

Planning and Consultation Committee Meeting

to be held at the Civic Centre, Civic Drive, Greensborough
on Tuesday 10 August 2021 commencing at 7:00pm.

Agenda

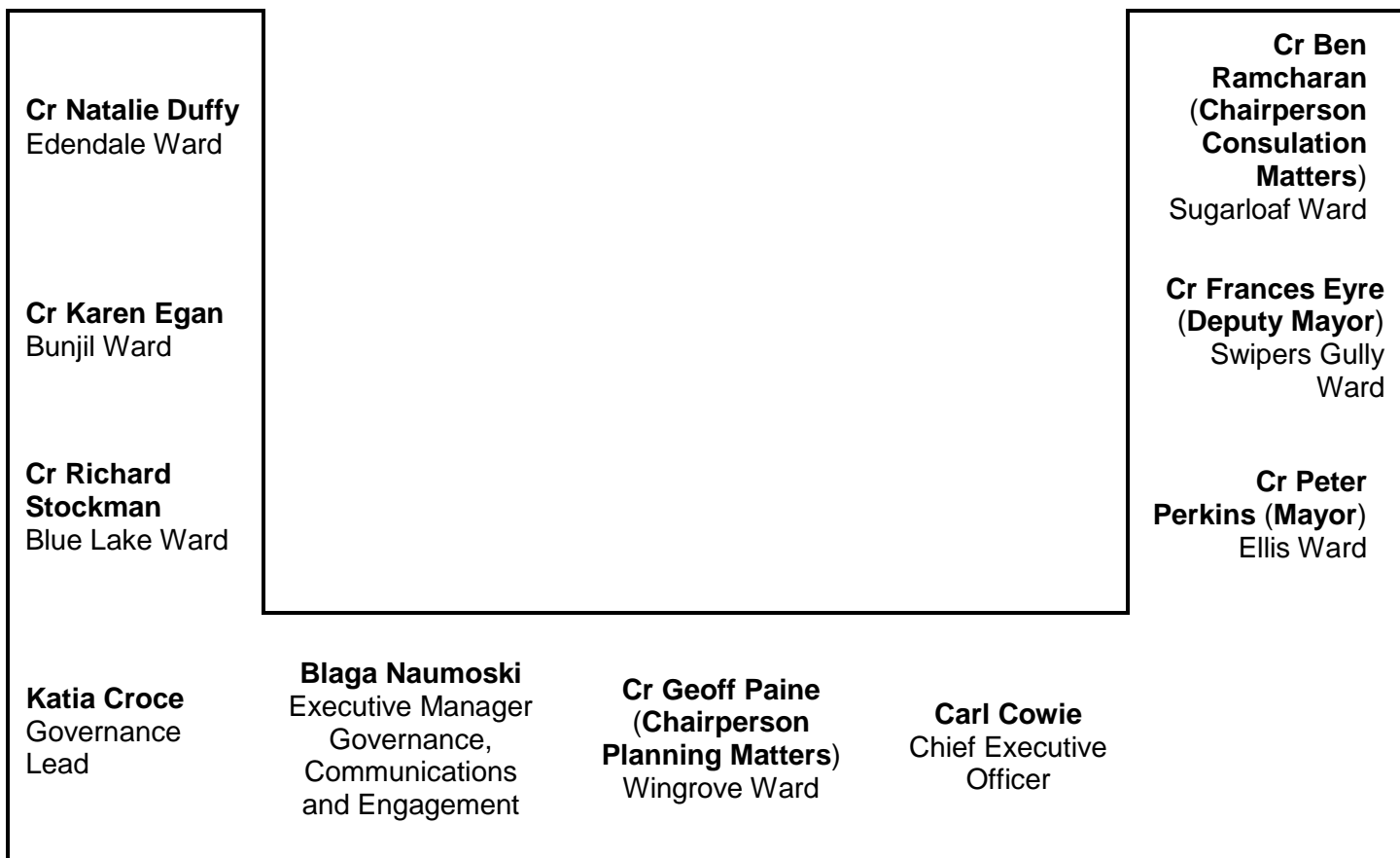
Carl Cowie
Chief Executive Officer

Thursday 5 August 2021

Distribution: Public

Civic Drive, Greensborough
PO Box 476, Greensborough 3088
Telephone 9433 3111
Facsimile 9433 3777
Website www.nillumbik.vic.gov.au
Email nillumbik@nillumbik.vic.gov.au

Planning and Consultation Committee Meeting seating plan



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Nillumbik Shire Council

**Agenda of the Planning and Consultation Committee Meeting to be held
Tuesday 10 August 2021 commencing at 7:00pm.**

1. Welcome by the Chair

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

2. Acknowledgement of Country

The Acknowledgement of Country to be read by the Chairperson

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

3. Apologies

Recommendation

That the apologies be noted.

