

## Ordinary Meeting of Council

held at the Civic Centre, Civic Drive, Greensborough  
on Tuesday 20 December 2016.

## Minutes

**Stuart Burdack**  
**Chief Executive Officer**

Wednesday 21 December 2016

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*Domin je ka*

Nillumbik Shire Council

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## Nillumbik Shire Council

Minutes of the Ordinary Meeting of Nillumbik Shire Council held Tuesday 20 December 2016. The meeting commenced at 7.03pm.

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### Councillors present:

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

### Officers in attendance:

Stuart Burdack	Chief Executive Officer
Andrew Port	General Manager Corporate Services
Ransce Salan	General Manager Environment and Planning
Conal Creedon	General Manager Infrastructure Services
Naomi Paton	Acting General Manager Community and Leisure
Allison Watt	Manager Governance and Communications
Lisa Pittle	Manager Infrastructure Maintenance
Jeremy Livingston	Manager Planning and Health Services
Joanne Hammond	Coordinator Communications

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### Welcome

#### 1. Reconciliation statement

The reconciliation statement was read by the Mayor, Cr Peter Clarke.

#### 2. Prayer

A prayer was read by Lead Pastor Stewart Hunt of the Eltham Baptist Church.

#### 3. Good governance pledge

The good governance pledge was read by Cr Peter Clarke.

#### 4. Apologies

An apology was received from Cr Grant Brooker.

<b>Motion</b>
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**Cr Karen Egan**  
**Cr Jane Ashton**

**That Cr Grant Brooker's apology be accepted.**

**CARRIED**

#### 5. Presentations

Nil

6. Confirmation of minutes

Confirmation of minutes of the Council Meeting held on Tuesday 22 November 2016.

**Motion**

**Cr Peter Perkins**  
**Cr Bruce Ranken**

**That the minutes of the Council Meeting held on Tuesday 22 November 2016 be confirmed.**

**CARRIED**

7. Disclosure of conflicts of interest

Nil

8. Petitions

Nil

9. Questions from the gallery

**Fred Bauer**, asked Council:

I refer to the Council Plan Quarterly Performance Report September 2016 considered at the 22 November 2016 Meeting of Council. Item 2.1.1. states 'We will protect Nillumbik's Green Wedge from expansion of the Urban Growth Boundary (UGB)'. Given that sections 46AA to 46AM (inclusive) of Part 3AA of the *Planning and Environment Act 1987* stipulate that an amendment to the Urban Growth Boundary requires it to be approved by each House of the Victorian Parliament, why is this action necessary by Council staff and is it likely that the Council Plan of the new Council will include such an action?

**Mayor, Cr Peter Clarke**, responded that Council has a responsibility to ensure its decision making is consistent with State Government policy. The State Planning Policy Framework of the Nillumbik Planning Scheme requires Council to protect the green wedges of metropolitan Melbourne from inappropriate development. The statement in the current Council Plan is consistent with this objective.

The objectives contained in the Council Plan are the elected Council's statement of priorities for the Nillumbik community during their term. Council is currently in the process of preparing a new Council Plan that will be released to the community for comment in the new year as this new Council sets out its plan going forward.

**Fred Bauer**, asked Council:

In his 'open letter to residents of Nillumbik Shire' in March 2004, Cr Lex de Man, on behalf of the then Nillumbik Shire Council, stated in relation to the introduction of Melbourne 2030 and the Urban Growth Boundary that the process 'lacks procedural fairness and natural justice'. 'To Introduce dramatic changes to planning controls over non-urban land with no direct notification to affected owners of the specifics of the proposal, and no opportunities for submissions to be heard prior to a final decision being made, is contrary to the principles of natural justice'. In the light of Cr Lex de Man's comments I ask:- What can and/or will the new Council do to convince the State Government and all Members of the State Parliament that a review of planning controls at both the state and local government levels is now necessary to achieve a planning scheme that has followed proper research, proper investigation, proper consultation with the whole - of the community, and proper process?

**9. Questions from the gallery continued**

**Mayor, Cr Peter Clarke**, responded that the Urban Growth Boundary was introduced by the State Government in 2002 to provide legislative recognition to protect Melbourne's green wedge areas and to better manage outward expansion. Council, through making submissions to any review of zones and overlays initiated by the State Government, can advocate a position; however any consultation undertaken and the final decision on the form of planning controls contained in the Victoria Planning Provisions and the Nillumbik Planning scheme rests with the Minister for Planning.

**Alexander Collum** asked Council:

In light of the announcement that consultation on the North East Link will commence in 2017, could Council outline the advocacy role it will play in the process, particularly as potential route options include cutting through Nillumbik, and Nillumbik homes?

**Mayor, Cr Peter Clarke**, responded that Council welcomes the recent announcements by the Victorian and Australian Governments to fund the preparation of feasibility study and business case for the North East Link.

Council awaits the appointment of the North East Link Authority, with advertisements placed in *The Age* and other papers at the weekend to commence that particular authority. Council had a meeting with VicRoads last Wednesday and sought in depth comment from them. However, VicRoads who had no comment because they did not have any in depth analysis themselves as they are still waiting for the establishment of the authority.

Once VicRoads have the terms of reference and the scope of the feasibility study released, Council will certainly be active to engage with and understand what the routes are and how to participate in that process.

Suffice to say that the previous Council (and this Council is not set to change that at this stage, nor am I anticipating that it is looking to do so) but the stated position or formal position of the Council is a route south from the end of the Ring Road to connect to the Eastern Freeway at Bulleen as the preferred route.

**Alexander Collum** asked Council:

Are Councillors aware of the current restructuring being undertaken in their youth services department, which include moves to shift Nillumbik Youth away from service and program delivery, towards a largely advocate role, and do Councillors agree with this approach?

**Mayor, Cr Peter Clarke**, responded a number of Council services in the community and leisure portfolio will undergo significant change as a result of Commonwealth and State reform particularly across the age and disability sectors. In addition, our community profile is shifting with new or changing demands on Council services, and there is pressure to drive efficiency and productivity agendas as a result of the reduced revenue from the State imposed cap and decline in Commonwealth and State funding.

Whilst we are responding to the global and local issues and establishing priorities, we will be doing that as we move forward with the Council Plan in 2017-2021, planning the future delivery model across all Council services including youth services that will position the organisation in readiness for implementing the new Council Plan in 2017

At this particular point, any changes to Council's provision of youth services will be subject to a future Council decision. This is not a matter we have had detailed conversations with but we will be dealing with as part of our Council plan going forward.

**9. Questions from the gallery continued**

Council received a series of questions relating to 23 Diamond Street. The Mayor summarised the questions and provided one response, seeking to give as much detail as possible in his response and noting that the item was listed to be considered later in the agenda.

**Gary Moulton**, asked Council:

Background Condition 9 of the VCAT Order granting a permit for three dwellings at 23 Diamond Street and dated 25 June 2013 stated that 'Prior to development commencing (including any demolition, excavations, tree removal, delivery of building materials and/or temporary buildings) the trees marked on the endorsed plans as being retained must be protected by a Tree Protection Zone (TPZ) to the satisfaction of the Responsible Authority.

There is there still no TPZ fencing around the three last protected trees despite the commencing of the development in late 2015 when the tennis court framework cyclone fencing was demolished and removed. It should be stressed here that the VCAT order stipulated that the commencement of development includes the start date of any demolition. The date of the demolition of the court fencing therefore clearly denotes the start date of this particular development. A full 12 months have elapsed since the development started and still no TPZ fencing.

What does Council intend to do about the omission of TPZ fencing around the three remaining protected trees at 23 Diamond Street, Eltham some 12 months after the commencement of the development?

**Gary Moulton**, asked Council:

The same VCAT Order stated that a condition would be that the amended and endorsed plans were to be generally in accordance with the advertised plans received by the Responsible Authority on 16 September 2011 which were prepared by Barry Pearce, Architect and Designer, These plans stipulate that the existing post and wire fence on the boundary of CLC and 23 Diamond Street be retained. I would suggest that the owner of the property has deliberately breached the VCAT order by willingly setting about to use the VICSMART fast track permit system to replace the post and wire fence with an ugly solid timber paling fence of some 59 metres long. If, as the owner has stated, the old post and wire fence was falling down then the VCAT Order would have compelled him to replace like for like.

Given that a post and wire fence on the border of CLC and 23 Diamond Street Eltham was a condition of the VCAT order covering the development on 23 Diamond Street, can Council rescind the Planning Permit that was issued for a 'fence' via the VicSmart process and then demand that the owner replace the ugly solid timber fence with a post and wire fence as per the VCAT order at his own expense.

**Amelia Sinclair** asked Council:

Following details outlined in the agenda for this meeting confirming that tree removal at 23 Diamond Street, Eltham, was 'unauthorised activity, as it has contravened a planning permit previously issued for the land', what limitations would apply to the offender if he is prosecuted at the Magistrates' Court and they impose a 'criminal conviction'? Will the offender/s lose their rights to develop/build again? And, at what stage in this process, would the offender's newer building permit be disregarded due to breaching the law?

