

# Special Meeting of Future Nillumbik Committee

held virtually on Tuesday 18 August 2020 commencing at 7:02pm.

## Minutes

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

Friday 21 August 2020

Distribution: Public

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**Nillumbik Shire Council**

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**Contents**

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<b>1. Welcome by the Chair</b>	<b>2</b>
<b>2. Reconciliation statement</b>	<b>2</b>
<b>3 Apologies</b>	<b>2</b>
<b>4. Officers' reports</b>	<b>3</b>
<b>Planning Portfolio</b>	
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	3
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	44
<b>Social Infrastructure Portfolio</b>	
FN.027/20 Local Roads and Community Infrastructure Program	49
<b>5. Supplementary and urgent business</b>	<b>50</b>
FN.028/20 Traffic Restrictions and Actions Regarding Chapel Lane and Middle Hut Road, Doreen	50
<b>8. Confidential reports</b>	<b>55</b>
<b>Close of Meeting</b>	<b>55</b>

**Nillumbik Shire Council**

**Minutes of the Special Meeting of Future Nillumbik Committee held Tuesday  
18 August 2020. The meeting commenced at 7:00pm.**

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**Councillors present:**

Cr Karen Egan	Bunjil Ward (Mayor)
Cr Grant Brooker	Blue Lake Ward
Cr John Dumaresq	Edendale Ward
Cr Peter Perkins	Ellis Ward
Cr Jane Ashton	Sugarloaf Ward
Cr Bruce Ranken	Swipers Gully Ward
Cr Peter Clarke	Wingrove Ward

**Officers in attendance:**

Carl Cowie	Chief Executive Officer
Vince Lombardi	Chief Financial Officer
Hjalmar Philipp	Director Operations and Infrastructure
Blaga Naumoski	Executive Manager Governance, Communications and Engagement
Rosa Zouzoulas	Executive Manager Planning and Community Safety
Eddie Cheng	Manager Information Technology
Nik Mistriotis	Lead Systems Architect
Renaë Ahern	Manager Planning Services
Joseph Emmanuelle	Manager Infrastructure
Katrina Ross	Statutory Planning Coordinator
Lawrence Seyers	Lead Transport Planner
Katia Croce	Governance Lead

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**1. Welcome by the Chair**

The Mayor, Cr Karen Egan welcomed members of the public to the meeting and advised the meeting would be livestreamed and recorded and the livestream and video recording would be made publicly available on YouTube and Council's website.

The Mayor also advised the meeting was a continuation of the Future Nillumbik Committee meeting held on 11 August 2020, which was adjourned in accordance with Clause 8.3 and 8.7 of the Meeting Procedure Local Law 2017.

**2. Reconciliation statement**

The reconciliation statement was read by the Chairperson, Cr Karen Egan.

**3 Apologies**

Nil

## 4. 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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**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> <li>• Potential Second Dwelling</li> </ul>

4. Officers' reports

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Location map



#### 4. Officers' reports

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The following people addressed the Committee with respect to this item:

1. Matt Dillon on behalf of Professional Consulting Services
2. Jim Missailidis on behalf of D E Missailidis Pty Ltd
3. Helen Stray
4. Bruce Birthisel
5. Jeni and Dennis Gregory Brown
6. Fiona Lennox
7. Greg Tieman
8. Dean Cerneka on behalf of Lydia Tartaglia
9. Carolyn Dyer
10. Ross Steeloom)
11. George & Gwendelene Barratt (read by CEO)
12. Glenda & Murray Waldie (read by CEO)
13. Greg Johnson on behalf of Friends of Nillumbik (read by CEO)
14. Judy Rodsted Wood (read by Executive Manager Governance, Communications and Engagement)
15. David Buttner (read by Executive Manager Governance, Communications and Engagement)

#### **Recommendation**

**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

#### 4. Officers' reports

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'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.
  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

#### 4. Officers' reports

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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.

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.



#### 4. Officers' reports

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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 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.

#### 4. 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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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 not productive; and
  - f) Identify any existing wildlife corridors and methods for wildlife to move

#### 4. 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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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;

#### 4. 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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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.

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.

## 4. Officers' reports

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- 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 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:

#### 4. 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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- 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 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

**4. 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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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 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

**4. 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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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 Unserviced 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. 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



**4. 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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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.
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;

#### 4. 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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- 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*.

