

## Future Nillumbik Committee

to be held at the Civic Centre, Civic Drive, Greensborough  
on Tuesday 13 February 2018 commencing at 7.30pm

## Agenda

**Mark Stoermer**  
**Chief Executive Officer**

Thursday 8 February 2018

Distribution: Public

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*Wominje ka*

## Future Nillumbik Committee seating plan

**Cr John Dumaresq**  
Edendale Ward  
Infrastructure  
Portfolio

**Cr Karen Egan**  
Bunjil Ward  
Economic and  
Development  
Portfolio

**Cr Grant Brooker**  
Blue Lake Ward  
Environment and  
Sustainability  
Portfolio

**Cr Peter Perkins**  
Ellis Ward  
Planning Portfolio

**Cr Jane Ashton**  
Sugarloaf Ward  
Community  
Services Portfolio

**Cr Bruce Ranken**  
Swipers Gully Ward  
Social Infrastructure  
Portfolio

**Adrian Cully**  
Director Business  
and Strategy

**Mark Stoermer**  
Chief Executive  
Officer

**Cr Peter Clarke  
(Mayor)**  
Wingrove Ward  
Finance and  
Governance  
Portfolio

**Matt Kelleher**  
Director Services  
and Planning

**Hjalmar Philipp**  
Director  
Sustainability and  
Place

Visitors in the gallery at Committee meetings are:

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

Nillumbik Shire Council

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**Nillumbik Shire Council**

**Agenda of the Future Nillumbik Committee Meeting to be held Tuesday 13 February 2018 commencing at 7.30pm**

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**1. Welcome and apologies**

**Welcome by the Chair**

Members of the public are advised the meeting will be recorded and an audio recording of the meeting will be made publicly available on Council's website.

**Apologies**

**Motion**

**That the apologies be accepted.**

**2. Disclosure of conflicts of interest**

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

**3. Confirmation of minutes**

Confirmation of minutes of the Future Nillumbik Committee Meeting held on Tuesday 12 December 2017.

**Motion**

**That the minutes of the Future Nillumbik Committee Meeting held on Tuesday 12 December 2017 be confirmed.**

**4. Officers' reports****FN.001/18 Diamond Valley Railway Lease Agreement at Eltham Lower Park**

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**Portfolio: Infrastructure****Distribution: Public****Manager: Hjalmar Philipp, Director Sustainability and Place****Author: Jon Miller, Manager Assets and Property****Summary**

The purpose of this report is analysis of the submissions received in relation to the proposed new lease agreement between Council and the Diamond Valley Railway Inc.

The Diamond Valley Railway Inc. (the Association) leases a portion of Eltham Lower Park from Council to conduct its miniature railway operations. The current 21 year lease agreement expired on 30 November 2017. The Association has requested Council enter into a new 21 year lease agreement, to ensure ongoing management and operation of the miniature railway.

In discussions with Council officers, the Association has requested the new lease include an additional parcel of land and a realignment of the existing fence to the south of the railway workshop, to allow for better access to the site. The original lease area (lease area A) and proposed minor additions (lease area B) as well as the area included in the proposed fence realignment are depicted in Attachment 1.

At its Ordinary Meeting held on 28 November 2017, Council resolved to:

- Undertake public consultation in accordance with section 190 of the *Local Government Act 1989* (the Act) and give public notice of its intention to enter into a new lease agreement with the Association.
- Invite public submissions on the matter, in accordance with section 223 of the Act.

At that meeting, Council further resolved to investigate with the Association the future management of a larger parcel of Council managed land located between Main Road and the existing creek, with the intention of adding this area to the lease agreement, or entering into a separate licence agreement, on condition that public access is maintained. This parcel of land is depicted as 'Council Managed Land' in Attachment 1.

In response to publicly advertising its intention to enter into a new lease agreement with the Association, Council received 159 public submissions. Councillors have been provided with a copy of all those submissions.

In order for Council to make a decision to proceed (or otherwise) with a new lease agreement, it must consider the contents of all public submissions received. This report provides a summary of public submissions received (Attachment 2) in relation to the proposed lease with the Association, an analysis of key themes raised in those submissions and, where appropriate, an officer response.