Based on the offender's blatant breach of the laws (pre-existing permit and *Planning and Environment Act 1987*) removing the trees and fence at this property, how quickly can we have the site vegetation reinstated back to its former state?

**9. Questions from the gallery continued**

**Patricia Weller** asked Council:

Is the removal of the 12 trees from 23 Diamond Street considered one offence or 12 offences?

**Patricia Weller** asked Council:

Given that the Council had observed the removal of the trees on or about 1 December and 2 December and given that they had visited the site to observe that fewer trees were standing then when they last visited and that an enforcement office had observed the site for circa two hours then what powers did the Council have to prevent the tree felling as it took place over the period 1 and 2 December?

**Robert Weller** asked Council:

When were the three water meters installed at 23 Diamond Street Eltham?

Who was the owner of 23 and 25 Diamond Street when the water meters and the paling fence were installed?

**Joel Drew** asked Council:

How can the inconsistent extant of the planning overlays (ESO, SLO) that cover both 25 and 23 Diamond Street be addressed and rectified to ensure that current/ future developments at this address meet the general guidelines for which the majority of the area falls under, and is it this inconstancy that has facilitated the success of the VicSmart application for the paling fence on this property?

**Joel Drew** asked Council:

What action is being taken to ensure that the available building envelope on 23/25 Diamond Street is not increased as a result of the recent removal of trees on the property? The residents strongly feel that this building envelope should not be allowed to increase.

**Lou Empson** asked Council:

In relation to the removal of 12 twelve trees at 23 Diamond Street, Eltham will Council instruct its legal representatives to pursue the maximum penalty of \$186,000 for every tree removed?

**Lou Empson** asked Council:

In relation to the above question, if not, why not?

**Mayor, Cr Peter Clarke**, responded that issues raised broadly relate to Council's intent regarding fencing around the three remaining protected trees; can Council rescind the Planning Permit for the fence that was issued via the VicSmart process and require a post and timber replacement; implications of a criminal conviction; future development of the site; reinstatement of trees removed without consent, including timeframes; when were meters installed and who owned the property at that time; what powers of Council officers to prosecute, the extent of planning overlays and character controls; possible fines for the contraventions.

The answers to these various questions are:

- Council's actions in response to the recent removal of trees at 23 Diamond Street is the subject of a report that will be considered later on in tonight's meeting.
- The actions of the person responsible have generated significant concern in the community and amongst councillors.



**9. Questions from the gallery continued**

- Council will be seeking maximum penalties wherever possible for this breach.
- Although Council is prosecuting this matter in the Magistrates' Court, the person responsible is strongly contending that he has not acted on the previously issued planning permit for three dwellings.
- In accordance with advice from our solicitors, Council is pursuing one charge for each tree removed.
- If the alleged offender is found by the Court to be in breach of the permit or planning scheme, whether given a criminal conviction or not, this does not prevent him from developing or acting on any planning permit issued to land owned by him into the future, ie. he can clearly make an application despite the fact that he may well face a conviction in some way.
- Should the Magistrate rule that a breach has occurred, Council will consider a range of further options, including whether to seek an enforcement order at VCAT, and to ensure that an appropriate level of vegetative replanting is undertaken to compensate for the tree loss. Timing will likely be subject to some practicalities, such as the completion of the future development on the land.
- Council's enforcement options and powers extend only to the response to the offence itself, and not prevention. Once the tree removal was known to be occurring, Council had no powers to physically prevent this from occurring. Under advice from its solicitors, Council cautioned the landowner with instructions to cease and desist. Not only did we get the advice from the lawyers who sought to do that, I think a number of you are aware that I met personally with the landowner and made it abundantly clear to do exactly the same or wear the wrath of the Council as it would take the opportunity to seek maximum enforcement in terms of penalties.
- The VicSmart planning permit issued in July did not contravene a condition of the previously issued permit for three dwellings on the land, as it only prescribed post-and-wire fencing along the Diamond Street frontage.
- Only the eastern-most 22 metres of the constructed solid fence required a permit under the planning scheme due to the existence of the ESO over that section of the property.
- A fence in the ESO triggers a VicSmart permit under State planning laws, which precludes third party notification and appeal rights to VCAT. In assessing these applications, Council had only very limited decision making considerations concerning the movement of fauna and habitat values. To mitigate potential fauna impacts, a permit condition required the cutting out of the base of the fence at three metre intervals at a size of approximately 300mm x 300mm metres to allow for the free movement of wildlife. This requirement has not yet been adhered to by the permit holder, and he has been formally requested to have this completed by the end of February 2017.
- Under the Planning and Environment Act, Council cannot rescind its decision to issue a permit for the fence.
- The ESO is an environmental overlay, and not a character/landscape overlay such as a Significant Landscape Overlay.

**9. Questions from the gallery continued**

- There appears to be a change to the property boundary that places the boundary outside of the SLO on this property, and Council will look into this with respect to future planning scheme amendments.
- When assessing the new planning application for four dwellings on the land. Council is obligated to assess that proposal in accordance with the Nillumbik Planning Scheme. Although ultimately the planning application will need to be assessed on its own planning merit, it is acknowledged that the complicating factor will be whether the proposal takes advantage of the actions which contravened the existing planning permit for the land.

The only other thing I would want to add is, I think Councillors remained concerned about what has occurred with the fencing and will continue to investigate that particular matter and see what we can do going forward.

The responses I have provided are pretty much a statement of fact and in accordance with the planning law as is currently exists. Clearly there will be more to say on that later on tonight when we get to the item on the agenda.

**Henry Haszler** asked Council:

Diamond Valley Miniature Railway – As background to my question, I refer to the meeting between Mayor Peter Clarke and a group of ratepayers and park users at Eltham Lower Park on Monday 12 December. The meeting was called by Carole Waldron to discuss the apparently renewed interest by Diamond Valley Miniature Railway (DVR) in extending the track length through the Park. My question is in two parts: When was use of the land for the DVR initially approved and when did the DVR start operating? What if anything do Council documents, eg agendas, minutes, addenda, etc, around those times, generally and concerned specifically with the DVR, say about the land lease conditions?

**Mayor, Cr Peter Clarke**, responded that as I am sure you aware the railway is in Eltham Lower Park. Eltham Lower Park was permanently reserved for public recreation in 1965. Council was appointed as Committee of Management in 1970. The Diamond Valley Railway has operated from Eltham Lower Park since 1961. In 1975 the *Eltham Land Act 1975* designated land in Eltham Lower Park for the purposes of a miniature railway and enabled Council to grant a maximum 21 year lease, which is what it is currently operating under.

**Henry Haszler** asked Council:

Diamond Valley Miniature Railway – Following on from my first question, what payments for the use of the land does the lease stipulate and what if any income, for lease payments and other, has Council received from the DVR over the past five years? Who is responsible for cleaning and maintenance of the area surrounding the operations of the DVR and, if it is the Council, what have been the DVR related costs incurred by Council over the past five years?

**Mayor, Cr Peter Clarke**, responded the Diamond Valley Railway is responsible for all maintenance of land within their leased area. Council manages and maintains all parkland outside this leased area. The leased area is essentially defined by the wire fence that sits around its barrier and perimeter. There are some areas outside of that which I know that families and children use for recreation and having picnics and whatever else but that is actually maintained by the Council. It is only the area within the fenced space which is the requirement of the Diamond Valley Railway and they look after that particular space.

The annual rental is \$200 as set out under the lease as it was originally established.

**9. Questions from the gallery continued**

**Colleen Hackett** asked Council:

Given the Mayor's proposed discontinuance of the Mayor's column in the local community paper, the *Diamond Valley Leader*, and noting that six (one third) of Council Advisory Committees, where members of the public can have the input into Council policies, have been scrapped, I ask what are the reasons behind these actions and do they contradict Council's stated intention to have more community consultation rather than less?

**Mayor, Cr Peter Clarke**, responded that Council is committed to quality engagement undertaken in a cost effective manner. We will look a range of new and better ways to communicate and engage with the community. This will include using social media and the Councillor portfolio structure to provide for meaningful two-way interaction.

In further clarification of the Mayor's message as it was in the local paper, that was a decision which I took, It was costing the community around about \$55,000 to \$60,000 per annum. One of the undertakings that I took to the election is that I would not waste Council money publicising myself as a Councillor in my role as Mayor. So as a very direct response to the community and given that I had spoken to people for about four weeks to say does anybody read the Mayor's Message and I did not find a soul, I determined that the \$60,000 was better off in other community expenditure than telling everybody what a good week I was having and how we would move the matter forward.

We clearly have the Nillumbik News and a range of other informative matters for the community and I have had some response to make sure that people who do not want to actually follow social media can access and have good communication with the community and the Council with respect to that.

We will continue to find the means to that, but utilising social media is a substantial mechanism and indeed as I said the quarterly Nillumbik News and other correspondence we have with residents and other consultation we will have about specific projects, I am sure we will be able to undertake that in a more effective and cost effective manner for the community.

Equally whilst we have a lesser number of advisory committees, it is not fair to say that the issues that some of those committees dealt with will not continue to be dealt with. Some of those committees will be merged with other committees. As I am sure members of the community will be well aware, it is not only just the opportunity for community members to come together with Council to discuss matters but equally it takes time, money and expense for officers to be participating in all of those community forums.