#### **Motion**

**MOVED: Cr Grant Brooker**

**SECONDED: Cr John Dumaresq**

**That** the Committee (acting under delegation from Council) issue a Notice of Decision to Refuse to Grant a permit to the land located at 103 Bannons Lane, Yarrambat for 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 on the following grounds:

1. The proposal fails to adequately demonstrate that the proposed restaurant use will be 'in conjunction' with the proposed agricultural use, as required by Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions) of the Nillumbik Planning Scheme.
2. The development and carpark is not responsive to the desired character of the area and will adopt a high level of visibility within the landscape, which is contrary to the

## 4. 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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requirements of Clause 12.05-2S (Landscapes) and Clause 22.04 (Siting and design policy for buildings and works in non-urban areas) of the Nillumbik Planning Scheme.

3. The proposal fails to adequately demonstrate that noise emissions from the restaurant use will be appropriately mitigated so as not to have an adverse impact on surrounding land uses and amenity, which is contrary to the requirements of Clause 35.06-6 (Rural Conservation Zone) of the Nillumbik Planning Scheme.
4. The proposal has not demonstrated that it is able to mitigate noise emissions from the site in accordance with State Environment Protection Policy (control of noise from commerce, industry and trade) No.N-1. The Noise Control Guidelines.
5. The granting of a Liquor License to allow the sale and consumption of liquor will be detrimental to the amenity of the area and is contrary to the requirements of Clause 52.27 – Licensed Premises of the Nillumbik Planning Scheme.
6. The proposal fails to satisfy Clause 13.02 (Bushfire), Clause 44.06 (Bushfire Management Overlay) and Clause 22.13 (Wildfire Management Policy) of the Nillumbik Planning Scheme, as the restaurant use will result in the potential for a large number of people to congregate in a high bushfire risk area.
7. The proposal is not in accordance with the orderly planning of the area and will have a detrimental effect on the amenity of the area and is contrary to the decision guidelines of Clause 65 of the Nillumbik Planning Scheme.

THE MOTION WAS PUT TO THE VOTE AND LOST

Cr John Dumaresq called for a division

For: Crs Grant Brooker, John Dumaresq and Peter Perkins

Against: Crs Jane Ashton, Peter Clarke, Karen Egan and Bruce Ranken

*The Mayor, Cr Karen Egan declared the Motion Lost.*

<b>Motion</b>
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**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**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

#### 4. 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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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 uninhabitable 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.
  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

#### 4. 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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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.

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

#### 4. 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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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

#### 4. 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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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;

#### 4. 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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- 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 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;



#### 4. 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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- 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.

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

## 4. 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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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 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,

## 4. 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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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 **restaurant** use hereby permitted may only operate between the following hours:
  - Sunday: 8am to 10pm.
  - Good Friday & ANZAC Day: 12 noon to 10pm.
  - **Wednesday – Saturday: 12 noon to 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 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

**4. 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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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 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.

**4. 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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- 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 Unserviced 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. 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

**4. 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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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.
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:

## 4. 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**

- 
- 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*.

THE MOTION WAS PUT TO THE VOTE AND CARRIED AND BECAME THE COMMITTEE RESOLUTION AS FOLLOWS:

<b>Committee Resolution</b>
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**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**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

#### 4. 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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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 uninhabitable 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.
5. The use hereby permitted must not operate on any day with a declared Fire Danger Rating of Code Red.



#### 4. 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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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

#### 4. 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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around the perimeter of the fence.

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;

**4. 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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- 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 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

**4. 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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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 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

#### 4. 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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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.

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

## 4. 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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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 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:
      - Number of vehicles required
      - Name of company providing transportation
      - Contact phone number for transport company
      - Time required before transportation is likely to be available
      - 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

**4. 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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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 restaurant use hereby permitted may only operate between the following hours:
  - Sunday: 8am to 10pm.
  - Good Friday & ANZAC Day: 12 noon to 10pm.
  - Wednesday – Saturday: 12 noon to 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 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;

**4. 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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- 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 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



#### 4. 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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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 Unserviced 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. 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

#### 4. 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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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.
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.

#### 4. 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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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*.