**4. Officers' reports****FN.001/18 Diamond Valley Railway Lease Agreement at Eltham Lower Park**

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**Recommendation**

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

- 1. In accordance with section 223 of the *Local Government Act 1989* (the Act), receives and notes the contents of public submissions received in response to the proposed lease agreement for Diamond Valley Railway Inc. at Eltham Lower Park under section 190 of the Act.**
- 2. Presents a report to the Ordinary Meeting of Council on 27 February 2018 regarding the consideration of submissions in accordance with section 223(i)(c) of the Act.**

**Attachments**

1. Map
2. Submissions summary

**Background**

1. This report relates to the public consultation undertaken by Council in order for it to consider entering into new lease agreement with the Diamond Valley Railway Incorporation (the Association), for use of a part of Eltham Lower Park, the purpose being the ongoing operation of their miniature railway and associated facilities that have been located on the land since the late 1960s.
2. At the Ordinary Meeting held on 28 November 2017, Council resolved to commence the necessary processes under section 190 of the Act and publicly advertise its intention to lease part of Eltham Lower Park to the Association for a further 21 years, including with minor additions to the original lease area.
3. Council also resolved at that meeting to include within the public notice the opportunity for public submissions on Council investigating the future management of the area depicted as 'Council Managed Land' in Attachment 1 be undertaken by the Association, with the intention of adding this area to the lease agreement, or by entering into a separate licence agreement ensuring public access is maintained.

**Policy context**

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

**Budget implications**

5. If after considering public submissions, Council resolves to enter into a new lease with the Association, it will receive a rental income of \$200 per annum (with a fixed annual three per cent increase) for the term of the lease.
6. Unlike other lease agreements Council enters into with community organisations, the Association will be required to maintain all its assets within the leased area. This reduces requirements on Council's operating budgets relating to these activities.

**4. Officers' reports****FN.001/18 Diamond Valley Railway Lease Agreement at Eltham Lower Park**

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**Consultation/communication**

7. Section 190 of the *Local Government Act 1989* restricts Council from entering into a lease of 10 years or more without firstly advertising its intention to do so and inviting public submissions. Section 223 of the Act requires Council to consider all submissions that are received, prior to making a decision to enter into a new lease.
8. In compliance with the Act, a public notice was placed in the *Diamond Valley Leader* newspaper on 6 December 2017, seeking submissions on the proposed lease.
9. The closing date for submissions was Wednesday 17 January 2018. Officers have accepted all late submissions.
10. In response to the advertisement, a total of 159 written submissions were received.

**Summary of submissions**

11. Of the 159 submissions, 113 (71 per cent) were generally supportive of Council entering into a new 21 year lease agreement with the Association. It should be noted that most of these did not specifically refer to additional parcels of land being included in a new lease.
12. The key themes raised in support of Council entering into a new lease agreement with the Association are:
  - a) The miniature railway is a key attraction that promotes tourism for Eltham
  - b) Stimulates growth for local businesses
  - c) Provides historical value for Eltham's identity
  - d) A fun and affordable community activity
  - e) A vibrant and iconic feature set amongst natural landscaped surroundings
  - f) Provides a place to inspire young people to become the engineers of the future
  - g) The railway offers opportunities for volunteers to share their skills, whilst participating and engaging with the wider community.
13. Of the remaining 46 submissions (29 per cent), many were supportive of Council entering into a new lease with the Association for the existing lease area, but were in general:
  - a) Not supportive of adding additional land to the lease
  - b) Not supportive of adding the land under investigation referred as 'Council Managed Land' (Attachment 1) to the lease or entering into a licence
  - c) Raised other relevant issues.
14. Issues raised in these 46 submissions and an officer's response is as follows.

**Equality of existing park users**

15. Submitters feel it is important to preserve equality amongst all uses as Eltham Lower Park is a shared reserve. Their concern was that if the Association is granted management of additional public land this would be a substantial increase under their control, to the detriment of other users.