And, so the matter is how we utilise the resources to the best advantage, and so the outcome, which has resulted, was what was determined as the best way to take the matter forward.

**Colleen Hackett** asked Council:

What is the estimated cost of the Christopher Wren investigation and how will this cost be met?

**Mayor, Cr Peter Clarke**, responded the cost of Mr Wren is estimated to be approximately \$70,000, however it will be offset by the savings of not having to fund a panel hearing for Amendment C101.

**9. Questions from the gallery continued**

**Alan Bamford** submitted a question to Council regarding a review of petition eligibility requirements in the Meeting Procedure Local Law, however as he was not present at the meeting, a written response will be provided.

**Greg Johnson on behalf of Friends of Nillumbik Inc.** asked Council:

The radical policy switch on Lot 1 Graysharps Road, Hurstbridge (see Ordinary Council Meeting of 22 November, Minutes: NOM.019/16) was done without a formal officer report and recommendation in the agenda. Why was no officer report called for and how can the public be assured that the policy switch both followed a transparent process and is in the interests of Nillumbik's residents?

**Mayor, Cr Peter Clarke**, responded that as the matter was an election issue raised with a number of Councillors, indeed debated with the Council and community through that particular process and undertakings given to us by Council, some Councillors considered how they might respond to that matter.

As a consequence the Councillors felt adequately informed about making decisions with respect to the matter having being briefed by Council officers leading up to that particular evening and the decision was made in an open meeting of the Council. Which is clearly the most open and transparent form of decision making.

**Greg Johnson on behalf of Friends of Nillumbik Inc.** asked Council:

The Mayor was reported as saying three suitable alternative sites for social housing have been offered to Araluen. Which sites are these, and when will we see an assessment of their suitability, zoning and other relevant planning constraints?

**Mayor, Cr Peter Clarke**, responded that his comments were not about social housing, but more about inclusive housing, more specifically looking to find housing accommodation for generally senior, aged individuals who have a disability and whose elderly parents are looking to ensure that their children have adequate accommodation in future years. That is what my comments were reflecting following the conversation with Araluen.

Suffice to say that there are a number of possible sites for intentional living. I have identified three which I do not want to talk about publicly at this stage because I have made some of those known to Araluen, who are considering them. It would be inappropriate until they come back to see whether they believe that would be an appropriate context.

Suffice to say, in broad terms they believe they are worth considering having met with their CEO and their Chairman of their Board, so they are going to come back and talk to us about that further.

Equally, I undertook at that Council meeting where we made that policy change to raise this issue at a regional level, I did so a week ago with the Mayors of Manningham, Banyule and Whittlesea to seek whether we could formulate a more regional response. During subsequent conversations with Araluen, they have indicated that within those three councils there would be approximately 300 people needing that sort of accommodation.

To suggest that we were going to resolve the issue simply by way of doing something at Graysharps Road, which was going to be in the order of six to eight units, given that the demand is around about 300, that this does need a more broad-based approach across the region and so those councils have undertaken to continue a conversation as well.

Suffice to say we are working through this issue in a very considered matter.

**9. Questions from the gallery continued**

**Oriana Halliwell** asked Council:

The proposal to acquire land is distressing for the majority of property owners, what are the policies and procedures that Nillumbik Council use to ensure ethical practices and treatment of property owners who are forced in the pre-acquisition stages to defend themselves and their properties with limited expertise and resources available?

**Mayor, Cr Peter Clarke**, responded that Council acknowledges the distress that acquisition of land may cause and is bound by the legal requirements of the Planning and Environment Act and Land Acquisition and Compensation Act in any acquisition process. Council also follows its communication and consultation protocols to ensure that any affected property owners are engaged in the process at the earliest possible stage and given every opportunity to question, discuss and understand their rights under the legislation.

I am not sure exactly what you are referring to but I presume it might have something to do with the current C108 conversation around the acquisition overlay. Suffice to say, we are aware of it. In fact, the Deputy Mayor and myself met with another family who is probably the most dramatically impacted by the proposed overlay earlier on today. Where we had a very fruitful and long conversation about that with their legal representatives recognising we are waiting for the panel report to come out and see what they say about that matter.

But the only thing I would say outside of that, we were frankly a little surprised to learn that this was the first meaningful conversation that they had directly with Councillors about that, so they were certainly appreciative of the fact that we were open and transparent and happy to meet with them and have the conversation which they thought was a step forward from the past.

**Oriana Halliwell** asked Council:

Where can the policies and procedures relating to question 1 be accessed that outline the Nillumbik Council practices and methods that ensure ethical treatment and non-bias support groups for property owners negatively affected by the pre-acquisition stages?

**Mayor, Cr Peter Clarke**, responded that as indicated in the response to question one, the relevant legislation sets the requirements for the process to be followed. Council's Community Engagement Policy is accessible on the website and officers will provide any reasonable assistance to affected residents.

To be frank, the bigger issue is to make ourselves available to you and that's exactly what this Council intends to do, to meet with residents and work through the issues to get the best possible outcome. I think that is the most transparent and open way we can proceed.

**Anne Stoneman** asked Council:

There are serious questions affecting the compulsory acquisition of our land under proposed Amendment C108 which Council officers have been unable to answer. Does this Council have, or will it put in place, a process to guarantee fair and ethical consideration of outstanding issues for those of us stressed out by this excruciating process prior to making any decision whether or not to approve the Amendment?

**9. Questions from the gallery continued**

**Mayor, Cr Peter Clarke**, responded that Council will consider the report of the independent Planning Panel when it is handed down, presumably sometime in early in 2017, to determine its course of action.

Council will of course observe due process in any action it takes at the time. Council will consider and respond to any currently outstanding issues that are not under consideration by the Panel and encourages yourself and others directly affected to put those before officers when officers are considering the report. Or you might wish to write to your Ward Councillor or myself as Mayor or relevant Committee Chairs in the case of Cr Perkins, where we will take full consideration.

Clearly that will be an open public meeting where we will be considering those matters and we will clearly be taking full account of all of the concerns of the residents impacted by that.

**Brian Murray on behalf of Nillumbik Ratepayers Association** asked Council:

During 'Council's summing up' at the C108 Panel, in answer to a question on notice, through Chair Eade, re: rebuilding after loss by fire on a block under the zone size, Mr Chad Griffiths, Manager Strategic and Economic Planning, stated that the questioner had 'existing use right' and could rebuild, he went on to say that they would need a building permit and later stated they would need a planning permit, Was Chad Griffiths correct in stating that landowners on undersized blocks (eg. two hectares in a eight hectares zone area) have existing use rights to rebuild?

The Nillumbik Ratepayer's Association (NRA) challenged Mr Griffiths answer, so if the answer to question 1 above is, no existing use rights exist for rebuilding on an under the zone size block Q. What action will be taken against Mr Griffiths for misleading the public and what action will be taken to inform the public of their position if they lose more than 50 per cent of their home due to fire or other means.

**Mayor, Cr Peter Clarke**, responded that as a general principle under the planning scheme, if the land had been used for a dwelling prior to the bushfire, the planning scheme recognises existing use rights to continue to use the land for a dwelling in accordance with the provisions of the Planning and Environment Act. With respect to rebuilding, the State Government may implement overriding legislation to aid the rebuilding effort (as was the case in 2009). Failing this, the development component of the rebuilt dwelling would need to comply with the planning scheme at that time.

Council is yet to receive a panel report on C108 and any item relevant to this amendment that was contested at the hearing will be addressed in the panel findings and may assist you in gaining further clarity with regards your contention.

**Gila Schnapp** submitted a petition comprising two signatures, requesting Council investigate sealing a small portion of Pioneer Road, Yarrambat. The petition does not meet the requirements under the Meeting Procedure Local Law and was treated as a question to Council instead. However, as Mrs Schnapp was not present at the meeting, a written response will be provided. The matters raised were also dealt with as part of confidential report OCM.193/16 Tender report – Hillmartin Lane Area Special Charge Scheme.

**10. Reports of Advisory Committees**

Nil

**11. Reports of Special Committees**

Nil

**12. Officers' reports**

The following officers' reports were moved as a block motion and their recommendations adopted:

- OCM.180/16 Plenty Tennis Club Loan Guarantee Request
- OCM.181/16 Terms of Reference - Future Nillumbik Committee
- OCM.182/16 Mid-Year Financial Review 2016-2017
- OCM.183/16 Audit Committee - Minutes December 2016
- OCM.184/16 Risk and Insurance Report September 2016
- OCM.185/16 Supply and delivery of quarry products
- OCM.186/16 Tender report - Contract 1617-26 - Hillmartin Lane Area Special Charge Scheme
- OCM.187/16 Environment and Planning Monthly Activity Report
- OCM.188/16 Assemblies of Councillors

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Officers' reports OCM.180/16, OCM.181/16, OCM.182/16, OCM.183/16, OCM.184/16, OCM.185/16, OCM.186/16, OCM.187/16 and OCM.188/16 be dealt with as a block motion and the recommendations be adopted.**

**CARRIED**

12. Officers' reports

OCM.177/16 Fire management information and actions

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**Distribution: Public**

**Manager: Conal Creedon, General Manager Infrastructure Services**

**Author: Conal Creedon, General Manager Infrastructure Services**

**Summary**

The Mayor and some Councillors met with local CFA Captains on Thursday 8 December 2016 to discuss current preparations for the fire danger period and related fire management issues. The topics that were discussed included:

- Permits for planned burns
- The definition and application of the exemption for Burgan removal under the planning scheme
- Roadside vegetation management
- Understanding of permitted vegetation removal on roadsides and private property under current controls

There are a number of established procedures for conducting controlled burns by CFA brigades which require a strategic objective and detailed planning. These are spelled out in more detail in the body of the report. With the appropriate pre-planning there are opportunities for more controlled burns to be conducted and these can be facilitated through the Municipal Fire Management Planning Committee.