**CARRIED**

Cr Karen Egan called for a division

For: Crs Jane Ashton, Peter Clarke, Karen Egan and Bruce Ranken

Against: Crs Grant Brooker, John Dumaresq and Peter Perkins

4. 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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*The Mayor, Cr Karen Egan declared the Motion Carried.*

*Cr Bruce Ranken temporarily left the meeting during discussion of the above item at 8:13pm and returned at 8:18pm.*

*Blaga Naumoski, Executive Manager Governance, Communications and Engagement temporarily left the meeting during discussion of the above item at 8:31pm and returned and 8:34pm.*

## 4. 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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**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>

4. 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



## 4. 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**

The following person addressed the Committee with respect to this item:

## 1. Maugan Bastone on behalf of Urbis Pty Ltd

<b>Recommendation</b>
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- A. **That** the Committee (acting under delegation from Council) issues 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:

Date of Amendment	Brief description of Amendment
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>

<b>Motion</b>
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**MOVED: Cr Peter Clarke**  
**SECONDED: Cr Bruce Ranken**

**That** the Committee (acting under delegation from Council) issue a Notice of Decision to Refuse to Grant an amended permit to the land located at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham, for 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, on the following grounds:

- The proposed reduction in the dimension of the lift fails to accommodate all of the trolley sizes Bunnings use, which creates a situation where centre management onerously have to regulate the movements of individual customers to avoid

#### 4. 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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customers using the public footpath as a thoroughfare to access the undercroft carpark. The outcome is not considered to be an appropriate response to the decision guidelines found under the Industrial 3 Zone relating to loading and service.

2. The proposal will have an adverse impact on the safety and amenity of the area as a result of customers using the public footpath to transport purchased goods to the undercroft carpark. The outcome has the potential to create a traffic safety hazard and is contrary to the purposes of the Industrial 3 Zone and Clause 65.01 (Decision Guidelines) of the Nillumbik Planning Scheme, with regard to safety and amenity.
3. The proposed reduction in the dimension of the lift will not allow customers easy and efficient movement of purchased goods between the carpark and the retail floor area, which is contrary to the requirements of Clause 18.02-4S (Car Parking) of the Nillumbik Planning Scheme.
4. The proposal will not contribute to the orderly planning of the area as required by Clause 65.01 of the Nillumbik Planning Scheme.

THE MOTION WAS PUT TO THE VOTE AND CARRIED AND BECAME THE COMMITTEE RESOLUTION AS FOLLOWS:

<b>Committee Resolution</b>
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**MOVED:            Cr Peter Clarke**  
**SECONDED:      Cr Bruce Ranken**

**That** the Committee (acting under delegation from Council) issue a Notice of Decision to Refuse to Grant an amended permit to the land located at 18 Brisbane Street, Eltham and 19 Bridge Street, Eltham and 19A Bridge Street, Eltham, for 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, on the following grounds:

1. The proposed reduction in the dimension of the lift fails to accommodate all of the trolley sizes Bunnings use, which creates a situation where centre management onerously have to regulate the movements of individual customers to avoid customers using the public footpath as a thoroughfare to access the undercroft carpark. The outcome is not considered to be an appropriate response to the decision guidelines found under the Industrial 3 Zone relating to loading and service.
2. The proposal will have an adverse impact on the safety and amenity of the area as a result of customers using the public footpath to transport purchased goods to the undercroft carpark. The outcome has the potential to create a traffic safety hazard and is contrary to the purposes of the Industrial 3 Zone and Clause 65.01 (Decision Guidelines) of the Nillumbik Planning Scheme, with regard to safety and amenity.
3. The proposed reduction in the dimension of the lift will not allow customers easy and efficient movement of purchased goods between the carpark and the retail floor



4. 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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area, which is contrary to the requirements of Clause 18.02-4S (Car Parking) of the Nillumbik Planning Scheme.

4. The proposal will not contribute to the orderly planning of the area as required by Clause 65.01 of the Nillumbik Planning Scheme.

**CARRIED**

Cr Peter Clarke called for a division

For:            Crs Jane Ashton, Peter Clarke, Karen Egan and Bruce Ranken

Against:      Crs John Dumaresq and Peter Perkins

Abstained: Cr Grant Brooker

4. Officers' reports

**FN.027/20      Local Roads and Community Infrastructure Program**

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**Portfolio:      Social 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.

<b>Committee Resolution</b>
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**MOVED:        Cr John Dumaresq**

**SECONDED:   Cr Peter Clarke**

**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.

**CARRIED UNANIMOUSLY**

**5. Supplementary and urgent business**

The Mayor, Cr Egan advised the meeting of an urgent business item. In accordance with section 12.1 of the Meeting Procedure Local Law 2017, an urgent business item may only be introduced if resolved unanimously.

**Motion to extend meeting – 10:28pm**

In accordance with Clause 2.1 of the Meeting Procedure Local Law 2017, a meeting must not continue after 10:30pm unless a majority of Councillors present vote in favour of the meeting continuing.

**Committee Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**That** the meeting be extended.

**CARRIED**

**Admittance of urgent business item**

**Committee Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**That** the 'Traffic Restrictions and Actions Regarding Chapel Lane and Middle Hut Road, Doreen' item be admitted as urgent business.