4. Confirmation of minutes

Confirmation of minutes of the Planning and Consultation Committee Meeting held on Tuesday 13 July 2021.

Recommendation

That the minutes of the Planning and Consultation Committee Meeting held on Tuesday 13 July 2021 be confirmed (**Attachment 1**).

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5. Disclosure of conflicts of interest

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

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6. Officers' reports

PCC.017/21 Nillumbik Planning Scheme Amendment C126nill Rezoning of Eastern Ends of Bridge and John Street Panel Submissions

Item: Planning Matter

Distribution: Public

Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety

**Author: Bea Guevara, Senior Strategic Planner
Leigh Northwood, Strategic Planning Lead**

Summary

The purpose of this report is to outline the key matters of consideration and recommendations raised at the C126nill Planning Panel Hearing.

This planning scheme Amendment C126nill is running parallel with the road discontinuance process to facilitate rezoning of the land from the Neighbourhood Residential Zone to the Public Park and Recreation Zone in acknowledgement of the future open space function of the area.

The road discontinuance is being undertaken pursuant to a formal statutory process as required under the *Local Government Act 1989*.

Formal exhibition of Amendment C126nill took place for 1 calendar month through January and February as required under Section 19 of the *Planning and Environment Act 1987*.

Council received three submissions during the public exhibition of the Amendment. One supporting submission and two objecting submissions.

Submissions to Amendment C126nill were considered on 9 March 2021 by Council's Planning and Consultative Committee.

Council resolved to request the Minister for Planning to appoint an independent Planning Panel to consider the Amendment, and refer all submissions to the panel appointed, in accordance with Section 23(1)(b) of the *Planning and Environment Act 1987*.

The Panel Hearing took place virtually on 25 May 2021 where four parties made submissions. Council has since received the Panel Report containing recommendations from the Panel. The Panel report was made public on 28 June 2021.

Council's legal representatives on 5 July 2021 confirmed that the owners of 86 John Street have formally lodged a claim of 'adverse possession' pursuant to Section 60 of the *Transfer of Land Act 1958*.

Legal advice to Council (as of 5 July 2021) is that the mapping for the road discontinuance be amended to remove the area that is the subject of the formal adverse possession claim, before titles are lodged to complete the road discontinuance process. This is currently underway.

Council will consider the Panel Report at its August Ordinary Council Meeting. The recommendations of the report to the August Ordinary Council meeting where officers will recommend to:

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- amend the mapping for Amendment C126nill to reflect the road discontinuance mapping, thereby removing that area of land subject to recent adverse possession from the amendment area given that Council’s ownership would be in dispute.
- adopt the Amendment with changes outlined in the dot point above.


If Council resolves to adopt the amendment with changes it will be submitted to the Minister of Planning for approval and gazettal.

Recommendation

That the Committee (acting under delegation from Council):

1. Notes any verbal submissions made at this Planning and Consultation Committee.
2. Considers a further report at its 24 August 2021 Council Meeting to formally consider the Nillumbik C126nil Panel Report (**Attachment 1**), officer recommendations and to make a decision as to whether to adopt the Amendment (potentially with changes), or to abandon the Amendment.

Attachments

1.  Nillumbik C126nill Panel Report

Discussion

Context and Purpose for Amendment C126nill

1. The context and purpose for Amendment C126nill (the Amendment) has been outlined previously to the current Council at its March Future Nillumbik Committee (now Planning Consultation Committee) and March Ordinary Council Meeting.
2. The Amendment applies to the eastern ends of Bridge and John Streets in Eltham.
3. Amendment C126nill seeks to apply the Public Park and Recreation Zone (PPRZ) to Council managed land to ensure Council’s open space assets are correctly zoned in applying orderly planning to reflect the sites’ open space purpose. The primary purpose of the Zone is to recognise areas for public recreation and open space and to protect and conserve the natural environment. Pursuant to *Planning Practice Note 2 (Public Land Zones)*, the Amendment further seeks to allow Council as the public land manager to undertake works to upgrade and provide ongoing maintenance of these reserve spaces without the need for a planning permit.

