

# Planning and Consultation Committee Meeting

to be held at the Civic Centre, Civic Drive, Greensborough  
on Tuesday 12 April 2022 commencing at 7:00pm.

## Agenda

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

Thursday 7 April 2022

Distribution: Public

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# Council Chamber

## Planning and Consultation Committee Meeting seating plan

**Cr Natalie  
Duffy**  
Edendale Ward

**Cr Karen Egan**  
Bunjil Ward

**Cr Richard  
Stockman**  
Blue Lake Ward

**Cr Ben Ramcharan  
(Deputy Mayor)**  
Sugarloaf Ward

**Cr Frances Eyre  
(Mayor)**  
Swipers Gully Ward

**Cr Geoff Paine  
(Chairperson  
Consultation  
Matters)**  
Wingrove Ward

**Katia Croce**  
Governance  
Lead

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

Cr Peter Perkins  
**(Chairperson  
Planning Matters)**  
Ellis Ward

**Carl Cowie**  
Chief Executive  
Officer

**Nillumbik Shire Council**

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**Nillumbik Shire Council**

**Agenda of the Planning and Consultation Committee Meeting to be held  
Tuesday 12 April 2022 commencing at 7:00pm.**

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**1. Welcome by the Chair**

Members of the public are advised the meeting will be livestreamed and recorded and the livestream recording 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 respectfully acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners of the Country on which Nillumbik is located, and we value the significance of the Wurundjeri people's history as essential to the unique character of the shire. We pay tribute to all First Nations People living in Nillumbik, give respect to Elders past, present and future, and extend that respect to all First Nations People.

We respect the enduring strength of the Wurundjeri Woi-wurrung and acknowledge the ongoing impacts of past trauma and injustices from European invasion, massacres and genocide committed against First Nations People. We acknowledge that sovereignty was never ceded.

Wurundjeri Woi-wurrung people hold a deep and ongoing connection to this place. We value the distinctive place of our First Nations People in both Nillumbik and Australia's identity; from their cultural heritage and care of the land and waterways, to their ongoing contributions in many fields including academia, agriculture, art, economics, law, sport and politics.

**3. Apologies**

**Recommendation**

**That** the apologies be noted.

**4. Disclosure of conflicts of interest**

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

**5. Confirmation of Minutes**

Confirmation of the minutes of the Planning and Consultation Committee Meeting held on Tuesday 8 March 2022.

**Recommendation**

**That** the Committee (acting under delegation from Council) confirms the minutes of the Planning and Consultation Committee Meeting held on Tuesday 8 March 2022 (**Attachment 1**).

**Attachments**

1.  Minutes of Planning and Consultation Committee meeting held 8 March 2022

6. Officers' reports

**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

**Item: Planning Matter**

**Distribution: Public**

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

**Author: Kamal Hasanoff, Acting Manager Planning Services**

**Application summary**

Address of the land	117 Progress Road, Eltham North
Site area	2,024 m2
Proposal	Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation
Application number	1118/2021/03P
Date lodged	11 November 2021
Applicant	Creative Design Studio
Zoning	Neighbourhood Residential Zone (Schedule 1)
Overlay(s)	Significant Landscape Overlay (Schedule 2)
Reason for being reported	Called in by Ward Councillor
Number of objections	16
Key issues	<ul style="list-style-type: none"> <li>• Strategic location</li> <li>• Building bulk, massing and scale</li> <li>• Impacts to vegetation and landscaping opportunities</li> <li>• Private open space</li> <li>• Amenity impacts</li> <li>• Car parking and vehicle access</li> </ul>

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**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

<b>Recommendation</b>
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**That** the Committee (under delegation from Council) issue a Notice of Decision to Grant a Permit to the land located at 117 Progress Road, Eltham North for the construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation, in accordance with the submitted plans and subject to the following conditions:

1. Before the development commences 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 submitted with the application but modified to show:
  - a) The driveway landscape strip relocated to the east side of the driveway for its entire length.
  - b) A landscape plan in accordance with Condition 3 to provide 20 canopy trees on the site (including the 6 trees to be retained).
  - c) The Tree Protection Zones (TPZ) for all trees to be retained.
  - d) The driveway constructed using root sensitive construction methods and permeable material within the TPZ of third party Trees 11, 12 and 15.
  - e) A Tree Protection Management Plan in accordance with Condition 9.
  - f) The location of all trenched services.
  - g) The garage doors widened to 4.8 metres and the garden beds along the common driveway reconfigured to ensure vehicles can exit the garages conveniently. Vehicle swept paths must be provided to reflect the above amendments.
  - h) Sectional diagrams to show driveway gradients in accordance with Clause 52.06-9 of the Nillumbik Planning Scheme, together with any consequential changes to the gradients.
  - i) Vehicle sight lines in accordance with Clause 52.06-9 (Car Parking) of the Nillumbik Planning Scheme to ensure vehicles can exit the site clear of visual obstruction.
2. The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
3. Before the development commences, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The plan must show:
  - a) A survey of all existing vegetation and natural features;
  - b) The area or areas set aside for landscaping;