The provision of information to the community on current permitted actions to reduce fuel and prepare against fire threat has been ongoing over each summer period with CFA, Council and Emergency Management Victoria providing a range of advice in varying formats. It is acknowledged that this effort needs to be continuous and sustained and make greater use of social media.

Council can also provide greater clarity to brigades and the public on the issues of roadside vegetation management as well as the exemption on removal of Burgan from private land. This information can be disseminated through all available channels.

Recommendation
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That Council:

1. Writes to the Municipal Fire Management Planning Committee and CFA District 14 advising of the difficulties captains identify with planning for controlled burns and request that the Committee recommend any further improvements and/or support required to expedite plans in each brigade area.
2. Writes to the Minister for Planning requesting the preparation of a ministerial amendment to amend the amend the species of Burgan referred to in the Nillumbik Planning Scheme from *Kunzea ericoides* to *Kunzea leptospermoides* or, failing that, seek authorisation from the Minister for Planning to commence Planning Scheme Amendment C114 to amend the species identification and to place the amendment on public exhibition.



12. Officers' reports

OCM.177/16 Fire management information and actions

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3. Reviews and develop a consolidated suite of key information in relation to fire management on private land and permitted activity on adjacent roadsides for distribution through all available media channels.
4. Advises each Brigade Captain of these actions.

**Motion**

**Cr Peter Perkins**

**Cr Karen Egan**

**That:**

1. **Council writes to the Municipal Fire Management Planning Sub-Committee of the Municipal Emergency Management Planning Committee and CFA District 14 advising of the difficulties captains identify with planning for controlled burns and request that the Committee recommend any further improvements and/or support required to expedite plans in each brigade area.**
2. **Council writes to the Minister for Planning as a matter of urgency requesting the preparation of a ministerial amendment to amend the species of Burgan referred to in the Nillumbik Planning Scheme from *Kunzea ericoides* to *Kunzea leptospermoides* or, failing that, seek authorisation from the Minister for Planning to commence Planning Scheme Amendment C114 to amend the species identification and to place the amendment on public exhibition.**
3. **Council:**
  - a) **Reviews and develops a suite of information to inform residents how they can reduce fire risk on their property and adjacent roadside.**
  - b) **Appoints a small editorial team chaired by Cr Perkins including representative members of the community and a CFA brigade captain. The team will consult with all CFA brigade captains in Nillumbik.**
  - c) **Utilises a variety of media channels to be used to publicise the suite of information.**
  - d) **Reviews and updates the Council website accordingly.**
  - e) **Reviews Council permitting processes for controlled burns with the CFA**
4. **Council at a minimum have two meetings of all Nillumbik fire captains and Group Officers to be held in each financial year:**
  - **Meeting 1 held pre-fire season, likely October**
  - **Meeting 2 held post-fire season, likely April.**
5. **Advises each Brigade Captain and Group Officer of these actions.**

**CARRIED**

12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

**Distribution: Public**

**Manager: Ransce Salan, General Manager Environment and Planning**

**Author: Renae Ahern, Coordinator Statutory Planning**

**Application summary**

Address of the land	28 Arthur Street, Eltham
Site area	962 square metres
Proposal	Construction of 9 dwellings, removal of a substantial tree and a reduction in visitor parking requirements
Application number	386/2014/03P
Date lodged	23 July 2014
Applicant	Time Architect
Zoning	Activity Centre Zone (Schedule 1)
Overlay(s)	Significant Landscape Overlay (Schedule1)
Reason for being reported	More than five dwellings
Number of objections	Two
Key issues	<ul style="list-style-type: none"> <li>• Strategic merit for higher density development</li> <li>• Car parking and traffic impacts</li> <li>• Compliance with Clause 55 (ResCode)</li> <li>• Built form and neighbourhood character</li> <li>• Vegetation impacts and landscaping</li> </ul>
Officer recommendation	That Council supports the amended plans and the recommended permit conditions at the forthcoming VCAT hearing

12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

Recommendation
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That Council:

1. Supports the amended plans and their substitution at the forthcoming VCAT hearing, and advise VCAT and the registered parties of this position.
2. Circulates to VCAT (and the registered parties to the VCAT proceeding) the following draft permit conditions:
  1. Before the development 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 2 December 2016 and prepared by Time Architects, but modified to show:
    - a) The full extent of excavation setback a minimum distance of 1.5 metres from the eastern property boundary, in order to avoid the Structural Root Zone of third party trees on the abutting property.
    - b) The crossover and at least the first 12 metres of the access way inside the property boundary increased to a width of 5 metres. The remainder of the access way must maintain a minimum width of 4.5 metres. Building setbacks to the north, south and west title boundaries must not be reduced.
    - c) The ground floor of each dwelling setback from the eastern boundary as determined by Condition 1a) and 1b). Building setbacks to the north, south and west title boundaries must not be reduced.
    - d) The cantilevered first floor of Dwelling 1 setback a minimum distance of 3 metres from the outside edge of the retaining wall on the eastern edge of the driveway, so as to allow clearance for delivery trucks and vans to the site. This distance will be determined by Condition 1a) and 1b). Building setbacks to the north, south and west title boundaries must not be reduced.
    - e) The reversing area for Dwelling 9 reduced in length and the communal compost area setback an additional 1.5 metres off the southern boundary, so as to provide additional private open space for Dwelling 9. This will facilitate the provision of stairs from the first floor dining area into the area of private open space.
    - f) The inclusion of external stairs from the first floor dining area of Dwelling 9 so as to provide direct access to the area of private open space. The stairs and any associated footings must be located outside of the tree protection zone of Tree No.5, or alternatively arboricultural advice must be provided demonstrating that the tree will not be adversely impacted.
    - g) The area of private open space for Dwelling 9 to be shown consistently on all plans.

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**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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- h) The removal of the bollard light from the private open space of Dwelling 9 as a result of Condition 1d).
  - i) The internal ground floor layout of Dwelling 1 modified so that the study cannot reasonably be used as a third bedroom.
  - j) The removal of Tree No. 1 to facilitate a wider crossover if necessary.
  - k) Clear delineation of future common property areas.
  - l) Tree protection zones drawn to scale on the site plan and ground floor plan.
  - m) Any trees proposed to be pruned.
  - n) Written demonstration from the project arborist that any pruning of third party trees for box clearance along the driveway will not adversely impact neighbouring trees.
  - o) The location of all trenched services.
  - p) A full schedule of external colours and materials, generally in accordance with the plans by Time Architects.
  - q) The Tree Protection Zone (TPZ) and associated tree protection fencing for all trees shown on the plans to be retained, including trees on adjoining properties and within the road reserve as required by condition 6 of this permit.
  - r) An amended landscape plan in accordance with condition 5 of this permit.
  - s) A Tree Management Plan in accordance with condition 9 of this permit.
  - t) A Construction Management Plan in accordance with condition 10 of this permit.
  - u) An amended Waste Management Plan to address the following:
    - i. Waste and recycling collection to be carried out by a private contractor (and not Council).
    - ii. Waste and recycling collection is to be carried out within the subject site and not from the kerbside.
    - iii. Time and frequency of collection.
    - iv. Method of collection.
    - v. Location of bin storage areas.
    - vi. Provision of both waste and recycling storage and collection.
2. The development (including tree removal) as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
  3. The tree(s) nominated for pruning as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.

12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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4. Only trees marked 'tree to be removed' on the endorsed plans are permitted to be removed, to the satisfaction of the Responsible Authority.
5. Before the development commences, three copies of 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 landscaping plan must be generally in accordance with the landscape concept plan prepared by John Patrick Architects Pty Ltd (Drawing no. VCAT01 Revision). The plan must show:
  - 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 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, lighting and other landscape works including areas of cut and fill.
  - f) Appropriate irrigation systems.
  - g) The quantities of all shrubs, groundcovers, and climbers to be shown.
6. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the trees marked on the endorsed plans as being retained must have a Tree Protection Zone (TPZ) to the satisfaction of the Responsible Authority. The fencing associated with this TPZ must meet the following requirements:
  - a) Extent
 

The tree protection fencing (TPF) is to be provided to the extent of the identified TPZ. If works are shown on any endorsed plan of this permit within the confines of the calculated TPZ, then the TPF 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 TPZ.