**4. Officers' reports****FN.001/18 Diamond Valley Railway Lease Agreement at Eltham Lower Park**

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## Officer's response

16. The proposed new lease agreement includes minor amendments to the existing lease area. These included the additional area shown on Attachment 1 as Lease Area B and the fence realignment beside the existing workshop (to improve access).
17. The Association requested Lease Area B be included in the new lease as they would like to maintain the land to a higher standard than it currently is.
18. The public currently have access to both these areas, and the Friends of Eltham Lower Park conduct regular conservation related works to the banks of the creek flowing through this Area B. The Friends of Eltham Lower Park have concerns that if included in the new lease, the group may be excluded from undertaking such activities in the future.
19. The proposed Lease Agreement includes a clause in relation to Lease Area B that the Tenant must allow public access at all times; not change the current perimeter fencing or construct additional infrastructure or lease the area to a third party without agreement of Council.
20. The proposed change to the fencing around the Railway workshop will have little or no impact on use of the adjacent parkland.
21. In relation to the Council resolution to investigate adding the area depicted as 'Council Managed Land' (in Attachment 1), this is not currently included in the key terms of the proposed lease agreement that has been approved by the Department of Environment, Land, Water and Planning (DELWP). For it to be included, DELWP would need to approve a new draft of the lease. Any amendments to the key terms or area proposed under the lease may also then trigger a requirement to undertake further public consultation.
22. Council expects to commence the process of drafting a new master plan for Eltham Lower Park in the near future. This process may present Council with a more appropriate forum to consider management responsibilities and tenancies within the park.

**The implications and legal process of transferring Crown Land**

23. Submitters raised concerns about the loss of public land as the park is seen as a gateway entrance to Eltham which also provides an environmental retreat.

## Officer's response

24. Council as the Committee of Management for the Eltham Lower Park Reserve land has the right to lease or licence land under the *Crown Land (Reserves) Act 1978* with the approval of the Minister for Energy, Environment and Climate Change. The *Eltham Land Act 1975* also provides the Committee of Management (being Council) the authority to lease part of the Eltham Lower Park Reserve for up to 21 years for the carriage of passengers for the miniature railway. The *Eltham Land Act 1975* includes a map of part of Eltham Lower Park that can be leased for that purpose.
25. Council is not proposing to, nor can it transfer ownership of the Crown Land to third parties.



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**FN.001/18 Diamond Valley Railway Lease Agreement at Eltham Lower Park**

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**Uncertainty of future public access**

26. Submitters were concerned about Diamond Valley Railway's unspecified role in the management of additional land and whether this would restrict public access, use of barbeque and picnic facilities, allow further building of infrastructure, or removal of trees which might alter the character of the area.

Officer's response

27. The main intention of considering adding additional land to the original lease area is for the Association to be able to increase the level of maintenance, to a level it thinks is appropriate for the park, not to restrict access to the public. The lease agreement includes a clause that states that the Tenant must:

- a) allow at all times public access to the area within Lease Area B on the Plan of Land shown in Attachment 1
- b) not change the current perimeter fencing without the Landlord's permission
- c) not add additional infrastructure within Lease Area B or hire out any part of Lease Area B to a third party without agreement by the Landlord.

**Negative impacts on the appearance of the gateway zone and its natural environment**

28. Submitters were concerned that a proposal to increase the land leased to the Association might negatively impact the amenity of the area and native vegetation if the railway were to expand their operation and infrastructure. Submitters felt this would create major issues relating to noise, biodiversity, aesthetics, pollution, traffic congestion and parking.

Officer's response

29. The Association has been leasing part of Eltham Lower Park from Council since 1971 and wish to continue operating the railway within the current leased area with the inclusion of two minor areas of land.

30. There is no intention for the Association to utilise this additional land for additional railway services or for the construction of new related infrastructure. Therefore officers do not anticipate additional negative impacts on the matters raised by submitters.

31. It should be noted that aerial photography of the park dating from 1966 shows substantially less native vegetation and tree cover (particularly in the vicinity of the railway) than currently exists, suggesting that the Association have been proactive in the environmental management of the land.

**Financial arrangements and rental amount**

32. Some submitters felt that the rental amount of \$200 per annum is inadequate and questioned whether the railway provides any economic benefit to the community.

