed car park which are not impacted by the proposal.

The submitted Farm Management Plan indicates that four hectares of the site will be available for agricultural use which is an appropriate balance given the lot size. The existing dwelling and associated structures are generally clustered together towards the middle of the site and occupy a small footprint.

Whilst at least half of the site remains available for agricultural pursuits there is broader support within the planning scheme for a use which will bring local employment and economic benefit. The proposal is able to achieve this whilst also meeting the objectives of the Rural Conservation Zone (Schedule 3). The application has demonstrated that all waste water can be treated on the site, the proposed buildings and works will occupy a relatively small portion of the overall site area and there will be limited amenity impacts to adjoining properties resulting from the proposed use.

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The operation of the proposed restaurant on the site will certainly be noticeable to adjoining properties through the movement of cars entering and exiting the site. It is expected however that noise associated with this will not be detrimental to properties adjoining the site. This aspect of the proposal is discussed in a later section of this report.

Clause 51.02-2 of the Planning Scheme requires that the use of the site for a restaurant must be in conjunction with agriculture, natural systems, outdoor recreation facility, rural industry or a winery. This clause also places a limit of 150 patrons at any one time.

In this instance, the application proposes to use the site for agricultural purposes in accordance with the restaurant. If a provision of this scheme provides that a use of land must be used 'in conjunction with' another use of the land:

- There must be an essential association between the two uses; and
- The use must have a genuine, close and continuing functional relationship in its operation with the other use."

The application has submitted that the proposed agricultural use on the site will be to go produce, specifically an orchard consisting of olive trees and lemon trees. The produce of which is to be used directly in the proposed restaurant.

Various decisions made by the Victorian Civil and Administrative Tribunal have explored the issue of what constitutes a situation where land is used in conjunction with another use and from these decisions has stemmed the term 'functional nexus'. These decisions have also established that the notion of 'functional nexus' between the uses is a critical ingredient and not simply the co-location of uses. As proposed the agricultural use on the site is to be beneficial to the restaurant use in terms of the production of olives, lemons and herbs in the restaurant.

None the less, the restaurant use on the site cannot exist and continue to operate unless the proposed agricultural use has commenced and is implemented to a certain degree. The agricultural use must also continue to be viable for the lifetime of the restaurant. In this instance, it is considered that having plants established in the ground would satisfy this requirement.

In the event that a planning permit is issued, it is recommended that a condition be imposed requiring the permit holder to enter into a Section 173 Agreement requiring the following:

- The restaurant use approved by this permit must not commence on site until such time as the agricultural use is established in accordance with the approved Farm Management Plan.
- The restaurant use approved by this permit must only operate in association with the approved agricultural use.

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- Should the agricultural use on the site cease or become unviable, the restaurant use must cease immediately.

A Legal agreement registered to the property title will ensure that the proposed use on site will operate in accordance with the requirement of Clause 51.02 (Metropolitan Green Wedge Land) and will have ongoing effect.

### Agricultural Use

23. Pursuant to the requirements of the Rural Conservation Zone, a planning permit is required for the use of the site for agricultural purposes. In determining the appropriateness of the proposed agricultural use, amongst other things, the zone asks for consideration of rural and environmental issues.

The proposed agricultural use on the site is considered appropriate for the following reasons:

- The site has capacity to establish the proposed use as outlined in the submitted Farm Management Plan. Aside from the domestic area in the middle of the site, the remainder of the site has established paddocks. The site may have supported agricultural uses in the past, however there is not presently any productive agricultural uses on the subject site;
- The proposed Farm Management Plan has been assessed by Council's Environmental Planner and Council's Land Management Officer, who have provided comment in relation to the proposed agricultural use. Subject to some modifications to the Farm Management Plan, the proposed use is appropriate in terms of the species proposed to be planted on the site and the space available for these to be productive into the future;
- A Land Management Plan will be recommended as a condition of any permit issued which will identify measures to protect existing vegetation on the site, measures to control pest animals and erosion control. This document will sit alongside an amended Farm Management Plan if approved;
- The requirements of the Land Management Plan and amended Farm Management Plan will ensure the site will be able to sustain the rural enterprise sought; and
- The proposed agricultural use will not adversely impact on the surrounding land uses.

### Amenity Impacts / Noise Abatement / Liquor Licence

24. Many of the objections received in relation to the proposal have raised concern about potential amenity impacts as a result of the proposed restaurant.

In this location, noise from a commercial premises is informed by *Noise from industry in regional Victoria: Recommended maximum noise levels from commerce, industry*

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*and trade premises in regional Victoria and regulated by State Environmental Protection Policy (Control of Noise from Commerce, Industry and Trade).*

The policy sets a number of parameters around the desired levels of noise associated with a premises such as a restaurant. The guidelines set out applicable times for noise and appropriate noise levels.

The policy requires that noise sources in this location would be at a maximum of 47 db(A) during the day (Monday to Friday 7am to 6pm, Saturday 7am to 1pm) 42db(A) (Saturday 1pm to 6pm, Sundays and public holidays 7am to 6pm) and 42 db(A) during the evening period which is 6pm to 10pm.

As a guide following are decibel readings of everyday sounds:

- 30 db – A quiet library or a quiet location in the country.
- 45 db – Typical office space / ambience in the city at night.
- 70 db- Sound of a car passing in the street.
- 100db – Sound of a rock band.

Noise sources from the proposed restaurant are not limited to, but will include cars entering and exiting the premises, noise from patrons entering and exiting the premises, noise of patrons utilising the external dining area and noise associated with the kitchen, exhaust fans and cool rooms.

It is acknowledged that the site functioning as a restaurant in this location will be noticeable, especially to the properties immediately abutting the site. As noted previously, the proposed restaurant is to be located within an existing shed which will be retro fitted and an external dining area will be added to the eastern side of the existing building.

Given this it is reasonable to expect that noise generated from the proposed restaurant use will travel to the east and be audible to the following properties:

- 50 Edward Henty Drive – the existing dwelling is located 198 metres from the proposed location of the restaurant.
- 105-123 Bannons Lane – the existing dwelling is located 262 metres from the location of the proposed restaurant.
- 125-143 Bannons Lane – the existing dwelling is located 426 metres from the location of the proposed restaurant.
- 65 Charles Sturt Drive – the existing dwelling is located 561 metres from the location of the proposed restaurant.

To the west of the site a number of dwellings are located in Bannons Lane, Edward Henty Drive and Laurie Street. It is expected that these dwellings would not be impacted by noise from the restaurant itself, but cars entering and exiting the site would be noticeable.