The TPF must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.

12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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- c) Signage  
Fixed signs are to be provided on all visible sides of the TPF clearly stating 'Tree Protection Zone – No Entry', to the satisfaction of the Responsible Authority.
- d) Irrigation  
The area within the TPZ and TPF 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 TPZ, to the satisfaction of the Responsible Authority.
- f) Access to TPZ  
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).

7. 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.

8. 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.
  - h) Unauthorised entry by any person, vehicle or machinery.

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**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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9. Before the development commences, three copies of a Tree Management Plan (TMP) with measures to protect Tree No. 5 on the subject site and trees on abutting properties and in the adjacent road / public areas 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.
10. Before the development commences, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The management plan must show:
  - a) Measures to control erosion and sediment and sediment laden water runoff including the design details of structures.
  - b) Dust control.
  - c) Where any construction wastes, equipment, machinery and/or earth is to be stored/stockpiled during construction.
  - d) Where access to the site for construction vehicle traffic will occur.
  - e) The location and details of a sign to be erected at the entrance(s) of the site advising contractors that they are entering a „sensitive site“ with prescribed tree protection zones and fences.
  - f) The location of any temporary buildings or yards.

Development works on the land must be undertaken in accordance with the endorsed Construction Management Plan to the satisfaction of the Responsible Authority.

11. Any tree that is shown on the endorsed plans as being pruned, must be pruned in accordance with Australian Standard 4373/2007 Pruning for Amenity Trees, under the supervision of a qualified arborist, to the satisfaction of the Responsible Authority.
12. Unless with the prior written consent of the Responsible Authority, before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out, completed and maintained to the satisfaction of the Responsible Authority.
13. All external lighting must be designed, baffled and located so as to prevent adverse effect on adjoining land, to the satisfaction of the Responsible Authority.
14. Vehicular access and egress to the development site from the roadway must be by way of a vehicle crossing constructed to the requirements of the Nillumbik Shire Council, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an Infrastructure Works permit.

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**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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15. Driveways, access lanes, and areas set aside for the parking of vehicles must be properly formed to such levels to ensure they can be utilised at all times and in accordance with the endorsed plans. All must be drained and constructed in concrete, asphalt or similar surface, and must be carried out and maintained to the satisfaction of the Responsible Authority.
16. The development, including any new paved areas, must be drained so as to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land. The drainage system within the subject site must be designed to the requirements and satisfaction of the relevant building surveyor. Any connection to Council's underground drainage system within road reserves or drainage easements must be carried out under Council supervision and a Minor Works within the Municipal Road Reserves permit.
17. Stormwater from the roof of each dwelling hereby approved must be directed to a holding tank with sufficient storage capacity in relation to the roof area. Each dwelling must have an independent holding tank with a minimum storage capacity of 2,000 litres. The overflow from the tanks must be directed via independent internal drainage system to the on-site detention system.

Water in the holding tank/s may be used for one or more of the following purposes: toilet flushing; property irrigation; vehicle washing and any other purpose approved by the Responsible Authority.

Stormwater from the driveway must be collected using 225mm wide trench-grates across the driveway and/or grating pits positioned in the driveway at a maximum spacing of 15 metres and connected to the on-site detention device.

An on-site detention device must be installed, at no cost to Council, to restrict the property discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority unless with the prior written consent of the Responsible Authority. The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge.

The on-site detention device shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval prior to the commencement of the development. The engineer that is designing on site detention unit must contact Council's Development Engineer for tc and tso figures. For calculation of the onsite detention unit adopt for pre development one in five years and post development one in 10 years average occurrence interval and for vacant block adopt 60 per cent impervious area.

Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and Council's specifications. An AutoCAD electronic copy of the approved plans must be submitted to Council for record purposes.



12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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18. The nominated point of stormwater discharge requires the construction of drainage works outside the boundaries of the site. These works are to be constructed at no cost to Council and under Council supervision. Such drainage works shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval prior to the commencement of the development. An AutoCAD electronic copy of the approved plans must be submitted to Council for record purposes.
19. No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property. In this regard, pollution or litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.
20. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within two years of the date of this permit.
  - b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within six 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, including tree removal, a copy of this permit and the endorsed plan(s) must be kept on-site and made available for inspection by Council officers.

The removal of vegetation is often found by Council to generate concern amongst other community members who may not be aware that a permit has been obtained. Council therefore strongly recommends that the permit holder advise any nearby neighbours of their intention to remove the vegetation and that they have obtained permission to do so before they proceed to remove the vegetation. Failure to do so may result in Council officers being obliged to visit the land, and also potentially delay the vegetation removal process while compliance with the permit is checked.

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 \$777 for the land owner and occupant, and \$1,555 for any company which may be undertaking works on-site.

For any clarification or enquiries concerning the drainage or stormwater conditions contained in this permit, please contact Council's Development Engineer on 9433 3234.

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OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham

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**Motion**

Cr Peter Perkins

Cr Karen Egan

That Council:

1. Advises VCAT that the current proposal remains a deficient response to the development opportunity wherein it fails to respond to the fall of the site, an awkward built form with excessive overhangs and recommends a refusal of the proposal.
2. Circulates to VCAT (and the registered parties to the VCAT proceeding) the following draft permit conditions:
  1. Before the development 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 2 December 2016 and prepared by Time Architects, but modified to show:
    - a) The full extent of excavation setback a minimum distance of 1.5 metres from the eastern property boundary, in order to avoid the Structural Root Zone of third party trees on the abutting property.
    - b) The crossover and at least the first 12 metres of the access way inside the property boundary increased to a width of 5 metres. The remainder of the access way must maintain a minimum width of 4.5 metres. Building setbacks to the north, south and west title boundaries must not be reduced.
    - c) The ground floor of each dwelling setback from the eastern boundary as determined by Condition 1a) and 1b). Building setbacks to the north, south and west title boundaries must not be reduced.
    - d) The cantilevered first floor of Dwelling 1 setback a minimum distance of 3 metres from the outside edge of the retaining wall on the eastern edge of the driveway, so as to allow clearance for delivery trucks and vans to the site. This distance will be determined by Condition 1a) and 1b). Building setbacks to the north, south and west title boundaries must not be reduced.
    - e) The reversing area for Dwelling 9 reduced in length and the communal compost area setback an additional 1.5 metres off the southern boundary, so as to provide additional private open space for Dwelling 9. This will facilitate the provision of stairs from the first floor dining area into the area of private open space.

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- f) The inclusion of external stairs from the first floor dining area of Dwelling 9 so as to provide direct access to the area of private open space. The stairs and any associated footings must be located outside of the tree protection zone of Tree No.5, or alternatively arboricultural advice must be provided demonstrating that the tree will not be adversely impacted.
- g) The area of private open space for Dwelling 9 to be shown consistently on all plans.
- h) The removal of the bollard light from the private open space of Dwelling 9 as a result of Condition 1d).
- i) The internal ground floor layout of Dwelling 1 modified so that the study cannot reasonably be used as a third bedroom.
- j) The removal of Tree No. 1 to facilitate a wider crossover if necessary.
- k) Clear delineation of future common property areas.
- l) Tree protection zones drawn to scale on the site plan and ground floor plan.
- m) Any trees proposed to be pruned.
- n) Written demonstration from the project arborist that any pruning of third party trees for box clearance along the driveway will not adversely impact neighbouring trees.
- o) The location of all trenched services.
- p) A full schedule of external colours and materials, generally in accordance with the plans by Time Architects.
- q) The Tree Protection Zone (TPZ) and associated tree protection fencing for all trees shown on the plans to be retained, including trees on adjoining properties and within the road reserve as required by condition 6 of this permit.
- r) An amended landscape plan in accordance with condition 5 of this permit.
- s) A Tree Management Plan in accordance with condition 9 of this permit.
- t) A Construction Management Plan in accordance with condition 10 of this permit.
- u) An amended Waste Management Plan to address the following:
  - i. Waste and recycling collection to be carried out by a private contractor (and not Council).
  - ii. Waste and recycling collection is to be carried out within the subject site and not from the kerbside.

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**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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- iii. Time and frequency of collection.
  - iv. Method of collection.
  - v. Location of bin storage areas.
  - vi. Provision of both waste and recycling storage and collection.
2. The development (including tree removal) as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
  3. The tree(s) nominated for pruning as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
  4. Only trees marked 'tree to be removed' on the endorsed plans are permitted to be removed, to the satisfaction of the Responsible Authority.
  5. Before the development commences, three copies of 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 landscaping plan must be generally in accordance with the landscape concept plan prepared by John Patrick Architects Pty Ltd (Drawing no. VCAT01 Revision). The plan must show:
    - 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 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, lighting and other landscape works including areas of cut and fill.
    - f) Appropriate irrigation systems.
    - g) The quantities of all shrubs, groundcovers, and climbers to be shown.
  6. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the trees marked on the endorsed plans as being retained must have a Tree Protection Zone (TPZ) to the satisfaction of the Responsible Authority. The fencing associated with this TPZ must meet the following requirements:

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**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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**a) Extent**

The tree protection fencing (TPF) is to be provided to the extent of the identified TPZ. If works are shown on any endorsed plan of this permit within the confines of the calculated TPZ, then the TPF 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 TPZ.