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Panel Hearing and Report

4. The Panel Hearing took place virtually on 25 May 2021 where four parties made submissions.
5. There were three key matters of consideration identified by the Panel at the Hearing, being:
 - A. *Status of the subject land*
 - B. *Landscaping and vehicle access*
 - C. *Extension of the PPRZ at Bridge Street.*
6. Council has since received the Panel Report, on the 11 June 2021, containing recommendations from the Panel. The Panel Report has also been made available on Council's Participate Nillumbik website.
7. Please see **Attachment 1** for Panel Report.
8. Regarding point A above, it was presented to the Panel that the parallel process of the road discontinuance is evidence that the status of the subject land is not resolved. The Panel Report states that:

Some submitters disputed the legal status of the Amendment land. The [They] submitted that it was not certain that the subject land would 'vest' in Council in the near future. They submitted that the Public Park and Recreation Zone should not be applied until the status of the subject land was resolved.
9. Point B was raised in a written submission during the Public Exhibition period of the Amendment. This submission was considered by Council at its 23 March 2021 Council Meeting but was not pursued at the Panel Hearing. The Panel's conclusions outlined below found that the amendment would not result in any adverse impacts on existing vehicle access and will enable Council to landscape the area and maintain it as open space.
10. Point C was raised by a supporting submitter. It was suggested that the land proposed for rezoning to PPRZ be extended to the corner of 8 Plumtree Close on the Bridge Street side of the subject land. Council has previously resolved to undertake a future amendment to extend the PPRZ to this land.
11. In summary, the Panel concludes:
 - *The subject land must be Crown land or be vested in, or controlled by, Council (or another public body) before it is rezoned to PPRZ.*
 - *It is not a matter for the Panel to determine the legal status of the subject land. The status of the land can only be resolved through separate processes outside the remit of this Panel.*
 - *The Amendment will not result in any adverse impacts on existing vehicle access.*
 - *The rezoning will enable Council to establish and maintain the proposed pocket parks as part of a broader open space network.*
 - *That the extension of the PPRZ to the edge of Plumtree Close (at eastern end of Bridge Street) is a logical change to the Amendment, but such a rezoning proposal cannot proceed until the land is vested in or controlled by a Minister, government department, public authority or a municipal Council.*

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12. Based on reasons set out in the Panel Report, the Panel recommends that Amendment C126nill be adopted as exhibited with changes, subject to the following:
- i. *That Council satisfy itself that sufficient notice of the Amendment was provided in accordance with the requirements at section 19 of the Planning and Environment Act 1987 before it decides whether to adopt the Amendment. If it is not satisfied, it must give notice of the Amendment in accordance with the Planning and Environment Act 1987.*
 - ii. *The subject land is not rezoned to Public Park and Recreation Zone until it is Crown land or is vested in or controlled by a Minister, government department, public authority or a municipal Council.*
 - iii. *An additional section of land (as shown in Figure 2) at the eastern end Bridge Street, Eltham (to the edge of Plumtree Close) be rezoned from Neighbourhood Residential Zone Schedule 1 to Public Park and Recreation Zone, once that land is vested in or controlled by a Minister, government department, public authority or a municipal Council.*

Response to Panel Report Recommendations

13. Officer response to the Panel Report Recommendations will be detailed in the report to the 24 August 2021 Council Meeting where Council will also formally consider the Panel Report and an associated officer recommendation.

Related Council decisions

14. At Council's Meeting of 25 February 2020, Council resolved to commence the statutory procedure to remove the road reserve status and proceed to rezone eastern sections of Bridge and John Streets from Neighbourhood Residential Zone (NRZ) to Public Park and Recreation Zone (PPRZ).
15. At Council's Meeting of 28 July 2020, Council resolved to request the Minister for Planning under Section 8A of the *Planning and Environment Act 1987* to authorise the preparation and exhibition of Amendment C126nill.
16. At the Future Nillumbik Committee (FNC) meeting of 9 February 2021, the Committee heard submissions made to Council as part of its proposal to discontinue two road reserves located at the eastern end of Bridge Street in Eltham and the eastern end of John Street in Eltham, pursuant to the statutory process under the *Local Government Act 1989*.
17. At that FNC the Committee (acting under delegation from Council) resolved to:
- *Note the 12 submissions including three objections made with respect to the proposal to discontinue two road reserves located at the eastern end of Bridge Street in Eltham and the eastern end of John Street in Eltham; and*
 - *Consider a further report at the next available Council Meeting to resolve a position on the proposed road discontinuance relating to the eastern ends of John Street and Bridge Street in Eltham.*