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It is considered that noise sources from the proposed use of the site as a restaurant can be appropriately mitigated so as not to result in unreasonable detriment to properties adjoining the site as:

- In line with the guidelines contained in the *State Environmental Protection Policy (Control of Noise from Commerce, Industry and Trade)* any planning permit issued will require a closing time of 10pm.
- In a rural location a closing time of 12am is not considered to be appropriate. This time would still have patrons exiting the site post-midnight. A closing time of 10pm is considered to be more appropriate and will still allow sufficient time for the restaurant to provide a dinner service and allow patrons reasonable time to finish meals and leave.
- It is recommended that prior to the use commencing the applicant will be required to submit an acoustic assessment to the satisfaction of the Responsible Authority, as required by a planning permit condition, which will set out the following:
  - The noise emissions from the operation of the development do not impact adversely on the reasonable amenity of any nearby property.
  - The noise emissions from the operation of the development comply with the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1;
  - All noise emanating from any mechanical plant (air conditioners, refrigeration plant, etc.) complies with the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1;
- All plant equipment will be required to be appropriately baffled to the satisfaction of the Responsible Authority.
- No live music is proposed and a condition will ensure that no live music is played inside or outside of the venue.
- It is recommended any planning permit issued for the site will require that no external amplified music is played at any time outside of the restaurant.
- It is appropriate for background music to be played within the restaurant and conditions require the restaurant to be acoustically treated to the satisfaction of the Responsible Authority to mitigate potential noise impacts.
- The submission of a Premises Management Plan which will outline security, staffing and other measures to ensure the orderly arrival and departure of patrons, signage to encourage responsible patron behaviour, the training of staff in patron behaviour, the responsible service of alcohol, complaint procedures and measures to control noise emissions from the premises.
- The submitted transport assessment submitted with the application has indicated that there will be:

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- 10 vehicle movements in the morning peak hour;
  - 60 vehicle movements during peak evening times;
  - 57 vehicle movements at the lunchtime peak and
  - 14 vehicle movements in the afternoon peak
- The report concluded that the traffic to be generated by the proposal can be accommodated by the existing road network and will not have a significant impacts in the operation of nearby intersections.
  - This report was reviewed by Council Traffic and Transport Engineers who have concluded that the proposal will not result in unreasonable traffic impacts on the road network

**Liquor Licence**

25. Pursuant to Clause 52.27 (Licensed Premises) a planning permit is required as the applicant is seeking an 'On Premises' liquor license. It is noted that License No.32357102 has been granted on the subject site by the Victorian Commission for Gambling and Liquor Regulation, this license is conditional on a planning permit being granted and has no effect until such a time that a planning permit is granted. The license allows trading between 10am and 11pm and 12noon to 11pm on Good Friday and ANZAC Day.

Clause 52.27 require the Responsible Authority to consider the impact of the sale or consumption of liquor on the surrounding area, the impact of the hours of operation and patrons numbers on the amenity of the surrounding area and the cumulative impact of existing licences and proposed licensed premises on the amenity of the surrounding area.

In proximity of the subject site there is only one licensed premises within a one kilometre radius, which is Yarrambat Estate situated on Laurie Street. This site has a Producers License and the license is to 11pm on any day, but is restricted to liquor made from fruit grown by the licensee. The issuing of an on premises license in this location would not result in a cumulative impact or the proliferation of licenses in a particular area.

Subject to the licensee complying with the their requirements in terms of the responsible service of alcohol, the preparation of a Premises Management Plan (which sets out requirements of the operator in relation to security, staffing and other measures to ensure the orderly arrival and departure of patrons), the proposed liquor license sought is appropriate. It is noted that the licence granted on the site is until 11pm on any given day, the planning permit if granted will require the premises to close at 10pm. The requirements of a planning permit override that of the license granted in this instance.

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### Vegetation Impacts

26. Aside from the proposed alterations to the existing shed to accommodate the proposed restaurant, the only physical works required on site is for the construction of the proposed car parking area. These areas are generally clear of vegetation, however there are trees identified to be retained located to the eastern side of the existing shed where an access way and car park will be located. The proposed car parking areas are proposed to be constructed from crushed rock and of a permeable nature.

The proposed car park will be located to the east and west of the existing native trees. The eastern section will be located 2.7 meters to the east and 3.9 metres to the west of the existing trees. The proposed car park section to the west is to be constructed on an existing driveway.

Provided the works are constructed above grade, there will not be adverse impacts to the ongoing health of the trees. It is appropriate that a notation be required on the development plans which indicates that any works within the Tree Protection Zone of native trees to be retained be carried out above grade, are of a permeable nature and that Tree Protection Fencing be provided during construction.

No other areas of vegetation on the site will be impacted by the proposed use and development.

### Siting and Design

27. With regard to the policies and objectives outlined at Clause 22.04 (Siting and Design Policy for Buildings and Works in Non-Urban Areas) and the siting and design objectives contained within the Rural Conservation Zone (Schedule 3), the proposed works are considered appropriate for the following reasons:

- The proposed restaurant is appropriately sited in relation to the existing dwelling. As noted in previous sections, the proposed restaurant seeks to retro fit an existing shed on the site for this use;
- The proposal will require some minor additions to the shed, this being the addition of an external dining area to the eastern side and a minor addition to the south elevation to provide an entrance to the restaurant. Both additions are well below the existing height of the shed;
- The proposed materials are considered appropriate. The built form of the shed will remain aside from the additions outlined above. The eastern side of the shed will comprise glazing to the existing wall height of the building, being 3 metres;
- The proposed car parking area is to be constructed between the existing dwelling and the shed area, and will not become a visible element of the landscape; and

Overall the proposed will result in little impact with regard to the existing appearance of the site within the locality. No vegetation is proposed to be removed as part of the application.

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**Car Parking**

28. In accordance with Clause 52.06 (Car Parking) before a new use commences, the number of car parking spaces required in Clause 52.06-5 must be provided to the satisfaction of the Responsible Authority. The table at Clause 52.06 –5 requires that a restaurant provide 0.4 car parking spaces per patron. The proposed patron limit of 150 results in a requirement to provide 60 car parking spaces.

A total of 60 car parking spaces are to be provided on site. A Traffic Engineering Assessment was provided with the application which has demonstrated that these spaces can be provided in accordance with the Australian Standards, identified in Clause 52.06 in terms of access arrangement and the proposed car parking layout.

**Signage**

29. It is proposed to install a sign at the entrance of the site on Edward Henty Drive and also a parapet sign above the proposed entrance to the restaurant. Council's Signage Policy at Clause 22.09 seeks to ensure signs are compatible with the amenity and streetscape and/or landscape character of the area and with the building or site on which they are to be displayed.

With regard to Clause 52.05 (Advertising Signs), the site is located within Category 4 – Sensitive Areas, which seeks to provide for unobtrusive signs in areas which require strong amenity control. In this location, a Business Identification Sign requires a planning permit and can't be more than 3 square metres in area. The proposed area of signage on the site totals 1.2 square metres in area.