The TPF must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.

**c) Signage**

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

**d) Irrigation**

The area within the TPZ and TPF 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 TPZ, to the satisfaction of the Responsible Authority.

**f) Access to TPZ**

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).

- 7. 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.

12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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8. 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.
  - h) Unauthorised entry by any person, vehicle or machinery.
  
9. Before the development commences, three copies of a Tree Management Plan (TMP) with measures to protect Tree No. 5 on the subject site and trees on abutting properties and in the adjacent road / public areas 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.
  
10. Before the development commences, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The management plan must show:
  - a) Measures to control erosion and sediment and sediment laden water runoff including the design details of structures.
  - b) Dust control.
  - c) Where any construction wastes, equipment, machinery and/or earth is to be stored/stockpiled during construction.
  - d) Where access to the site for construction vehicle traffic will occur.
  - e) The location and details of a sign to be erected at the entrance(s) of the site advising contractors that they are entering a „sensitive site“ with prescribed tree protection zones and fences.
  - f) The location of any temporary buildings or yards.

Development works on the land must be undertaken in accordance with the endorsed Construction Management Plan to the satisfaction of the Responsible Authority.
  
11. Any tree that is shown on the endorsed plans as being pruned, must be pruned in accordance with Australian Standard 4373/2007 Pruning for Amenity Trees, under the supervision of a qualified arborist, to the satisfaction of the Responsible Authority.

12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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12. Unless with the prior written consent of the Responsible Authority, before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out, completed and maintained to the satisfaction of the Responsible Authority.
13. All external lighting must be designed, baffled and located so as to prevent adverse effect on adjoining land, to the satisfaction of the Responsible Authority.
14. Vehicular access and egress to the development site from the roadway must be by way of a vehicle crossing constructed to the requirements of the Nillumbik Shire Council, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an Infrastructure Works permit.
15. Driveways, access lanes, and areas set aside for the parking of vehicles must be properly formed to such levels to ensure they can be utilised at all times and in accordance with the endorsed plans. All must be drained and constructed in concrete, asphalt or similar surface, and must be carried out and maintained to the satisfaction of the Responsible Authority.
16. The development, including any new paved areas, must be drained so as to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land. The drainage system within the subject site must be designed to the requirements and satisfaction of the relevant building surveyor. Any connection to Council's underground drainage system within road reserves or drainage easements must be carried out under Council supervision and a Minor Works within the Municipal Road Reserves permit.
17. Stormwater from the roof of each dwelling hereby approved must be directed to a holding tank with sufficient storage capacity in relation to the roof area. Each dwelling must have an independent holding tank with a minimum storage capacity of 2,000 litres. The overflow from the tanks must be directed via independent internal drainage system to the on-site detention system.

Water in the holding tank/s may be used for one or more of the following purposes: toilet flushing; property irrigation; vehicle washing and any other purpose approved by the Responsible Authority.

Stormwater from the driveway must be collected using 225mm wide trench-grates across the driveway and/or grating pits positioned in the driveway at a maximum spacing of 15 metres and connected to the on-site detention device.

12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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**An on-site detention device must be installed, at no cost to Council, to restrict the property discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority unless with the prior written consent of the Responsible Authority. The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge.**

**The on-site detention device shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval prior to the commencement of the development. The engineer that is designing on site detention unit must contact Council's Development Engineer for tc and tso figures. For calculation of the onsite detention unit adopt for pre development one in five years and post development one in 10 years average occurrence interval and for vacant block adopt 60 per cent impervious area.**

**Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and Council's specifications. An AutoCAD electronic copy of the approved plans must be submitted to Council for record purposes.**

- 18. The nominated point of stormwater discharge requires the construction of drainage works outside the boundaries of the site. These works are to be constructed at no cost to Council and under Council supervision. Such drainage works shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval prior to the commencement of the development. An AutoCAD electronic copy of the approved plans must be submitted to Council for record purposes.**
- 19. No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property. In this regard, pollution or litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.**
- 20. This permit will expire if one of the following circumstances applies:**
  - a) The development is not commenced within two years of the date of this permit.**
  - b) The development is not completed within four years of the date of this permit.**

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



12. Officers' reports

**OCM.178/16 Construction of nine dwellings, removal of a substantial tree and a reduction in visitor parking requirements at 28 Arthur Street, Eltham**

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**NOTES:**

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

The removal of vegetation is often found by Council to generate concern amongst other community members who may not be aware that a permit has been obtained. Council therefore strongly recommends that the permit holder advise any nearby neighbours of their intention to remove the vegetation and that they have obtained permission to do so before they proceed to remove the vegetation. Failure to do so may result in Council officers being obliged to visit the land, and also potentially delay the vegetation removal process while compliance with the permit is checked.

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 \$777 for the land owner and occupant, and \$1555 for any company which may be undertaking works on-site.

For any clarification or enquiries concerning the drainage or stormwater conditions contained in this permit, please contact Council's Development Engineer on 9433 3234.

**CARRIED**

12. Officers' reports

**OCM.179/16 Recreation Trails Advisory Committee appointing of Committee vacancies and updated Terms of Reference**

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**Distribution: Public**

**Manager: Naomi Paton, Acting General Manager Community and Leisure**

**Author: Alison Hickey, Leisure Services Project Officer**

**Summary**

The Recreation Trails Advisory Committee (RTAC) provides advice to Council on the planning, development and use of trails across the Shire. The Committee consists of three Councillors and twelve community representatives.

There are currently three community representative vacancies in the RTAC.

These vacancies were recently advertised and eleven expressions of interest received. The applications have been assessed by officers and three candidates are recommended in this report for Council's consideration.

The Terms of Reference have also been updated.

**Recommendation**

That Council:

1. Endorses the recommended candidates to fill the three community representative vacancies in the Recreation Trails Advisory Committee.
2. Endorses the updated Recreation Trails Advisory Committee Terms of Reference (Attachment 1).

**Motion**

**Cr Karen Egan  
Cr Jane Ashton**

**That Council:**

1. **Endorses the recommended candidates to fill the three community representative vacancies in the Recreation Trails Advisory Committee.**
2. **Endorses the updated Recreation Trails Advisory Committee Terms of Reference (Attachment 1), and alters the Terms of Reference to ensure that all members are residents of the Shire as at July 2017.**

**CARRIED**

12. Officers' reports

OCM.180/16 Plenty Tennis Club Loan Guarantee Request

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**Distribution:** Public

**Manager:** Naomi Paton, Acting General Manager Community and Leisure

**Author:** Joanne Massoud, Leisure Services Development Officer

**Summary**

This report considers a request from the Plenty Tennis Club operating under a lease from Council-owned facilities at Plenty War Memorial Park, Plenty.

The Club has approached Council requesting Council act as a loan guarantor for \$15,000 to retrospectively fund the upgrade of tennis court lighting from metal halide to the more energy efficient and financially sustainable light-emitting diode (LED).

The Bendigo Bank has agreed to provide a loan of \$15,000, subject to a Council guarantee of the loan. The Club proposes to repay the loan over five years.

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Council:**

1. **Acts as loan guarantor for the Plenty Tennis Club for \$15,000 for a period of five years for the Club to reimburse Council for contributions towards the recent upgrade of tennis court lighting, on the proviso that the Club provides over the life of the loan:**
  - a) **Quarterly loan statements from the Bank to demonstrate that the loan repayment has been made as scheduled.**
  - b) **Annual cash flow reports and projections to ensure the Council is informed of any possible adverse financial projections.**
  - c) **Current Business Plan forecasting memberships, programs and services.**
2. **Affixes the common seal of Nillumbik Shire Council to the necessary loan guarantee documentation.**

**CARRIED**

Note: Item OCM.180/16 was carried as part of a block motion.

**12. Officers' reports****OCM.181/16 Terms of Reference - Future Nillumbik Committee**

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**Distribution: Public****Manager: Andrew Port, General Manager Corporate Services****Author: Andrew Port, General Manager Corporate Services****Summary**

This report presents the draft Terms of Reference for the new Future Nillumbik Committee.

At the Council Meeting on 22 November 2016, Council resolved to establish portfolio responsibilities for Councillors. Council also resolved to establish a single Special Committee to replace the previous Policy and Services Committee and Planning Committee. This single Special Committee will be chaired by the relevant portfolio Councillor for those items within their portfolio. It is proposed that the committee be named the Future Nillumbik Committee.

In order to implement Council's resolution, several steps are required, as was noted in the report to Council on 22 November. The first step is to confirm the Terms of Reference for the Special Committee, which is considered in this report.

The second step is the preparation of a new Instrument of Delegation, which provides the formal authority for the Special Committee to make certain decisions on behalf of Council.

In order to make changes to the existing arrangements for members of the public to address the Committee, Council will also need to modify the existing Meeting Procedure Local Law. This involves a statutory process of public exhibition and submissions.