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18. At Council's 23 March 2021 Council Meeting it was resolved that Council:
- *Notes the submissions to Amendment C126nill.*
 - *Requests the Minister for Planning appoint an independent Planning Panel to consider the Amendment, and refer all submissions to the panel appointed, in accordance with Section 23(1)(b) of the Planning and Environment Act 1987.*
 - *Prepares a submission to the Panel appointed that considers all submissions and which does not oppose the extension to the area proposed to be rezoned to include that land between Bridge Street and the corner of 8 Plumtree Close, Eltham.*
 - *Notifies all submitters and owners and occupiers of the land affected by the proposed amendment of Council's resolution.*

Options

19. The next statutory step in the planning scheme Amendment process, is for Council to formally consider the Panel Report and on doing so, to make a decision as to whether to adopt the Amendment (potentially with changes), or to abandon it.
20. Therefore, the Panel report will be formally brought to the 24 August 2021 Council meeting. The Council Meeting will provide the opportunity for Council to decide on the Amendment (i.e. abandon or adopt).
21. Officers contend that the Amendment is strategically sound and note that this position has been clearly supported by the Planning Panel. Consequently, officers expect to recommend to Council that it adopt the Amendment which a mapping change to remove the land adjoining 86 John Street, Eltham where an adverse possession has been claimed.
22. If Council resolve to adopt the Amendment, (with or without changes), it would then be submitted to the Minister for Planning for approval and gazettal. The gazettal of the Amendment will rezone the eastern ends of Bridge and John Street, Eltham from Neighbourhood Residential Zone to Public Park and Recreation Zone.

Council plans and policies

23. This report directly supports the achievement of Council Plan 2017-2021 strategy:
- Prepare and develop an improved and holistic approach to strategic planning.
 - Provide a range of infrastructure that encourages people of all ages to participate in a variety of active and passive opportunities.
 - Prepare and develop an improved and holistic approach to strategic planning.

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Sustainability implications

24. The Amendment is expected to have positive environmental effects and economic and social benefits as it will confirm the intended status and management of land as public open space.
25. The social interactions and community building that public open spaces bring enhances community connectivity and community capital.
26. Retention of the open space assists in maintaining the attractiveness and amenity of the public realm.
27. Retention of the open space will continue to provide habitat for flora and fauna within the predominantly urban environment.
28. Pockets of planted open space help connect larger patches of bushland, and allow freedom of movement for wildlife.

Community engagement

29. Pursuant to the *Planning and Environment Act 1987*, amendment C126nill was publicly exhibited from 7 January 2021 to 18 February 2021.
30. Pursuant to notification requirements of the Act, Council officers sent out notification letters to all surrounding owners/occupiers and Prescribed Ministers, and notification in the Herald Sun and Government Gazette were also posted on 7 January 2021 to inform the public of the formal exhibition period.
31. The Amendment was also made available on Council's Participate Nillumbik website.
32. After the Exhibition, submitters were given the opportunity to speak to their submission at the 9 March 2021 Future Nillumbik Committee. This took place before Council considered the submissions and resolved to requests the Minister for Planning appoint an independent planning panel, and upon doing so refer the submissions to that Planning Panel.
33. Submitters will be afforded a further opportunity to speak to their submissions and any response they have to the Panel Report at the 10 August 2021 Planning Consultation Committee.

Innovation and continuous improvement

34. The Amendment ensures that planning controls are accurate, correct and consistent with its current use. This will improve the effectiveness and efficiency of achieving the objectives of planning in Victoria.

Collaboration

35. Officers liaised with the Department of Environment, Land, Water and Planning (DELWP) to ensure that amendment documents were prepared to their standard and that they are kept informed throughout the Planning Scheme Amendment process.

Budget implications

36. Planning scheme amendment budget allocation 20/21 and 21/22 financial years.

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Relevant law

37. *Planning and Environment Act 1987.*

Regional, state and national plans and policies

38. This Amendment supports the objective of Clause 19.02 Open Space to establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community. Specifically, the amendment supports the following strategy set out in Clause 19.02 6S:

Ensure that urban open space provides for nature conservation, recreation and play, formal and informal sport, social interaction, opportunities to connect with nature and peace and solitude.

39. The Victorian Health and Wellbeing Plan 2019-2023, outlines the government's key priorities to improve the health and wellbeing of Victorians. Priorities supported by the Amendment include increasing active living by increasing easy access to parks, open spaces and public spaces with opportunities for physical activity where appropriate.