The proposed signage is considered appropriate in the site context. The sign to the property entrance is to be completed in contemporary materials which comprise ironbark sleepers, a corton steel frame with lettering cut out to indicate the name of the premises. The lettering is proposed to be internally illuminated.

The proposed sign above the parapet is also to be of similar materials and internally illuminated. The proposed parapet sign will not adopt a level of visibility in the overall landscape and will only be visible to those attending the restaurant. Whilst the signs are generally appropriate in the context of the site and surrounds, the provisions of Clause 52.05-14 prohibit an internally illuminated sign in this location.

It is recommended that a condition be included on any issuing permit seeking the proposed signs to be amended to be floodlit rather than internally illuminated. It is also recommended that a condition be required to limit the hours of illumination to be in accordance with the approved opening hours to limit the impact on the local landscape.

**Bushfire**

30. The site is partially located within a Bushfire Management Overlay. Whilst a planning permit is not required for the proposed restaurant, part of the car park requires consideration under the Bushfire Management Overlay. Further, Clause 13.02 seeks

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to strengthen the resilience of settlements and communities to bushfire through risk based planning that prioritises the protection of human life.

In order to ensure that appropriate practices are in place during the bushfire season, it is considered appropriate to include a condition on the permit, requiring the closure of the premises on any day with a declared fire danger rating of Code Red.

Whilst the restaurant does not trigger a response to the Bushfire Management Overlay, the use will potentially result in 150 people on site at any one time during the bushfire season. As such, the inclusion of the requirement for a Bushfire Emergency Plan is considered appropriate to ensure that consideration is given to how the business operations can be appropriately managed during the bushfire season.

The proposed area to accommodate the works is generally clear of vegetation and is located in proximity to the existing dwelling. The proposed use will not result in any unreasonable bushfire risk. The site comprises appropriate vehicle access for all emergency vehicles.

**Potential Second Dwelling**

31. The existing survey plan and the proposed plans submitted with the application show both a single storey weatherboard dwelling and a double story weatherboard dwelling. Planning permit 214/2005/05P was issued in 2005 for the development of the land in the form of a dwelling and conversion of the existing dwelling into an uninhabitable outbuilding. More specifically, Condition 11 of that planning permit required that the existing dwelling must be altered in accordance with the plans approved to show the removal of the kitchen within one month of the occupation of the replacement dwelling. This was to ensure that the original dwelling could not continue to be defined as a 'dwelling' under the Nillumbik Planning Scheme.

The replacement dwelling has since been constructed and is now used for that purpose. Under the provisions of the planning scheme, a second dwelling in this location is a prohibited use and cannot be considered for that use.

The application documents make reference to the proposed use requiring a 24 hour manager to be on site. Objections received in relation to the application have inferred that this would be carried out in the single storey weatherboard structure referred to as an existing dwelling. It is understood that the restaurant will be operated by the owners of the site and the original dwelling on the site will not be used for this purpose.

It is recommended that amended plans will be required through any permit issued to demonstrate that the works required under Planning Permit 214/2005/05P have been carried out. The use of this structure for any purpose is not being considered as part of this application. The issue of whether the original weatherboard structure is in compliance with Planning Permit 214/2005/05P can be pursued through Council's Planning Investigation service.

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### Response to objections received

32. In response to objector concerns not already raised in this report, the following officer comments (in italic) are noted:

- The proposal is not consistent with the objectives and requirements of the Rural Conservation Zone.

*The Rural Conservation Zone does not prohibit the proposed use on the site, rather, it seeks a balance of providing for agricultural uses consistent with the conservation of the environmental values of the area.*

*As noted in above sections, the proposal seeks to utilise the existing 'domestic' area for this proposal. As a result of this, a majority of the infrastructure is in place such as the vehicle access from Edward Henty Drive and the existing shed to be converted to the restaurant. This area on the site comprises about one hectare or 12% of the overall site area. The remainder of the site is available for agricultural pursuits which is an appropriate balance in line with the outcomes sought by the zone.*

*There is also support within the planning scheme for a use which will bring employment, tourism and economic benefit. In addition to this, Council's Economic Development Team have noted that the proposal is in accordance with Council's Economic Strategy, in terms of facilitating an economically sustainable use within the green wedge and showcasing Nillumbik's visitor, recreation and cultural economy. These outcomes can be achieved whilst meeting the objectives of the zone in terms of conserving the environmental values of the area.*

- The proposed restaurant use on the site does not have a legitimate relationship with the proposed agricultural use and is prohibited under the provisions of Clause 51.02 (Metropolitan Green Wedge Land).

*As noted in the report, the proposed use of the site for an agricultural purpose is considered to have an acceptable relationship with the proposed restaurant on the site. The provisions of Clause 51.02 require that the proposed agricultural use on the site must have an essential association and a close functioning relationship with the other use. In this instance, it is proposed to grow olives, lemons and herbs which would subsequently be used in the proposed restaurant for the preparation of meals.*

*Various decisions of the Victorian and Administrative Tribunal have discussed the 'functional nexus' required between the two uses. In accordance with the requirements of Clause 51.02, the use of the site for a restaurant is prohibited unless the agricultural use is being carried out on the site.*

*In the event a planning permit is granted, a Section 173 Agreement will be required which requires that the agricultural use on the site be carried out in accordance with the approved Farm Management Plan and that should the agricultural use on the site cease, the restaurant use must also cease.*

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- The proposal to use the existing second dwelling on the site as a manager's cottage is not appropriate.

*The application documents do discuss the provision of a 24 hour manager being on site. It is understood the restaurant is to be operated by the current occupants of the site who reside in the existing dwelling.*

*The current dwelling on the site was approved in 2005, part of this approval was that the existing dwelling be converted into an outbuilding. The submitted plans for the current application also refer to this building as a dwelling. A condition will require that this reference be deleted from the plans and that it be referred to as an outbuilding and plans be submitted which demonstrate the works required of the 2005 permit have been carried out to make the dwelling uninhabitable.*

- The noise resulting from the proposed restaurant is not appropriate, nor are the proposed hours of operation. Live music is not appropriate.

*As discussed within the report, the noise generated from the restaurant itself will not adversely impact the properties surrounding the site, this is based on noise associated with patrons entering and exiting the site, and sitting down for meals.*

*It is acknowledged that a balance is required given the site's location within a Rural Conservation Zone and loud noise as a result loud music or the like (outdoor) is not appropriate in this location. This will be mitigated through the acoustic assessment required to be submitted as part of any issuing permit*

*A number of conditions relating to the amenity of adjoining properties are recommended to be included on any permission issued for the site, one such condition requires that no external music to the restaurant building is played.*

- The application is misleading in that the property has been used for extensive agriculture for a number of years.

*The proposed agricultural use on the site has been considered as a new use on the site. Whilst there may have had agricultural uses in the past, there currently isn't considered to be any existing use rights for agriculture for this site.*

- The proposal will result in an unacceptable increase in traffic movements in the local road network. The proposal will be a risk to vehicle and pedestrian safety in the locality.