<b>Motion</b>
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**Cr Bruce Ranken****Cr Karen Egan****That Council:**

- 1. Approves the Terms of Reference for the Future Nillumbik Committee (Attachment 1).**
- 2. Receives a further report with a draft Instrument of Delegation for the Future Nillumbik Committee, for approval by Council.**
- 3. Receives a further report with a draft version of a modified Meeting Procedure Local Law, for approval by Council in order to commence the statutory process of public consultation.**
- 4. Confirms that the Future Nillumbik Committee meeting dates for 2017 will be the same as the meeting dates previously approved by Council for the former Policy and Services Committee and Planning Committee.**
- 5. Resolves to abolish the Policy and Services Committee and the Planning Committee, effective from the date of Council approval of the new Instrument of Delegation to the new Future Nillumbik Committee.**

**CARRIED**

Note: Item OCM.181/16 was carried as part of a block motion.

12. Officers' reports

OCM.182/16 Mid-Year Financial Review 2016-2017

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**Distribution: Public**

**Manager: Andrew Port, General Manager Corporate Services**

**Author: Vince Lombardi, Manager Finance**

**Robert Malignaggi, Management Accountant**

**Summary**

This report presents the outcomes of the Mid-Year Financial Review.

The revised forecast on a cash (rate-determination) basis is for Council to achieve a surplus of \$681,504 for the financial year 2016-2017, which is an improvement on the \$150,200 forecast in the original budget.

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Council:**

- 1. Approves the changes detailed in the Mid-Year Financial Review (Attachment 1).**
- 2. Notes the revised forecast on a cash (rate-determination) basis of \$681,504 for financial year 2016-2017.**

**CARRIED**

Note: Item OCM.182/16 was carried as part of a block motion.

12. Officers' reports

OCM.183/16 Audit Committee - Minutes December 2016

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**Distribution: Public**

**Manager: Andrew Port, General Manager Corporate Services**

**Author: Vince Lombardi, Manager Finance**

**Melika Sukunda, Financial Accountant**

**Summary**

In accordance with the *Local Government Act 1989* section 139 and good governance principles, councils must have an Audit Committee.

As resolved at the Ordinary Meeting of Council on 16 August 2005 the Audit Committee minutes are to be reported and presented at an Ordinary Meeting of Council following the Audit Committee meeting.

The Audit Committee met on 12 December 2016. The minutes for the meeting are attached.

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Council:**

- 1. Notes the minutes of the Audit Committee meeting for 12 December 2016.**
- 2. Approves the Audit Committee's recommendation that a report to Council arising from the internal audit of Open Space/Tree Management be fast tracked and be provided to Council in early 2017 and considered as part of the 2017-2018 budget process.**

**CARRIED**

Note: Item OCM.183/16 was carried as part of a block motion.

12. Officers' reports

OCM.184/16 Risk and Insurance Report September 2016

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**Distribution: Public**

**Manager: Andrew Port, General Manager Corporate Services**

**Author: Craig Commene, Risk Advisor  
Vince Lombardi, Manager Finance**

**Summary**

This report provides a summary of Council's Risk and Insurance Report for the quarter ending September 2016.

The report is presented in accordance with the Local Government Performance Reporting Framework that commenced on 1 July 2014. This reporting framework requires the presentation of a report to Council at least every six months, detailing the strategic risks, operational risks, the consequences and likelihood of occurrence, and risk mitigation strategies.

Risk and insurance reporting to Council will be tabled each quarter following consideration by the Audit Committee.

A separate report in this agenda provides detailed information for Council consideration. It is recommended that this detailed report remain confidential as it includes information which may prejudice the Council or another person.

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Council:**

- 1. Notes this summary of the Risk and Insurance Report for the quarter ending September 2016.**
- 2. Confirms that the confidential Risk and Insurance Report for the September quarter 2016 is to remain confidential in accordance with sections 77 and 89(2)(h) of the *Local Government Act 1989*.**

**CARRIED**

Note: Item OCM.184/16 was carried as part of a block motion.

12. Officers' reports

OCM.185/16 Supply and delivery of quarry products

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**Distribution:** Public

**Manager:** Conal Creedon, General Manager Infrastructure Services

**Author:** Joseph Emmanuel, Coordinator Road and Drainage Maintenance

**Summary**

This report considers the awarding of a panel contract for the Supply and delivery of quarry products for a period of three years, commencing on 1 February 2017 (Contract 1617-19). The term of the contract is three years with a two year extension option.

The materials that will be supplied under this contract will be utilised mainly in the maintenance of unsealed roads but includes use for other minor works. The tender evaluation panel has assessed all submissions and a separate confidential report outlines the evaluation and recommendations to award the panel contract.

Pursuant to the Instrument of Delegation to the Chief Executive Officer the anticipated value of this contract exceeds financial limits and a Council resolution is required to accept the recommendation to award and use this contract.

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Council:**

1. **Notes the report.**
2. **Makes public the decision regarding the contract but the tender evaluation remain confidential.**

**CARRIED**

Note: Item OCM.185/16 was carried as part of a block motion.



**12. Officers' reports**

**OCM.186/16 Tender report - Contract 1617-26 - Hillmartin Lane Area Special Charge Scheme**

**Distribution: Public**

**Manager: Conal Creedon, General Manager Infrastructure Services**

**Author: Steven Blight, Coordinator Construction**

**Summary**

This report considers the awarding of the contract for the construction of the Hillmartin Lane Area Special Charge Scheme, Diamond Creek. The contract involves the road sealing of Hillmartin Lane, Larch Crescent, Starling Road, Fielding Road and the eastern section of Sutherland Road, Diamond Creek. These works will include the provision and construction of some underground drainage, small sections of kerb and channel, sealed table drains, road pavement and primer sealing of the road surface as well as driveway works, signs, associated line marking and other miscellaneous items.

The Tender Evaluation panel have assessed all submissions and a separate confidential report outlines their evaluation in recommending the awarding of the contract for the construction of the Hillmartin Lane Area Special Charge Scheme, Diamond Creek.

Pursuant to the Instrument of Delegation to the Chief Executive Officer the value of this contract exceeds the specified financial limits and a Council resolution is therefore required to award the contract/s.

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Council:**

- 1. Notes the report.**
- 2. Makes public the decision regarding the contract but the tender evaluation remain confidential.**

**CARRIED**

Note: Item OCM.186/16 was carried as part of a block motion.

12. Officers' reports

OCM.187/16 Environment and Planning Monthly Activity Report

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**Distribution: Public**

**Manager: Ransce Salan, General Manager Environment and Planning**

**Author: Jeremy Livingston, Manager Planning and Health Services**

**Chad Griffiths, Manager Strategic and Economic Planning**

**Phil Lovelace, Manager Regulatory Services**

**Pat Vaughan, Sustainability and Environment Executive Officer**

**Summary**

This report provides a status update on planning, regulatory and policy activities in Council's Environment and Planning Department for the month of November 2016.

**Motion**

**Cr Bruce Ranken**

**Cr Karen Egan**

**That Council receives the Environment and Planning Department Activity Report for November 2016 and notes the following items:**

- 1. Eighty per cent of planning applications were determined within 60 statutory days.**
- 2. One VCAT decision was handed down.**
- 3. The large scale solar systems at the Civic Centre (124kW) was approved by AusNet and the Building Permit application has been lodged.**
- 4. The project with Beyond Zero Emissions to develop a strategy for the Shire of Nillumbik to become powered by 100% renewable energy has commenced.**

**CARRIED**

Note: Item OCM.187/16 was carried as part of a block motion.

12. Officers' reports

OCM.188/16 Assemblies of Councillors

**Distribution:** Public

**Manager:** Andrew Port, General Manager Corporate Services

**Author:** Naomi Ellis, Corporate Planner

**Summary**

In accordance with section 80A(2) of the *Local Government Act 1989* Council is required to report as soon as practicable to an Ordinary meeting of Council a record of any assemblies of Councillors held.

This report lists assemblies of Councillors forms that have been submitted since the matter was last reported to Council on 22 November 2016.