40. Plan Melbourne 2017-2050 highlights the importance of 20-minute neighbourhoods. The 20-minute neighbourhood concept aims to improve liveability by giving people the ability to meet most of their daily needs within a 20-minute walk from home. The subject sites are within 12-15 minutes' walk from the Eltham Major Activity Centre (Eltham MAC). The formalisation of these pocket parks will advance the objectives of Plan Melbourne 2017-2050 and continue providing access to the residents' daily needs such as recreation and as well as services provided with the Eltham MAC.

Conflicts of interest

41. Officers involved in the preparation of this report do not have a conflict of interest in the subject matter of this report.

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6. Officers' reports

PCC.018/21 Response to public exhibition of Planning Scheme Amendment C133

Item: Planning Matter

Distribution: Public

Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety

Author: Julie Paget, Strategic Planner

Summary

Council recently finished formal exhibition of Amendment C133 to the Nillumbik Planning Scheme, which seeks to amend Heritage Overlay (HO147) at 13 Park Road West, Eltham in order to protect a structure known as the Alan Marshall Bungalow and surrounds.

Amendment C133 was exhibited from 10 June to 12 July 2021 and Council received one submission. The single submission was in support of the amendment and whilst it was received late (after the formal exhibition period had concluded) it has been accepted and considered.

Where a submission raises an issue with a proposed amendment, the statutory amendment process provides for Council to request that the Minister for Planning appoint an independent planning panel to consider the amendment. In this instance, given the single submission is in support of the amendment and proposes no changes, it is recommended a planning panel is not required.

A report is being prepared, recommending adoption, for the August Council Meeting.

Should Council resolve to adopt Amendment C133, the Amendment must then be submitted to the Minister for Planning within 10 business days for approval.

Recommendation

That the Committee (acting under delegation from Council):

1. Notes the supporting submission received to Amendment C133 (**Attachment 1**).
2. Considers a further report at its 24 August 2021 Council Meeting to resolve to adopt Amendment C133 and seek approval from the Minister for Planning.

Attachments

1.  EDHS submission to Planning Scheme Amendment C133

Discussion

1. At the conclusion of the formal amendment exhibition period, no submissions had been received, however a single submission supporting the amendment from the Eltham District Historical Society was accepted shortly after the closing date.
2. **Attachment 1** is a copy of the submission noting the submission has not been redacted given it is not from an individual.

6. Planning Matters

PCC.018/21 Response to public exhibition of Planning Scheme Amendment C133

Related Council decisions

3. At its 25 February 2021 Council Meeting, Council resolved to:
 - Request the Minister for Planning, under Section 8A of the Planning and Environment Act 1987, to authorise the preparation of Amendment C133 to the Nillumbik Shire Planning Scheme; and
 - Undertake public exhibition of the proposed planning scheme amendment which will apply permanent planning controls through the use of the heritage overlay on the structure known as the Alan Marshall bungalow and surrounds, should authorisation be granted.

Options

4. As part of considering the submission received, Council at the August Council Meeting will be presented with a report recommending adoption of the amendment. In accordance with the *Planning and Environment Act 1987*, Council has two options:
 - Resolve to adopt the Amendment as exhibited and send the amendment to the Minister for Planning requesting that the Minister approve Amendment C133; or
 - Resolve to abandon Amendment C133.

Council plans and policies

5. This report directly supports the achievement of Council Plan 2017-2021 strategy:
 - Prepare and develop an improved and holistic approach to strategic planning.
6. The amendment links directly to Council's Heritage Strategy (2011) which aims to:
 - To identify, document and care for heritage places in the Shire of Nillumbik in ways which fulfil legal obligations and adopt best practice; and
 - To involve communities and to promote awareness, knowledge and enjoyment of heritage places.

Sustainability implications

7. Costs associated with this amendment will be funded from the Planning scheme amendment budget allocation for the 20/21 financial year.

Relevant law

8. *Planning and Environment Act 1987* (the Act).

Regional, state and national plans and policies

9. Plan Melbourne (2017-2050) Outcome 4.
 - Policy 4.4.1 Recognise the value of heritage when managing growth and change.
 - With all three levels of government sharing responsibility for protecting Melbourne's post settlement cultural heritage, decision-making must be consistent and credible and be based on clear and widely accepted heritage conservation principles and practices.

Conflicts of interest

10. No officer involved in the preparation of this report has a conflict of interest.

Planning and Consultation Committee Meeting Agenda

10 August 2021

- 7. Supplementary and urgent business**
- 8. Confidential reports**
- 9. Close of Meeting**