*The application has been accompanied by a Traffic Impact Assessment which has been reviewed by Council's Traffic & Transport Engineers. The report has identified that the vehicle movements generated by the proposed use will not be detrimental to the safe and efficient operation of the local road network. Council's Traffic and Transport engineers concur with this assessment.*

- The proposed restaurant would be detrimental to the flora and fauna in the area due to the increased light pollution, light pollution and littering.

## 6. Officers' reports

**FN.025/20 Use and development of the land for agriculture (olive grove, lemons and herbs) a restaurant (in conjunction with agriculture), sale and consumption of liquor, associated buildings and works, and the installation and display of business identification signage at 103 Bannons Lane Yarrambat**

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*Should a planning permit be issued, the restaurant operators will be required to submit, to the satisfaction of the Responsible Authority, a Premises Management Plan & Waste Management Plan which will outline methods for the collection of waste and methods to ensure patrons enter and exit the site in an orderly manner. In addition to this, the dining areas are confined to the restaurant and the proposed external seating area and take away food is not available. It is not expected there would be litter external to the restaurant.*

*The site is partially located within an Environmental Significance Overlay (Schedule 1) which seeks to protect flora and fauna. As stated in previous sections, a majority of the site will remain available for agricultural uses. The Land Management Plan and amended Farm Management Plan will set out wildlife corridors and methods to maintain them.*

- The proposal is not consistent with findings by the Victorian Civil and Administrative Tribunal in relation to similar applications considered in relation to the requirements of Clause 51.02 (Metropolitan Green Wedge Land).

*There are many decisions of the Victorian Civil and Administrative Tribunal which speak to the 'in conjunction' test in relation to Clause 51.02. Assessment of this application has concluded that the proposed agricultural use on the site will have a functioning relationship with the proposed restaurant use which is discussed within the report.*

**Conclusion**

33. The application seeks approval for the Use and development of the land for agriculture (olive grove, lemons and herbs), a restaurant (in conjunction with agriculture), the sale and consumption of liquor (on premises liquor licence), associated buildings and works and the construction and display of business identification signage. The application was advertised and twenty nine (29) written objections were received. The key planning issues relating to the proposal have been discussed above.
34. Overall the proposal is considered to be an appropriate outcome for the site. The proposed agricultural use is to be carried out in conjunction with the proposed restaurant use as the planning scheme requires. As noted in the report, a majority of the site remains available for agricultural purposes as required by the Rural Conservation Zone.
35. The operation of a restaurant on the site will no doubt be noticeable within the immediate locality. Should a planning be issued, there are numerous conditions which regulate the operation of the restaurant to ensure the amenity of the locality is not adversely affected. This includes a reduction in the trading hours sought, the submission of various management plans to ensure the operation of the restaurant is carried out in an appropriate manner, the requirements of no amplification of any music or other noise sources and the submission of an acoustic assessment.
36. In light of the above planning assessment, it is recommended that the application be supported.



6. Officers' reports

**FN.026/20**      **Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

**Portfolio:**      **Planning**

**Distribution:**      **Public**

**Manager:**      **Rosa Zouzoulas, Executive Manager Planning and Community Safety**

**Author:**      **Karen McPherson, Principal Planner**  
                          **Renae Ahern, Manager Planning Services**

**Application summary**

Address of the land	18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham
Site area	2,630.84 square metres
Proposal	Amendment to permit and/or plans: Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage
Application number	281/2019/11AP/A
Date lodged	30-Jun-2020
Applicant	Urbis Pty Ltd
Zoning	<i>Industrial 3 Zone</i>
Overlay(s)	N/A
Reason for being reported	Called in by Ward Councillor.
Number of objections	N/A
Key issues	<ul style="list-style-type: none"> <li>• Reduction in lift size</li> </ul>

6. Officers' reports

**FN.026/20** Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham

Location map



6. Officers' reports

**FN.026/20 Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

<b>Recommendation</b>
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- A. **That** the Committee (acting under delegation from Council) issue an Amended Permit to land at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham for Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage.
- B. That Condition 1c be amended as follows:  
Addition of a customer and goods lift with minimum internal dimensions of 1.35 metres in width, 1.4 metres in depth and 2.3 metres in height, providing access between the proposed car park and the proposed building materials and landscape yard.
- C. Condition 5 amended to include part m as follows:  
Process for collection of customer purchases, including the operation and management of the customer lift and drive through facility to avoid using the public footpath to transport bulky or large items to the under croft car park.
- D. The following table be placed on the amended planning permit:

<b>Date of Amendment</b>	<b>Brief description of Amendment</b>
11 August 2020	<ul style="list-style-type: none"> <li>• Condition 1 c amended to allow a reduction to the size of the lift.</li> <li>• Condition 5 amended to include part m</li> </ul>

**Attachments**

- 1. Site and surrounds
- 2. Aerial map
- 3. Plan

**Subject site and surrounds**

- 1. The subject site comprises of 3 titles comprising of the following:  
Lot 2 LP 71557 PSH Nillumbik (18 Brisbane Street),  
Lot 1 TP 597510 PSH Nillumbik, (18 Brisbane Street) and  
Lot 1 TP 110701 PSH Nillumbik (19-19A Bridge Street, Eltham).

The key features of the subject land and surrounds are as follows:

- The site is L-shaped, 2,630.84 square metres in area and located on the corner of Bridge Street, Silver Street and Brisbane Street.

**6. Officers' reports****FN.026/20 Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

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- The site is made up of two parcels of land. Number 18 Brisbane Street is 1,745 square metres in area and number 19 Bridge Street is 862 square metres in area.
  - The site has a street frontage of approximately 82 metres to Silver Street on its eastern interface, a 20 metre frontage along Bridge Street to the south and a frontage to Brisbane Street of approximately 41 metres.
  - The site is now vacant, as the buildings have recently been demolished.
  - An east-west drainage and sewerage easement exists on both 19-19A Bridge Street and 18 Brisbane Street along the common boundary, affecting each parcel to a width of 2.4 metres.

Surrounding PropertiesNorth

- Brisbane Street adjoins the subject site to its north, is approximately 9 metres in width and allows for a single lane of traffic in each direction. Further north of Brisbane Street is number 9 Silver Street and 5/15 Brisbane Street, Eltham.
- Number 9 Silver Street is developed with a single storey building occupied by a carpet wholesaler. Vehicular access to the site is proposed via a double crossover to Brisbane Street, with at-grade car parking provided in the southern setback.
- To the west, number 5/15 Brisbane Street, Eltham is developed with a single storey, brick building of approximately 2,142 m<sup>2</sup>. Vehicular access is provided in the front setback, facing Brisbane Street. A vehicular garage is provided within the eastern aspect of the site.