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Officer's response

33. Council applies a consistent rental arrangement for all not for profit community based organisations/clubs, which are incorporated in accordance with the *Associations Incorporation Reform Act 2012*.
34. The Association conducts maintenance of all assets on the leased land and buildings and is responsible for public liability insurance, utility supply and usage charges.
35. It should be noted that with all community leases of Council managed or owned land, there is no requirement or expectation that the community will receive a direct financial benefit. If this was the case, the majority of Council's current community tenants would not meet lease/licence conditions. The Association reported that they provided approximately 120,000 rides for the 2015/16 financial year, representing a large number of visitors to the Shire with likely wider economic benefits.

**Timing of the public consultation period**

36. Submitters raised concerns in relation to the public consultation period being over the Christmas/holiday period.

Officer's response

37. The preparation and timing of the consultation coincided with the ending of the existing lease agreement on 30 November 2017. Council had to await DELWP approval on the proposed lease agreement prior to publicly advertising the proposed lease.
38. The Association requires a new lease agreement as soon as possible to provide certainty about their ongoing tenancy and legal requirements.
39. To allow for the Christmas holiday period, submissions were opened for a six week period instead of the required 28 days.
40. Officers acknowledge the late addition of the Council Managed Land being investigated for addition to the lease may have caused confusion for a small number of submitters.

**Volunteers qualifications**

41. Submitters raised concerns in relation to the safety measures of volunteers working with children.

Officer's response

42. The Association must ensure that all employees or volunteers that are required to apply for a Working with Children check do so and that the check cards are verified. The Association must also ensure all working with children cardholders have advised the Department of Justice that they work or volunteer with the organisation, so the Tenant receives notices about the validity and status of the person's check card.
43. As with all Council's community group tenant's, there is a requirement to comply with the *Working with Children Act 2005* and *Working with Children Regulations 2006* has been included within the lease agreement.

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**Creek and waterways controlled by Melbourne Water**

44. Submitters raised concerns for part of the land adjacent to the creek and whether this would remain under the control of Melbourne Water, giving particular regard to the biodiversity of the region, wildlife corridor and the activities of community groups to revegetate the creek and waterway.

Officer's response

45. Melbourne Water is the statutory authority in relation to management of the bed and banks of the creek.
46. Council is not proposing to include these areas within the new lease.

**Conclusion**

47. In order to consider the proposed lease agreement for a 21 year term, Council has undertaken a public consultation process in accordance with section 190 of the *Local Government Act 1989* by advertising its intention and inviting public submissions.
48. In accordance with section 223 of the Act, the contents of the 159 submissions received from the public in response to the public advertisement are now required to be considered by Council prior to it making a decision to enter into a new lease agreement with the Association.

**4. Officers' reports****FN.002/18 Diamond Creek Trail extension - proposed next steps**

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**Portfolio: Social Infrastructure****Distribution: Public****Manager: Adrian Cully, Director Business and Strategy****Author: Naomi Paton, Manager Integrated Strategy****Joanne Massoud, Recreation and Open Space Planner****Summary**

This report presents the proposed program of key milestones and timeframes to deliver the Diamond Creek Trail's eight kilometre extension from Diamond Creek to Hurstbridge.

Planning for the Trail's extension has been a long-term priority of Council and the community. Significant progress has been made with the State Planning Minister's recent gazettal of an amendment to the Nillumbik Planning Scheme for Council to acquire land in private ownership to extend the Trail alongside a creek-side alignment. Acquiring the 19.5 hectares of land is proposed to commence in April 2018.

Council has maintained its necessary for the Trail to be extended and that government funding and proceeds from the Shire's proposed land sales program will be necessary for the project to be delivered without placing an additional financial burden on rate payers.

Subject to securing additional funds, the Trail's extension could be delivered by mid-2020.