<b>Motion</b>
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**Cr Bruce Ranken**  
**Cr Karen Egan**

**That Council, in accordance with section 80A(2) of the *Local Government Act 1989*, receives the records of the following assemblies of Councillors:**

1	<b>Date of assembly</b>	22 November 2016	
	<b>Matters considered</b>	Pre-meeting for Ordinary Council Meeting	
	<b>Councillors present</b>	Cr Peter Clarke Cr John Dumaresq Cr Bruce Ranken Cr Peter Perkins	Cr Grant Brooker Cr Jane Ashton Cr Karen Egan
	<b>Staff present</b>	Stuart Burdack Andrew Port Conal Creedon Pauline Gordon Rance Salan Chad Griffiths Naomi Paton	Michelle DePasquale Phil Lovelace Vince Lombardi Mathew Deayton Nichole Johnson Joanne Hammond
	<b>Conflict of interest</b>	None declared	

2	<b>Date of assembly</b>	29 November 2016	
	<b>Matters considered</b>	Officer briefings of Councillors <ul style="list-style-type: none"> <li>• Diamond Creek Trail</li> <li>• Potential sale of 22 Luck Street, Eltham</li> <li>• Mid-Year Financial Review</li> <li>• Eltham North Reserve sports pavilion</li> <li>• Plenty Tennis Club loan guarantee</li> <li>• Municipal Public Health and Wellbeing Plan</li> </ul>	

12. Officers' reports

OCM.188/16 Assemblies of Councillors

	<b>Councillors present</b>	<b>Cr Peter Clarke Cr John Dumaresq Cr Bruce Ranken Cr Peter Perkins</b>	<b>Cr Grant Brooker Cr Jane Ashton Cr Karen Egan</b>
	<b>Staff present</b>	<b>Stuart Burdack Andrew Port Conal Creedon Ransce Salan Naomi Paton Jon Miller</b>	<b>Natalie Campion Vince Lombardi Rob Malignaggi Jonathan Risby Diana Bell Corrienne Nichols</b>
	<b>Conflict of interest</b>	<b>None declared</b>	

<b>3</b>	<b>Date of assembly</b>	<b>6 December 2016</b>	
	<b>Matters considered</b>	<b>Pre-meeting for Policy and Services Committee</b>	
	<b>Councillors present</b>	<b>Cr Peter Clarke Cr John Dumaresq Cr Bruce Ranken Cr Peter Perkins</b>	<b>Cr Grant Brooker Cr Jane Ashton Cr Karen Egan</b>
	<b>Staff present</b>	<b>Stuart Burdack Andrew Port Ransce Salan Naomi Paton Lisa Pittle John Smyth</b>	<b>Jon Miller Natalie Campion Diana Bell Corrienne Nichols Mathew Deayton</b>
	<b>Conflict of interest</b>	<b>None declared</b>	

<b>4</b>	<b>Date of assembly</b>	<b>12 December 2016</b>	
	<b>Matters considered</b>	<b>Audit Committee</b>	
	<b>Councillors present</b>	<b>Cr Peter Clarke</b>	
	<b>Staff present</b>	<b>Stuart Burdack Andrew Port Vince Lombardi Melika Sukunda</b>	<b>Conal Creedon Lisa Pittle Craig Commene</b>
	<b>Conflict of interest</b>	<b>None declared</b>	

12. Officers' reports

OCM.188/16 Assemblies of Councillors

<b>5</b>	<b>Date of assembly</b>	<b>13 December 2016</b>	
	<b>Matters considered</b>	<b>Officer briefings of Councillors</b> <ul style="list-style-type: none"> <li>• <b>VicRoads projects</b></li> <li>• <b>Councillor priorities</b></li> <li>• <b>Special Committee terms of reference</b></li> <li>• <b>Councillor Code of Conduct review</b></li> <li>• <b>Town Planning system and Council's role</b></li> <li>• <b>Emergency Management arrangements</b></li> <li>• <b>Planning application 28 Arthur Street, Eltham</b></li> <li>• <b>Annual Budget process</b></li> <li>• <b>Recreation Trails Advisory Committee</b></li> </ul>	
	<b>Councillors present</b>	<b>Cr Peter Clarke</b> <b>Cr John Dumaresq</b> <b>Cr Bruce Ranken</b> <b>Cr Peter Perkins</b>	<b>Cr Grant Brooker</b> <b>Cr Jane Ashton</b> <b>Cr Karen Egan</b>
	<b>Staff present</b>	<b>Stuart Burdack</b> <b>Andrew Port</b> <b>Conal Creedon</b> <b>Ransce Salan</b>	<b>Mathew Deayton</b> <b>Jonathan Risby</b> <b>Jeremy Livingston</b>
	<b>Conflict of interest</b>	<b>None declared</b>	

**CARRIED**

Note: Item OCM.188/16 was carried as part of a block motion.

12. Officers' reports

OCM.189/16 Tree removal at 23 Diamond Street, Eltham

**Distribution: Public**

**Manager: Ransce Salan, General Manager Environment and Planning**

**Author: Jeremy Livingston, Manager Planning and Health Services**

**Summary**

On and around 1 December 2016, tree removal activity occurred on the land at 23 Diamond Street, Eltham. This activity was brought to the attention of Council following the receipt of complaints from concerned residents.

Council officers have been investigating the activity on the land to establish whether or not the tree removal has contravened the *Planning and Environment Act 1987*. As a result of this investigation, it has been identified that the tree removal which occurred was an unauthorised activity, as it has contravened a planning permit previously issued for the land. Council has now referred to the matter to its solicitors to commence formal enforcement action against the landowner.

The purpose of this report is to update Council on this matter and Council's future action given that the unauthorised activity has been the subject of significant concern to the nearby residents and the wider community.

**Recommendation**

That Council notes the contents of this report, acknowledging that the evidence and supporting documentation gathered during the planning investigation is has been referred to Council's solicitors to commence formal enforcement action through the Magistrates Court.

**Motion**

**Cr John Dumaresq**

**Cr Peter Perkins**

**That Council:**

1. **Notes the contents of this report, acknowledging that the evidence and supporting documentation gathered during the planning investigation has been referred to Council's solicitors to commence formal enforcement action through the Magistrates' Court**
2. **Reviews the Significant Landscape Overlay at 23 and 25 Diamond Street, Eltham to ensure that the overlay corresponds with current property boundaries and include these changes for consideration as part of the next available planning scheme amendment, such as a 'corrections' amendment.**

**CARRIED**

**13. Notices of Motion**

Nil

**14. Delegates' reports**

Nil

**15. Supplementary and urgent business**

Two supplementary and urgent items, one of which is confidential under section 89(2)(a) of the *Local Government Act 1989*, had arisen since the agenda was distributed and were presented for inclusion in the meeting.

In accordance with clause 6.15 of the Meeting Procedure Local Law, supplementary and urgent items may be admitted at the discretion of the Chairperson.

The Chairperson, Mayor, Cr Peter Clarke, admitted both items to the meeting.

## 15. Supplementary and urgent business

OCM.195/16 Chief Executive Officer

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**Distribution: Public****Manager: Suzy Ellingsen, Manager Organisational Development****Summary**

The Chief Executive Officer has tendered his resignation, with his last day being 31 December 2016. Accordingly it is necessary for Council to appoint a person to act as its Chief Executive Officer until such time as an appointment to the substantive role can be made following compliance with the requirements of the *Local Government Act 1989*. Accordingly, and in compliance with section 94(4A) of the *Local Government Act 1989*, the recommendation is that Council resolve to appoint a Special Committee with delegated power to appoint a person to act as its CEO for a period of up to 12 months.

Under section 94(3) of the *Local Government Act 1989*, Council can only appoint a person to the substantive CEO position after statutory public advertising requirements are met, and Council has considered all applications received that comply with the advertisement's conditions. It is recommended that Council now commence the advertising process in light of the CEO's resignation taking effect 31 December 2016.

<b>Motion</b>
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**Cr Peter Clarke****Cr Bruce Ranken****That Council:**

1. **Notes that Mr Burdack has submitted his resignation with effect 31 December 2016.**
2. **Thanks Mr Burdack for his six years of service to the Shire of Nillumbik and acknowledges the valued contribution he has made during his tenure.**
3. **Appoints a Special Committee (known as the Acting CEO Committee), and delegates to that Committee the power to appoint an acting CEO pursuant to section 94(4A) of the *Local Government Act 1989*, from midnight on 31 December 2016 for a period not more than 12 months, or until Council resolves otherwise.**
4. **Appoints the Mayor (Cr Peter Clarke), Deputy Mayor (Cr Karen Egan) and one other Councillor (Cr Bruce Ranken) to the Acting CEO Committee.**
5. **Executes under seal the attached Instrument of Delegation to the Acting CEO Special Committee.**
6. **Authorises its Manager Organisational Development to commence the process of inviting applications for appointment to the position of CEO of the Shire of Nillumbik in accordance with the requirements of section 94(3) of the *Local Government Act 1989* by:**
  - a) **Placing advertisements as required with a closing date sufficient to enable Council to consider applications received.**
  - b) **Presenting all applications received that comply with the advertisement's requirements, together with supporting documentation.**

**CARRIED**



**16. Confidential reports**

The Meeting may be closed to members of the public to consider confidential matters.

**Motion**

Cr Karen Egan  
Cr Bruce Ranken

That Council closes the meeting to the public pursuant to section 89(2) of the *Local Government Act 1989* to consider the following items, which are confidential for the reasons indicated:

<b>Report No.</b>	<b>Title</b>	<b>Reason for confidentiality</b>
OCM.190/16	Strategic land purchases and activity centre developments	(e) proposed developments
OCM.191/16	Landfill disposal contract extension	(d) contractual matters
OCM.192/16	Supply and delivery of quarry products	(d) contractual matters
OCM.193/16	Tender report - Contract 1617-26 - Hillmartin Lane Area Special Charge Scheme	(d) contractual matters
OCM.194/16	Confidential attachment to the Risk and Insurance Report	(h) any other matter which the Council or special committee considers would prejudice the Council or any person
OCM.196/16	Supplementary and urgent report - Resignation of the Chief Executive Officer	(a) personnel matters

**CARRIED**

The meeting closed to the public at 8.17pm.