East

- Silver Street abuts the subject site to its east. Silver Street is approximately 10 metres in width and allows for a single lane of traffic in each direction and on-street car parking.
- Further east of Silver Street is 25 Bridge Street, Eltham, which is currently occupied by a Bunnings Warehouse store. This site is developed with a built form that extends to the boundary of Silver Street. At-grade car parking is provided within the southern aspect of the site, accessed via a crossover from Bridge Street to the south.

South

- Bridge Street abuts the subject site to its south. This street runs east to west, is approximately 10 metres in width, and allows for a single lane of traffic in each direction.
- South of the site is number 22 Bridge Street, Eltham. This site is known as "Cedar Village" and is comprised of several single and double storey buildings used for both warehousing and light commercial purposes. There is an access way that

## 6. Officers' reports

**FN.026/20 Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

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allows for vehicle and pedestrian access, which runs down the centre of the site connecting through to Peel Street. At-grade parking is provided in the northern setback and throughout the site.

### West

Two properties abut the subject site to its west:

- In the northern aspect, number 16 Brisbane Street is developed with a double storey building utilised for warehouse and office purposes. At-grade car parking is provided within the front setback of the site, accessed via a double crossover to Brisbane Street to the north.
- In the southern aspect, number 17 Bridge Street is developed with a single storey building utilised for warehouse and retail purposes. At grade car parking is provided within the front, southern aspect of the site, accessed via Bridge Street to the south.

### **Details of proposal**

2. Refer to the attached plans.
3. Key features of the proposal include:
4. Planning Permit 281/2019/02P was issued on 19 May 2020 for the Use of the land as a building materials, landscape and timber yard. Buildings and works associated with a car park and warehouse, and business identification signage.

One of the conditions of the Planning Permit required the plans to be amended to show the installation of a lift allowing customers direct access from the under croft car park up to the shop floor and vice versa. The condition specified the size of lift that was to be installed which is essentially a customer and goods lift to accommodate the trollies available for customers in a Bunnings Warehouse. The applicant considers the size of the lift required to be excessive in light of the likely users of the store (trade sales). Through the current application, the applicant is proposing that the size of the lift be reduced so as to accommodate two of the three trolley sizes available. The proposed lift size would also allow two customers to fit inside the lift with a trolley.

The application proposes to amend Condition 1c and Condition 5 of Planning Permit 281/2019/02P.

Condition 1c of the permit currently requires the plans to be amended as follows:

Addition of a customer and goods lift with minimum internal dimensions of 3 metres in width, 2.3 metres in depth and 2.4 metres in height, providing access between the proposed car park and the proposed building materials and landscape yard.

The application is seeking approval to reduce the size of the lift and to amend the above condition as follows:

**6. Officers' reports****FN.026/20 Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

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Addition of a customer and goods lift with minimum internal dimensions of 1.35 metres in width, 1.4 metres in depth and 2.3 metres in height, providing access between the proposed car park and the proposed building materials and landscape yard.

It is also proposed to amend condition 5 of the planning permit by adding point m) as detailed below:

Before the use and development commences, a Business Function and Management Plan must be submitted to and approved by the Responsible Authority. All activities forming part of the permitted use must comply with the endorsed plan. The plan must include details on:

- a) Business operating hours;
- b) Security, staffing, and other measures which are designed to ensure the orderly arrival and departure of delivery vehicles, customer cars/trailers and on foot customers;
- c) Measures to ensure that vehicle queuing does not occur on Silver Street and Brisbane Street;
- d) Clarification as to how deliveries and unloading of goods to the site will occur in conjunction with customer vehicles entering and existing exiting the building;
- e) Clarification as to how waste will be collected from the site in conjunction with delivery vehicles and customer vehicles entering and existing exiting the building;
- f) Details of delivery days and times including time frames for the unloading of goods;
- g) Signage to be used to inform on-site delivery vehicles, customer cars/trailers and on foot customers;
- h) The training of staff in the management of on-site delivery vehicles, customer cars/trailers and on foot customers;
- i) A schedule of how and when rubbish and litter will be removed from the landscaped and hard standing areas around the site;
- j) Staff communication arrangements;
- k) Complaint procedures;
- l) Process for collection of trolleys left external to the building;
- m) *Process for collection of customer purchases, including the operation and management of the customer lift and drive through facility.*

The Business Function and Management Plan may be amended from time to time with the prior written consent of the Responsible Authority.

**6. Officers' reports**

- FN.026/20**      **Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**
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**Planning history**

5. 18 Brisbane Street, Eltham

Planning Permit 331/2007/06P issued on 21 August 2007 allowed for Buildings and works to an existing office.

Planning Permit 331/2007/11AP/A issued on 24 April 2008 allowed for a Voluntary amendment to the endorsed plans to include the following: Total of 23 car spaces, modification to ground floor addition and landscaping, new first floor addition and changes to roof cladding colour for addition.

Planning Permit 331/2007/11AP/B issued on 4 June 2009 allowed for an Amendment to the Planning Permit and endorsed plans.

Planning Permit 331/2007/11AC/A issued on 22 September 2009 allowed for the endorsement of plans required by permit conditions.

Planning Permit 331/2007/11AP/B issued on 21 September 2009 allowed for an amendment to the planning permit and endorsed plans

Planning Permit 411/2011/06P issued on 13 April 2012 allowed for Buildings and works to construct two offices, waiver of one (1) car parking space and the creation of a carriageway easement.

Planning Permit 281/2019/02P issued on 19 May 2020 allowed for the Use of the land as Retail Premises (Trade Supplies and Landscape Gardening Supplies) and buildings and works associated with a car park and warehouse and proposed business identification signage.

19A Bridge Street, Eltham

Planning Permit 286/1995/01P issued on 20 November 1996 allowed for the installation of signage.

**Planning controls**

**Zoning**

6. The subject land is zoned Industrial 3. Under this zone, a permit is required for the use of the land for retail premises which includes the use of the land for trade supplies and landscape gardening supplies. A permit is also required to construct a building or carry out works. Planning permit 281/2019/02P issued on 19 May 2020 allowed for the Use of the land as Retail Premises (Trade Supplies and Landscape Gardening Supplies) and buildings and works associated with a car park and warehouse and proposed business identification signage.

**Overlays**

7. No overlays apply to the site.

**6. Officers' reports**

**FN.026/20 Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

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**Particular provisions**

8. Clause 52.05 (Signage) states that a permit is required for Business Identification Signage where the display area of all signs to each premises exceeds 8 square metres. This does not include a sign with a display area not exceeding 1.5 square metres that is below a verandah or, if no verandah, that is less than 3.7 metres above pavement level.

Clause 52.06 (Car Parking) seeks to ensure there is the provision of an appropriate number of car parking spaces to ensure that car parking does not adversely affect the amenity of the locality, and to ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

Clause 52.29 (Land Adjacent to a Road Zone, Category 1) seeks to ensure appropriate access to identified roads. This clause applies to land adjacent to a Road Zone, Category 1.