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

- 1. Notes the proposed program to deliver the Diamond Creek Trail extension from Diamond Creek to Hurstbridge.**
- 2. Considers community feedback on the proposed program, and instructs officers to make any adjustments on the Committee's direction.**
- 3. Commences the public acquisition process of land in private ownership.**
- 4. Commences implementing an advocacy strategy to secure the necessary external funding to deliver the Trail's extension.**
- 5. Requests officers to continue to pursue grant funding opportunities.**

**Attachments**

- Diamond Creek Trail Extension Proposed Project Flowchart

**Background**

- The currently 12 kilometre Diamond Creek Trail travels from Eltham Lower Park, Eltham – where it connects with the Main Yarra Trail – to Luscombe Drive, Diamond Creek. Council and the community have worked together for many years to realise the long-term aspiration to extend the Trail – shared by horses, cyclists and pedestrians – eight kilometres north to Hurstbridge, maintaining a creek-side alignment.

**4. Officers' reports****FN.002/18 Diamond Creek Trail extension - proposed next steps**

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2. Delivering the Trail requires Council to acquire approximately 19.5 hectares of privately owned land. On 14 December 2017, approved Amendment C108 was gazetted, completing the statutory process to apply a Public Acquisition Overlay (PAO4) to parts of the 12 affected properties to be acquired by Council and insert an incorporated document titled *Diamond Creek Trail Extension (Diamond Creek to Hurstbridge) - Incorporated Document November 2017* which provides planning approval for construction and use of the Trail (subject to a range of conditions being fulfilled).
3. At the August 2017 Ordinary Meeting of Council it resolved for the Future Nillumbik Committee to receive a report from officers detailing the next steps of the Diamond Creek Trail extension project and provide opportunities to hear submissions from the community.

**Policy context**

4. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Provide a range of infrastructure that encourages people of all ages to participate in a variety of active and passive opportunities.
5. Delivering the Trail's extension also delivers upon broader Council and State Government policy priorities regarding tourism and growing the local visitor economy, enhancing the habitat and biodiversity qualities of the Diamond Creek, providing opportunities to connect with the natural environment, and improving community connections through off-road active transport links which contributes to reducing the reliance on short trips in private vehicles.

**Budget implications**

6. The cost of the project is estimated at \$11 million, consisting of \$4 million for land acquisition and compensation and \$7 million for trail construction. The Trail's construction includes maintaining where possible a minimum 15 metre set back from the bank of the Diamond Creek to meet Melbourne Water requirements, sections of boardwalks and seven bridge crossings.
7. It is proposed Council contributes \$6 million over the period 2017-2018 to 2019-2020. Council has commenced community engagement on its proposal to sell surplus assets to fast track the funding of major infrastructure projects including the Diamond Creek Trail extension.
8. Council has long-maintained its reliance on external funding estimated at \$5 million through grant income. It must be noted grant funding is not typically available for land acquisition.
  - a) In late 2017, Council was notified of having been unsuccessful in securing a State Government Growing Suburbs Fund (GSF) grant to extend the Trail from Diamond Creek to Wattle Glen War Memorial Reserve. Officers await the 2018 State budget which will determine the program's continuation.
  - b) A GSF grant was secured to deliver a pedestrian crossing on the Hurstbridge rail line at the rear of Diamond Creek East Primary School providing improved connectivity within Diamond Creek, and providing a connection to the Diamond Creek Trail.

**4. Officers' reports****FN.002/18 Diamond Creek Trail extension - proposed next steps**

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9. Other external funding opportunities include:
- a) Proposed Active Transport Infrastructure Fund (State): VicRoads is preparing a business case for consideration in the 2018 State budget to improve walking and cycling infrastructure and reduce short trips in private vehicles. Officers provided information on the Diamond Creek Trail extension.
  - b) Regional Tourism Infrastructure Fund (State): The fund seeks to grow and realise the potential of regional Victoria's visitor economy. The grant program is currently closed.
  - c) Community Sporting Infrastructure Fund (State): The program delivers increased physical activity participation through infrastructure. The maximum grant Council could secure is \$650,000 in the Major Facilities category. Officers anticipate the 2019-2020 funding round will open in coming months.
  - d) City Deal (Federal): The northern region councils have submitted a proposal to deliver on priorities including transport, jobs and business growth and resilient communities. The proposal includes implementation of the Northern Region Trails Strategy, of which the Diamond Creek trail extension has been ranked Nillumbik's highest priority.
  - e) The upcoming state and federal elections provides further opportunities for Council to advocate for the necessary external funds.