**CARRIED UNANIMOUSLY**

**FN.028/20 Traffic Restrictions and Actions Regarding Chapel Lane and Middle Hut Road, Doreen**

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**Motion**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

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

- A. Provide regular updates on Councils website with respect to the use and development of the land at 265 and 130 Chapel Lane Doreen to keep community up to date on actions to resolve the disposal of fill on these sites including our letters for planning scheme amendment to the Minister for Planning and any responses received.
- B. Take immediate action to overcome the current road safety, infrastructure integrity and amenity issues related to heavy vehicle traffic on Chapel Lane and Middle Hut Road Doreen by:
  - 1. Commencing the process to implement traffic interventions such as load limits and/or truck bans, on Chapel Lane (between Yan Yean Road and Hurstbridge Arthurs Creek Road and Middle Hut Road between (Brocks Road and Arthurs Creek Road), in consultation with the CFA and, where required, with the approval of the Department of Transport.

**5. Supplementary and urgent business****FN.028/20 Traffic Restrictions and Actions Regarding Chapel Lane and Middle Hut Road, Doreen**

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2. Enforcing the ban on all trucks (excepting Council and Emergency vehicles) over any load limit approved and request the support of the Victorian Police regarding this enforcement.
  3. Seek approval from the Victorian State Government Department of Transport to impose a 50kmph speed limit on Chapel Lane and Middle Hut Road (extent of imposition as per item above).
  4. Advising the owners and operators of the current land fill activities at 130 and 265 Chapel Lane that they have failed to obtain a permit to build a crossover for works 500 metres east of Middle Hut Roads, and at the vehicular entry point to 130 Chapel Lane, Doreen.
  5. Issue enforcement orders and seek all available penalties as a consequence for the destruction of road pavements and infrastructure in the vicinity of the sites at 130 and 265 Chapel Lane, Doreen.

<b>Amendment</b>
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**MOVED: Cr Peter Perkins**

**SECONDED: Cr John Dumaresq**

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

- A. **As soon as is practicable officers to commence enforcement proceedings and apply an interim enforcement order relating to the development of the land at 265 Chapel Lane Doreen.**
- B. Provide regular updates on Councils website with respect to the use and development of the land at 265 and 130 Chapel Lane Doreen to keep community up to date on actions to resolve the disposal of fill on these sites including our letters for planning scheme amendment to the Minister for Planning and any responses received.
- C. Take immediate action to overcome the current road safety, infrastructure integrity and amenity issues related to heavy vehicle traffic on Chapel Lane and Middle Hut Road Doreen by:
  1. Commencing the process to implement traffic interventions such as load limits and/or truck bans, on Chapel Lane (between Yan Yean Road and Hurstbridge Arthurs Creek Road and Middle Hut Road between (Brocks Road and Arthurs Creek Road), in consultation with the CFA and, where required, with the approval of the Department of Transport.
  2. Enforcing the ban on all trucks (excepting Council and Emergency vehicles) over any load limit approved and request the support of the Victorian Police regarding this enforcement.
  3. Seek approval from the Victorian State Government Department of Transport to impose a 50kmph speed limit on Chapel Lane and Middle Hut Road (extent of imposition as per item above).
  4. Advising the owners and operators of the current land fill activities at 130 and 265 Chapel Lane that they have failed to obtain a permit to build a crossover

**5. Supplementary and urgent business****FN.028/20 Traffic Restrictions and Actions Regarding Chapel Lane and Middle Hut Road, Doreen**

for works 500 metres east of Middle Hut Roads, and at the vehicular entry point to 130 Chapel Lane, Doreen.

5. Issue enforcement orders and seek all available penalties as a consequence for the destruction of road pavements and infrastructure in the vicinity of the sites at 130 and 265 Chapel Lane, Doreen.

With leave of the Chairperson, Blaga Naumoski, Executive Manager Governance, Communications and Engagement and the Chief Executive Officer advised the meeting should confidential information be discussed in relation to the Amendment it would be best addressed in-camera because if publicly released at the time, is likely to be inappropriately detrimental to the Council or any person (natural or corporate).

After further discussion the Chairperson, Cr Egan proposed a motion be put forward to close the meeting to members of the public to discuss and resolve the Amendment in-camera.

<b>Council Resolution</b>
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**MOVED: Cr Peter Clark**  
**SECONDED: Cr Bruce Ranken**

**That** in accordance with section 66(2) of the *Local Government Act 2020*, Council resolves to close the meeting to members of the public to debate and resolve an amendment considered confidential under section 3(1)(d) of the *Local Government Act 2020*, that is law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person.