Clause 65 (Decision Guidelines) outlines general decision guidelines that must be considered when assessing an application. These guidelines include the purpose of the zone or other provision, the orderly planning of the area, and the effect on the amenity of the area.

**Relevant planning policies**

9. State Planning Policies which are relevant to this application include:

Clause 11 (Settlement) identifies the subject site within urban land and promotes planning as a tool to suitably respond to urban development.

Clause 11.03-1S (Activity Centres) promote the concentration of major retail developments such precincts while improving accessibility.

Clause 15 (Built Environment and Heritage) promotes high quality design outcomes that respond and positively contribute to the site's local context. Additionally, land use and development are encouraged to minimise adverse environmental impacts.

Clause 17 (Economic Development), specifically Clause 17.03, encourages industrial development to be sited with convenient access to employees, freight and road transport and to minimise the impact of industrial uses upon nearby existing sensitive uses.

Clause 18 (Transport) specifically Clause 18.01-1S Land use transport planning seeks to enhance accessibility to developments by capitalizing on existing transport networks including roads and public transportation.

10. The Local Planning Policies which are relevant to this application include:

Clause 15.01 – Built Environment

Clause 17 – Economic Development



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**FN.026/20 Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

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Clause 17.02 – Commercial

Clause 17.03 – Industry

Clause 18 – Transport

Clause 22.08 – Industrial Areas Policy – seeks to ensure functional layouts and appropriate use of land within this zone.

Clause 22.09 – Signage Policy applies to all land within the shire and recognizes that advertising signage should aim to complement the high visual quality of urban and rural streetscape. The subject site is located within the Eltham Activity Centre.

Clause 22.15 – Bridge Street Business Area Policy applies to all land within the Bridge Street Business Area, to which the subject site is located. This policy encourages improvement in the visual amenity and functionality of the Bridge Street Business Area and a change in the range of land uses from being primarily industrial to include peripheral sales, light industry, commercial offices, health and fitness centres, indoor sports and recreation centres.

**Relevant Strategy Documents**

11. Eltham Activity Centre and Eltham MAC Structure Plan: The site is located within this Activity Centre and the strategic policy direction for the Centre is primarily set by the Eltham Major Activity Centre Structure Plan (2004).

The Eltham MAC Structure Plan is currently under review by Council's Strategic Planning Team who have identified a number of key areas of consideration which relate to the subject site:

- The extent of the Eltham Activity Centre.
- The number, boundaries and role of individual precincts.
- The role of the Bridge Street Business Area, including whether a wider and/or different variety of uses should be encouraged in this area.
- The best way in which the Eltham Town Centre (Precincts 1-4) and the Bridge Street Business Area can complement each other.

**Public consultation**

**Advertising**

12. The application was not advertised as the amendment to reduce the size of the lift is an internal change that will not impact on the amenity of adjoining or nearby owners and occupiers. It is considered that the proposed change will not cause material detriment.

**Referrals**

**Internal**

13. There are no internal referrals within Council relevant to this application.

## 6. Officers' reports

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### External

14. There are no external referral authorities relevant to this application.

### Planning assessment

#### Introduction

15. The application seeks to amend planning permit 281/2019/02P which requires assessment against the Industrial 3 Zone; Clause 22.08 (Industrial Areas Policy); the Eltham Activity Centre Structure Plan (2004) and Bridge Street Business Precinct Urban Design Framework (2003).

The application must be considered under the provisions of Section 72 of the *Planning and Environment Act 1987*.

Under these provisions, Section 72 of the Act states:

- (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
- (2) *This section does not apply to—*
  - (a) *a permit or part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under Section 85 that the Responsible Authority must not amend that permit or that part of the permit (as the case requires); or*
  - (b) *a permit issued under Division 6.*

Section 73 of the Act states:

- (1) *Subject to this section, sections 47 to 62 (with any necessary changes) apply to an application to the responsible authority to amend a permit as if—*
  - (a) *the application were an application for a permit; and*
  - (b) *any reference to a permit were a reference to the amendment to the permit.*
- (2) *If the responsible authority decides to grant an amendment to a permit subject to conditions, the conditions must relate to the amendment to the permit; and*
- (3) *Any conditions to which an amendment to a permit is subject form part of the permit when it is issued.*

16. With reference to the provisions above, the following issue has been identified as the key planning consideration for this assessment:

- Reduced lift size

#### Reduced lift size

17. During the assessment of the original application, concern was raised around how customers would access the new timber trade sales store from the undercroft car park below, and how they would transport purchases back to their car. The original plans submitted with the application didn't include a connection between the two levels, with

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the only option, other than going through the building drive through, was to push a trolley down the public footpath along Silver Street to the car park. This was not an appropriate option due to concerns for the safety of customers, the general public and the potential traffic hazard it may present along Silver Street.

In response to officer concerns, the applicant initially proposed an internal staircase to provide the necessary connection between the shop floor and the undercroft car park. Given the nature of the bulky goods for sale in a timber yard and a building materials and landscape yard, an internal staircase was not considered to be an appropriate solution. As such, officers imposed a condition on the permit requiring the installation of an internal customer and goods lift to provide the necessary access between the two levels of the development.

The particular lift size required was specified in the permit condition due to the uncertainty about certain aspects of the business model, specifically those around operational management and handling of bulky goods by customers.

As part of the current amendment application, the applicant has provided further clarification around the business model for the new facility, in support of their submission for a smaller lift. The following points provide clarification around how the new site will operate.

**Customers and Operation**

- i. The majority of customers using the timber trade sales store will be trades however there is also a retail offer open to the public.
- ii. It is expected that retail customers will occasionally shop at the timber trade sales store when they require a larger quantity of timber or plasterboard etc.
- iii. The operation of the timber trade sales store facility is expected to function similarly to the timber trade sales store component in a standard Bunnings store with a drive through offer, emphasising its convenience.
- iv. Customers often pre-order ahead and drive through and pick up the materials and leave. Or they drive into the timber trade sales store, park their vehicle, find the materials and load them with the assistance of team members into their vehicles, pay via mobile EFTPOS with a Team Member or on the way out at the gate.
- v. The design and purpose of the timber trade sales store is to enable customers to drive in, get bulk materials and drive out very quickly which is why these facilities are more suited to the trade customer
- vi. It is anticipated that the undercroft carpark will be used by team members, sales representatives and the occasional customer. Customers who park underneath would walk in, buy goods and would then be encouraged to bring their vehicles into the store for loading by team members.

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The scale of the material on site

- i. As shown on the indicative merchandise plan, product categories are generally timber, plasterboard and landscape supplies such as pavers, decking, pipe, fibre cement, dry mix concrete and other pre-packaged items.
- ii. As noted above, customers are expected to shop at the timber trade sales store when they require a larger quantity of bulky items of considerable weight.