**Consultation/communication**

10. Affected property owners, key stakeholders and those who have provided Council with their details to receive updates on the project have been invited to speak to the Committee on the officers' proposed next steps.
11. There has been significant community engagement through Council's planning of the Trail's extension. Most recently, officers notified affected property owners of the Minister's approval of Amendment C108. Additionally, public notification of the gazettal was placed on Council's website and in the *Diamond Valley Leader*.
12. Throughout 2017, the Mayor and Deputy Mayor undertook on-site meetings with the owners of private land affected by the then proposed application of the Public Acquisition Overlay to understand the opinion of landowners and to consider actions to address or reduce any issues landowners may have with the Amendment.
13. In accordance with Council's resolution to adopt the Amendment in August 2017, landowners will be shortly offered individual information sessions with an independent legal expert regarding the land compensation and acquisition processes. These sessions will explain owners' rights under the *Land Acquisition and Compensation Act 1986* (the Act), including their rights to legal and valuer representation. These sessions are proposed to commence in March 2018.
14. An advocacy strategy and communications plan has been prepared for the purposes of obtaining further broader community support for the Trail's extension and securing \$5 million in Government funding towards the project. Advocacy group Trailblazers, established in 2013 to advocate for the Trail's extension, has assisted Council officers in the preparation of this Strategy.

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**FN.002/18 Diamond Creek Trail extension - proposed next steps**

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15. Implementation of the advocacy strategy and communications plan will be far reaching, generating significant further community interest in and support for the Trail.

**Issues/options**

16. Officers are preparing a high level program of projects and project management plan to shape the remaining steps of the project consisting of:
- a) Communications and advocacy campaign for funding
  - b) Land acquisition and compensation
  - c) Detailed design and construction
17. Subject to securing the necessary external funding and additional Council contributions, the Trail could be delivered by mid-2020 (Attachment 1).
- a) From February 2018: commence implementation of communications plan and funding advocacy strategy, and complete further onsite environmental studies to satisfy the conditions of the incorporated plan.
  - b) April to December 2018: Undertake the acquisition and associated compensation process to acquire land.
  - c) By mid-2019: Complete remaining technical studies and reports including further survey and subdivision planning work, flora and fauna studies, offset strategy, Environmental Management Plan, asset management and maintenance plans and possible Cultural Heritage Management Plan.
  - d) By mid-2020: complete construction.
18. Officers recommend this approach for the following reasons, as it:
- a) Delivers on acquisition following the recent application of the PAO, providing certainty to affected land owners, and reduces likely escalation in costs to Council from land value rises.
  - b) Gives certainty to potential funders that the required land is being assembled.
  - c) Gives confidence to the community and funders that Council is moving expeditiously to deliver the Trail within the term of this Council, subject to external funding.
  - d) The risk of this option relates to the reliance and timing of external funding for construction, and potential requirement for Council to maintain land without community benefit until such time as the Trail can be constructed.

**Conclusion**

19. Extending the Diamond Creek Trail to Hurstbridge has been a long-term commitment of Council and the community. Amending the Planning Scheme in late 2017 to secure land along the creek has been a vital step to realising this outcome.

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**FN.002/18 Diamond Creek Trail extension - proposed next steps**

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20. Commencing the acquisition and compensation process gives certainty to affected landowners, and reinforces with potential funders Council's commitment to delivering this project within the term of this Council. The proposed program of land sales to support infrastructure development would enable Council to fund a portion of the project without any additional financial burden on ratepayers.



#### 4. Officers' reports

**FN.003/18**      **New State Government aged care draft 'Particular Provision' planning control**

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**Portfolio:**      **Planning**

**Distribution:**    **Public**

**Manager:**      **Adrian Cully, Director Business and Strategy**

**Author:**        **Anthony Calthorpe, Strategic Planning Coordinator**

#### Summary

The Minister for Planning, as part of ongoing reforms to the *Victorian Planning Provisions* (VPPs), has released a new Victoria-wide draft planning control (known as a '*Particular Provision*') for consultation in respect of Residential Aged Care Development Facilities (RACF). A copy is included at Attachment 1. The consultation period closed on 16 February 2018.