**CARRIED**

The meeting closed to the public at 10:49pm.

The meeting re-opened at 11:41pm.

With leave of the Chairperson, Cr Peter Clarke amended his motion to include item A as follows:

<b>Motion</b>
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**MOVED: Cr Peter Clarke**  
**SECONDED: Cr Jane Ashton**

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

- A. As soon as is practicable officers to commence enforcement proceedings relating to the development of the land at 265 Chapel Lane Doreen.**
- B. Provide regular updates on Councils website with respect to the use and development of the land at 265 and 130 Chapel Lane Doreen to keep community up to date on actions to resolve the disposal of fill on these sites including our letters for planning scheme amendment to the Minister for Planning and any responses received.

**5. Supplementary and urgent business****FN.028/20 Traffic Restrictions and Actions Regarding Chapel Lane and Middle Hut Road, Doreen**

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- C. Take immediate action to overcome the current road safety, infrastructure integrity and amenity issues related to heavy vehicle traffic on Chapel Lane and Middle Hut Road Doreen by:
1. Commencing the process to implement traffic interventions such as load limits and/or truck bans, on Chapel Lane (between Yan Yean Road and Hurstbridge Arthurs Creek Road and Middle Hut Road between (Brocks Road and Arthurs Creek Road), in consultation with the CFA and, where required, with the approval of the Department of Transport.
  2. Enforcing the ban on all trucks (excepting Council and Emergency vehicles) over any load limit approved and request the support of the Victorian Police regarding this enforcement.
  3. Seek approval from the Victorian State Government Department of Transport to impose a 50kmph speed limit on Chapel Lane and Middle Hut Road (extent of imposition as per item above).
  4. Advising the owners and operators of the current land fill activities at 130 and 265 Chapel Lane that they have failed to obtain a permit to build a crossover for works 500 metres east of Middle Hut Roads, and at the vehicular entry point to 130 Chapel Lane, Doreen.
  5. Issue enforcement orders and seek all available penalties as a consequence for the destruction of road pavements and infrastructure in the vicinity of the sites at 130 and 265 Chapel Lane, Doreen.

THE MOTION WAS PUT TO THE VOTE AND CARRIED AND BECAME THE COMMITTEE RESOLUTION AS FOLLOWS:

<b>Committee Resolution</b>
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**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

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

- A. As soon as is practicable officers to commence enforcement proceedings relating to the development of the land at 265 Chapel Lane Doreen.
- B. Provide regular updates on Councils website with respect to the use and development of the land at 265 and 130 Chapel Lane Doreen to keep community up to date on actions to resolve the disposal of fill on these sites including our letters for planning scheme amendment to the Minister for Planning and any responses received.
- C. Take immediate action to overcome the current road safety, infrastructure integrity and amenity issues related to heavy vehicle traffic on Chapel Lane and Middle Hut Road Doreen by:
  1. Commencing the process to implement traffic interventions such as load limits and/or truck bans, on Chapel Lane (between Yan Yean Road and Hurstbridge Arthurs Creek Road and Middle Hut Road between (Brocks Road and Arthurs

5. Supplementary and urgent business

**FN.028/20 Traffic Restrictions and Actions Regarding Chapel Lane and Middle Hut Road, Doreen**

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- Creek Road), in consultation with the CFA and, where required, with the approval of the Department of Transport.
2. Enforcing the ban on all trucks (excepting Council and Emergency vehicles) over any load limit approved and request the support of the Victorian Police regarding this enforcement.
  3. Seek approval from the Victorian State Government Department of Transport to impose a 50kmph speed limit on Chapel Lane and Middle Hut Road (extent of imposition as per item above).
  4. Advising the owners and operators of the current land fill activities at 130 and 265 Chapel Lane that they have failed to obtain a permit to build a crossover for works 500 metres east of Middle Hut Roads, and at the vehicular entry point to 130 Chapel Lane, Doreen.
  5. Issue enforcement orders and seek all available penalties as a consequence for the destruction of road pavements and infrastructure in the vicinity of the sites at 130 and 265 Chapel Lane, Doreen.

**CARRIED UNANIMOUSLY**

*Cr Jane Ashton temporarily left the meeting during discussion of the above item at 10:31pm and returned at 10:32pm.*

**6. Confidential reports**

**Close of Meeting**

The meeting closed at 11:46pm.

Confirmed: \_\_\_\_\_

Cr Karen Egan, Mayor