Whether the new store will replace the timber and landscape at the main store

- i. The timber trade sales store will complement the main Bunnings store by removing the timber trade area that is currently in the building to free up space for rest of the product offering to expand within the existing store
- ii. The main Bunnings store won't house larger timber and plasterboard products.

How the internal car parking works in conjunction with deliveries and waste collection

- i. The deliveries to the store will be via trucks through the Brisbane Street entry point. Trucks will reverse in, unload and drive out. Most of the deliveries will be scheduled to occur late in the day so to avoid peak trading times. If customer vehicles are in the timber trade sales store when deliveries are occurring they will use the middle aisle to exit.
- ii. A plan showing the location of the proposed waste area (and collection point) is attached and shows that the bins/skips will be located near the deliveries entry/exit point for easy access and convenience.
- iii. The removal of skips is a quick process and if customer vehicles are in the timber trade sales store during these times the customers will exit via the middle aisle.
- iv. For a store of this size, collection frequencies are estimated to be 3 cardboard and 3 plastic bales per week. Note that a full Waste Management Plan (by a relevant consultant) is yet to be prepared (in accordance with the permit) but the material submitted is intended to give an indication as to how waste collection will operate within the proposal.

How peak times will be managed

- i. With regard to peak times (6am-8am), Ratio Consultants undertook additional traffic surveys in March 2020 to understand the prevailing weekday AM traffic conditions at the intersections of Bridge Street/Silver Street and Silver Street/Brisbane Street.
- ii. Their assessment showed that while additional AM peak movements were marginally higher than the afternoon peak period, the net addition of traffic generated by the proposal represents a 'modest' increase in network traffic volumes. Further, Ratio note that it is anticipated the development will generate fewer traffic movements than forecasted in their analysis during the AM commuter peak period as development and commuter peaks are not expected to coincide.

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- iii. In any case and as noted above, the purpose of the timber trade sales store facility is to provide a convenient and efficient service to customers. Information previously provided to Council has demonstrated the additional movements that are anticipated to be generated by the proposal, the likely time spent by each customer and the ability for the proposal to adequately service this expected demand. Key points include:
- i. The traffic report suggests up to 14 traffic movements during peak hours generated by the timber yard sales area. These movements are inclusive of arrivals and departures, therefore equating to approximately up to seven vehicles per hour within the timber sales yard area.
  - ii. It is anticipated that customers will generally require about 15-20 minutes for timber pick-ups. In this regard, the five car spaces within the timber trade area on the ground floor, on average, could service up to 15-20 cars within the hour.
  - iii. There is also opportunity to informally prop within aisles if all car spaces are occupied without materially impacting on internal circulation.

In the unlikely instance that the drive-through area is unable to cater for demand, the dedicated carpark will allow any customers to park and walk in and select materials. Team members will encourage customers to bring their vehicles around and drive through the timber yard, for loading.

The applicant doesn't believe that a large goods lift is required, as this store will cater to mostly trades people who need quick and efficient service. Accordingly, the drive through area has been designed to support and encourage this method of sale, evidenced by traffic analysis and supported by operational analysis from Bunnings, who operate many timber trade sales store across Victoria.

Rather than removing the lift completely, the applicant is seeking approval to install a smaller sized lift that would support and reinforce the operation of the drive through facility. Based on allowing two people and one trolley to travel between the materials and trade area to the lower ground level the car park, a lift with minimum internal dimensions of 1400 x 1350 x 2300 metres (W x L x H) is proposed.

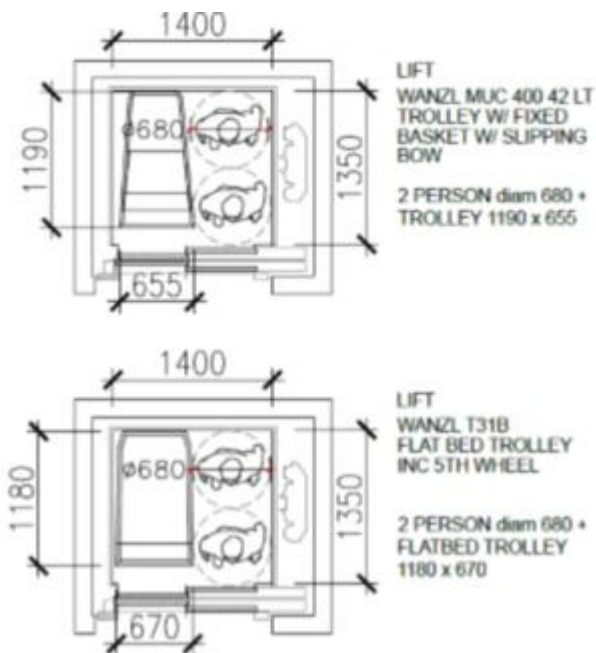
As shown in Diagram 1 below, the proposed lift size accommodates the two main trolley sizes to be used within the development. Bunnings have three types of trolleys available across their stores: the trolley with a fixed basket; the flat bed trolley; and the T trolley that is used to transport large/bulky materials. The T trolley won't fit inside the reduced lift size, however the T trolley is proposed to be used by staff only to transport material to waiting cars/trailers in the drive through area.

This outcome will allow a range of purchased goods to be transported to customer vehicles located in the undercroft car park and in the event larger goods are purchased, the drive through facility will be available to customers.

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Diagram 1 – Lift Spatial Plan



In consideration of the types of products to be stocked at the store (which include large lengths of timber and large sheets of plasterboard), it is considered reasonable that some products should only be available to be picked up from within the drive through. This allows bulkier items to be collected in a convenient and safe manner.

Team Members will be in store to assist and inform customers of the appropriate method of receiving their chosen goods and instructing customers to use the drive through facility rather than the lift where necessary. This will be in accordance with the Business Function and Management Plan, which is required by Condition 5 of the planning permit.

Condition 5 has been detailed above and is also proposed to be amended as part of this application to provide further operational details relating to the management of the lift, drive through facility and the collection of goods. The current amendment to the conditions proposes to add point m) which states that the Business Function and Management Plan should include the “Process for collection of customer purchases, including the operation and management of the customer lift and drive through facility”. It is considered that this requirement does not go far enough and officers consider that the condition should be more prescriptive and state the following:

m) *Process for collection of customer purchases, including the operation and management of the customer lift and drive through facility to avoid using the public footpath to transport bulky or large items to the undercroft car park.*

**6. Officers' reports**

**FN.026/20      Amendment to Permit - Use of the land as a building materials and landscape yard and timber yard and buildings and works associated with a car park and warehouse and proposed business identification signage at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham**

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This will ensure customers are not using the public footpath along Silver Street to transport purchased goods to the undercroft carpark.