The draft RACF Particular Provision has been prepared to help implement the State Government's *Homes for Victoria* housing strategy, which is aimed at creating certainty in planning and housing supply.

It is accompanied by an information sheet prepared by the Department of Environment, Land, Water and Environment (DELWP); see Attachment 2, which provides additional context about why the new Particular Provision is required.

The draft Particular Provision is intended to apply in the following residential zones and would sit within the Nillumbik Planning Scheme (the Planning Scheme):

- Neighbourhood Residential Zone
- General Residential Zone
- Residential Growth Zone
- Mixed Use Zone
- Township Zone

The draft Particular Provision encourages greater bulk and mass (building form) for RACF developments than the current planning controls in the Planning Scheme otherwise allow for. Generally, the draft Particular Provision proposes to:

- Allow RACF buildings to be up to 13.5 metres in height (five storeys generally) and to exceed it with a permit (where the zones currently have lower mandatory maximum heights and no ability to exceed them)
- Remove notice or review rights to any proposal for a building up to 13.5 metres.
- Site coverage will be able to extend to 80 per cent site area which will vary from the 'minimum garden area' requirements (60 per cent) recently introduced by State Government for residential zones.

The most immediate potential impacts of the draft Particular Provision for Nillumbik will be the possible height and mass of buildings it might enable (via planning permit applications) in our residential zones and whether the control appropriately balances the need to contemplate local characteristics and conditions, particularly in the more sensitive

#### 4. Officers' reports

##### **FN.003/18 New State Government aged care draft 'Particular Provision' planning control**

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Neighbourhood Residential Zone (NRZ). The draft Submission also questions why the proposed control does not provide any requirement or test for aged care housing to be located in accessible locations well served by public transport, services and community facilities i.e. to avoid occupiers being socially isolated. Another question raised by the draft Particular Provision is whether it could facilitate regular market housing through 'as of right' change of use provisions within the planning scheme.

Relevant to Nillumbik, the draft control would not apply to the green wedge zones that cover the majority of the municipality.

The purpose of this report is to consider the potential impacts of the draft Particular Provision, as summarised above, and to set out Council's formal position in response. The report does this by:

- a) Providing background context to Council about the State Government's reasoning for the draft Particular Provision for RACF
- b) Outlines the key strategic and statutory issues raised by the draft Particular Provision
- c) Seek Council's endorsement of the draft submission (Attachment 3) that outlines Council's position and recommendations in response to the draft Particular Provision.

#### **Recommendation**

**That the Committee (acting under delegation from Council) endorses Attachment 3 as its submission in response to the State Government's draft Residential Aged Care Particular Provision.**

#### **Attachments**

1. Draft Particular Provision for Residential Aged Care Facilities (State Government)
2. Information Sheet by State Government
3. Draft Nillumbik Council Submission

#### **Background**

1. This report relates to the release (by the Minister for Planning) of a new draft *Particular Provision* in respect of Residential Aged Care Facilities (RACF).
2. By way of background, a Particular Provision is a part of the planning scheme that sets out controls to guide the preparation of planning permit applications and is used for decision making by Council as a responsible authority (RA). The purpose of the RACF draft Particular Provision is to:  
  
'...support appropriately designed and located RACF developed in established residential areas to cater for an ageing population.'
3. The draft RACF Particular Provision has been prepared to help implement the State Government's *Homes for Victoria* housing strategy, which is aimed at 'creating certainty in planning and housing supply'.

**4. Officers' reports****FN.003/18 New State Government aged care draft 'Particular Provision' planning control**

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**Policy context**

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

**Budget implications**

5. There are no immediate budget implications to Council.
6. If the Council, for example, were not satisfied with the Minister for Planning's response to submissions there may be costs associated to any planning panel or advisory committee process. A further report would be brought to Council if there are further budget implications.