Incorporating the operational processes relating to the management of the lift, the drive through facility and for the collection of purchased goods in the Business Function and Management Plan to be endorsed as part of the Planning Permit, will allow Council to enforce this requirement in the event customers are using the public footpath to transport their purchased goods to the building's undercroft carpark.

**Conclusion**

18. The application seeks to amend Condition 1c and Condition 5 of Planning Permit 281/2019/02P. The application was not advertised as the internal building changes for accessing the car park area will not cause material detriment. The key planning issue for this application relates to whether a reduced lift size is appropriate.
19. The reduction in the size of the lift would adequately accommodate the two smaller trolleys as demonstrated in the drawings, along with room for two customers. The third trolley which is bigger in dimension, is reserved for Bunnings staff members or for use by customers within the drive through facility. If any larger items are purchased then a Bunnings staff member will be required to inform customers that they must collect those items from within the building using the drive through facility. Staff members will not permit customers to remove the third style of trolley from the building.
20. The process explained above with regard to the collection and transportation of purchased goods will be detailed as part of the Business Function and Management Plan required by Condition 5 of the planning permit. Failure by Bunnings and or customers to follow these procedures would result in Council undertaking enforcement action to ensure the Business Function and Management Plan is adhered to and implemented by the Bunnings management team.
21. In light of the above planning assessment, the application warrants support as reflected in the officer recommendation.

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**6. Officers' reports****FN.027/20 Local Roads and Community Infrastructure Program**

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**Portfolio: Infrastructure****Distribution: Public****Manager: Hjalmar Philipp, Director Operations and Infrastructure****Author: Lawrence Seyers, Lead Transport Planner****Summary**

To update Councillors on the proposed works to be funded by Local Roads and Community Infrastructure Program prior to submission to the Department of Infrastructure, Transport, Regional Development and Communications for approval.

**Recommendation**

**That** the Committee (acting under delegation from Council):

1. Notes the Local Roads and Community Infrastructure Program funding allocation to Nillumbik Shire Council of \$739,151 (excluding GST).
2. Approves the submission to the Department of Infrastructure, Transport, Regional Development and Communications of the proposed works under the Local Roads and Community Infrastructure Program.

**Attachments**

1. Proposed projects for submission to the Department of Infrastructure, Transport, Regional Development and Communications for approval

**Background**

2. On 22 May 2020 the Australian Government announced a new \$500 million Local Roads and Community Infrastructure Program (LRCI Program).
3. This program will support local councils to deliver priority local road and community infrastructure projects across Australia, supporting jobs and the resilience of local economies to help communities bounce back from the COVID-19 pandemic.
4. Funding allocations for the LRCI Program have been calculated in a similar way to how the Roads to Recovery Program and the road component of the Financial Assistance Grants works. This formula takes into consideration road length and population and is based on recommendations of Local Government Grants Commissions.
5. Nillumbik Shire Council received funding allocation of \$739,151 (excluding GST).
6. In June 2020 Councillors were provided an interim long-list of projects that may be considered for funding. On 3 July 2020 Council received the Letter of Offer that contained the grant agreement and project eligibility criteria.
7. Under the grant agreement Council is required to complete and submit *Work Schedules* for nominated projects to the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications for approval.
8. Projects must meet the following eligibility criteria includes:
  - a) Must be additional to Council's existing work program for 2020-21;

**6. Officers' reports****FN.027/20 Local Roads and Community Infrastructure Program**

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- b) Must deliver benefits to the community;
  - c) Construction must be completed by 30 June 2021; and
  - d) Involve the construction or maintenance of local government roads *or* council-owned community infrastructure assets.
9. Eligible road projects are projects that involve the construction or maintenance of roads managed by local governments. This could include projects involving any of the following associated with a road:
- a) Traffic signs;
  - b) Traffic control equipment;
  - c) Street lighting equipment;
  - d) A bridge or tunnel;
  - e) A facility off the road used by heavy vehicles in connection with travel on the road (for example, a rest area or weigh station);
  - f) Facilities off the road that support the visitor economy; or
  - g) Road and footpath maintenance, where additional to normal capital works schedules
10. Eligible community infrastructure projects are projects that involve the construction, maintenance and/or improvements to council-owned assets (including natural assets) that are generally accessible to the public. These projects must deliver benefits to the community, such as improved accessibility, visual amenity, and/or safety. Examples of eligible works include:
- a) Closed Circuit TV (CCTV);
  - b) Bicycle and walking paths;
  - c) Painting or improvements to community facilities;
  - d) Repairing and replacing fencing;
  - e) Improved accessibility of community facilities and areas;
  - f) Landscaping improvements, such as tree planting and beautification of roundabouts;
  - g) Picnic shelters or barbeque facilities at community parks;
  - h) Playgrounds and skate parks (including all ability playgrounds);
  - i) Noise and vibration mitigation measures; or
  - j) Off-road car parks (such as those at sporting grounds or parks).

**Issues/options**

- 11. Projects have been nominated on the basis of meeting eligibility criteria and importantly, delivery by 30 June 2021.
- 12. A key consideration was distribution of grant funding allocation across the municipality.

**6. Officers' reports****FN.027/20 Local Roads and Community Infrastructure Program**

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13. An assessment was undertaken to refine the interim long-list of projects to a short-list that included consideration of:
  - a) Council-owned asset;
  - b) No third party permits required *or* could be obtained in 3 months;
  - c) Designs prepared *or* could be quickly prepared in 3 months;
  - d) Construction can commence 3 to 6 months; and
  - e) Council resources available to deliver *or* an ability to engage relevant expertise.
14. Consideration was also given to projects that may not be chosen for funding through other funding mechanisms.
15. In the prioritisation of road projects, consideration was given to the roads on the list to be sealed under Council's 5-year Capital Works Program.
16. It is noted that individual road projects are typically expensive and would likely consume the entire program.
17. The short-list of eligible projects is provided as **Attachment 1**. In completing the final detailed design, all projects will be scaled to match available funding.

**Policy context**

18. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Advocate effectively for Nillumbik's interests at a state and national level.

**Budget implications**

19. The nominated projects will be funded through the Local Roads and Community Infrastructure Program allocation of \$739,151 (excluding GST).

**Consultation/communication**

20. There are constrained timelines for delivery of the projects, requiring completion being by 30 June 2021. The consultation undertaken from Council's 2020-21 budget includes the Capital Works Program and has been used a point of reference together with Council's asset renewal priorities and ongoing community feedback on assets and services.

**Conclusion**

21. Council is asked to approve the submission of nominated projects (**Attachment 1**) to the Department of Infrastructure, Transport, Regional Development and Communications of the proposed works under the Local Roads and Community Infrastructure Program.

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**Future Nillumbik Committee Agenda**

**11 August 2020**

- 7. Supplementary and urgent business**
- 8. Confidential reports**