**Consultation/communication**

7. The Department of Environment, Land, Water and Planning (DELWP) is currently seeking feedback on the draft Particular Provision. Submissions close 16 February 2018. DELWP has responsibility for community consultation and has engaged with key industry stakeholders during preparation of the draft Particular Provision. The submission period is open to the whole Victorian community to make a submission via an online portal. For this reason, Council has not carried out its own community consultation.

**Issues/options**

8. The draft Council submission at Attachment 3 has been prepared with the input of Council's statutory, strategic and social planners. It provides continued advocacy in respect of issues relevant to Nillumbik, but particularly on issues relevant to the receipt and determination of planning permit applications for RACF proposals.
9. There are six aged care facilities in Nillumbik (approximately 579 beds). Anecdotally, it is understood that Council officers receive limited enquiries about possible new RACF facilities.
10. In summary, the draft submission:
- a) Acknowledges the purpose of the State Government's approach.
  - b) Summarises the aged care housing issues relevant to Nillumbik (lack of housing diversity, ageing population) for the purposes of context.
  - c) Includes a number of recommendations in response to key issues, including:
    - Ensuring high quality design outcomes where any building is proposed to exceed the current mandatory height controls in the residential zones.
    - Ensuring that the controls encourage aged care housing in accessible locations to ensure people have access to transport, services and facilities.
    - Ensuring that the Particular Provision doesn't unwittingly facilitate standard residential market housing through change of use rights.

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- Acknowledges that the scope of the control may not apply to rural zones, but encourages the State Government to adopt an integrated approach to aged care housing provision to enable integrated planning to occur.
  - Recommends a number of other changes that should be made to the draft Particular Provision to improve it as a statutory planning tool decision making tool.
11. The draft Particular Provision will predominantly affect the bulk and scale of RACF buildings that an applicant can seek approval for within the residential zones.
  12. One of the main purposes of the draft Particular Provision is to enable aged care housing providers to better compete in securing residential land/ development sites. It will do this by providing encouragement for RACF developments to be taller and bulkier than normal market housing developments allowing greater yield (and return) to be achieved for RACF developments. In turn this should also help to improve the supply of aged care housing.
  13. The draft submission outlines that the above is considered to be a rudimentary approach and that caution needs to be had to ensure that quality outcomes and good design are not compromised. Local design and site context issues should remain important considerations because bad design and built form is a lasting legacy that can contrast established neighbourhood character. The suggested recommendations in the draft submission reinforce this.
  14. Alternative options are available to Council in response to the draft Particular Provision. In summary these include:
    - a) Make no submission and accept the draft Particular Provision in full
    - b) Make a submission that seeks even greater built form flexibility for RACF facilities within established residential zones e.g. greater height or bulk.
  15. From a development control perspective, it is considered that the sensitivity and characteristics of our residential zones should not be put to one side too readily for a generic planning control that is principally focused on achieving greater scale of built form. It is considered that Council should retain a good level of local discretion within any planning control to ensure that development proposals are appropriate to their surrounding environment.
  16. For these reasons, it is considered that the draft submission at Attachment 3 would encourage this balance. It accepts the reasons why the new control may be needed, but places an emphasis on ensuring that new RACF facilities are located in the right locations and with the rights tests to ensure design and building bulk are appropriately considered.

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**Conclusion**

17. Overall, the draft Particular Provision may help to increase housing diversity (for aged care housing) in some of the Shire's residential zoned areas. Further reform and review of housing in rural zones areas will be required to address housing diversity more broadly in a municipality such as Nillumbik where both urban and rural zones apply. This will allow more comprehensive strategic planning for housing needs to occur.
18. In respect of the above, the draft submission asks whether the draft Particular Provision goes far enough. The submission makes some recommendations about how the State Government could tackle housing diversity outside the Urban Growth Boundary, albeit it is likely to be beyond the scope of this reform to contemplate an issue with broader implications. Nonetheless, it is worthwhile that Council continue to advocate on housing needs for rural communities through this and other appropriate forums – highlighting the Green Wedge Management Plan review as one such avenue where this will likely be considered further.

**Future Nillumbik Committee agenda**

**13 February 2018**

- 5. Supplementary and urgent business**
- 6. Confidential reports**

Nil