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- c) A schedule of all proposed trees, shrubs/small trees and ground cover. This schedule shall include a mixture of selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing;
  - d) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material;
  - e) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill;
  - f) Appropriate irrigation systems;
  - g) Appropriate maintenance details; and
  - h) The provision of canopy trees to be planted throughout the development. The trees must be significant canopy species and selected from '*Live Local Plant Local – A guide to planting in Nillumbik*'.
4. 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.
5. No native vegetation on site (unless specified on the endorsed plans) shall be removed, destroyed, felled, lopped, ringbarked, uprooted or otherwise damaged except with the prior written consent of the Responsible Authority.
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 Fence (TPF) to the satisfaction of the Responsible Authority. The fencing associated with this TPZs must meet the following requirements:
- a) Extent  
 The tree protection fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009).  
  
 Fencing may be reduced directly adjacent to the works area only to allow access during construction (i.e. no more than 1 metre away from the works/ construction area).
  - 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 and must be a minimum height of 1.5 metres and of chain mesh or similar fence.

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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) 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.

e) 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; and
- h) Unauthorised entry by any person, vehicle or machinery.

9. Before the endorsement of plans a Tree Protection Management Plan by a suitably qualified arborist must be submitted to and endorsed by the Responsible Authority. The plan must show all measures required during construction to ensure protection of trees to be retained.

The plan must include (but not be limited to) the following:

- a) Locations of tree protection fencing to isolate TPZs from impact, or ground protection where appropriate in lieu of fencing (including Council’s street tree).

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- b) Crown pruning requirements to be conducted in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
  - c) Site ingress/egress routes for vehicles, machinery, equipment and materials.
  - d) Suitable on-site areas for material storage (if any).
  - e) Locations and timing of works within TPZs required to be supervised by the Project Arborist.
  - f) Certification templates to allow the Project Arborist to induct contractors and monitor compliance at all stages of site works; which should be provided to Council at the completion of the project.
10. The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type and finished in muted tones, to the satisfaction of the Responsible Authority.
11. Air-conditioning and other plant and equipment installed on the subject buildings shall be so positioned and baffled so that noise disturbance is minimised, to the satisfaction of the Responsible Authority.
12. Vehicular access and egress to the development site from the roadway must be by way of a vehicle crossing upgraded to the requirements of the Responsible Authority, 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.
- Width of the driveway at property boundary must match the width of the vehicle crossing.
13. The vehicular driveway must be properly formed and constructed meeting the ramp grades specified in the Nillumbik Planning Scheme and to such levels to ensure that it can be utilised at all times. Appropriate transitions with a maximum change in grade of 1 in 8 should be provided to enable access by all types of vehicles. The driveway must be drained, constructed in concrete, asphalt or similar surface and maintained in a continuously useable condition. All works are to be carried out to the satisfaction of the Responsible Authority.
- Stormwater from the driveway must be collected using 225mm wide trench-grates across the driveway at property boundary where it meets road reserve and connected to the on-site detention device/legal point of stormwater discharge.
14. Stormwater must not be discharged from the subject land other than by means of an underground pipe drain to the nominated point of stormwater discharge. The nominated point of stormwater discharge is Council underground drainage system.
15. Stormwater from the driveway must be collected using 225mm wide trench-grates across the driveway and/or grating pits positioned within the driveway at a maximum spacing of 15 metres to the satisfaction of the Responsible Authority.

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Stormwater must be connected to the on-site detention device to the satisfaction of the Responsible Authority. Overflow of stormwater must be connected to the nominated point of discharge.

Use minimum 225mm diameter underground drains for the internal drainage system underneath the driveway.

16. 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 unless with the prior written consent of the responsible authority). The engineer that is designing the on-site detention device must obtain tc and tso figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event.
17. An on-site detention device must be installed, at no cost to Council, to restrict the property storm water discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority (Nillumbik Shire). The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge.

Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and specifications and under an Infrastructure Works permit.

18. 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 during the construction of the development. Sediment fencing and/or pollution/litter traps must be installed on site and serviced accordingly to the satisfaction of the Responsible Authority.
19. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within 2 years of the date of this permit.
  - b) The development is not completed within 4 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 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.

**Attachments**

- 1  Aerial Map
- 2  Site and Surrounds
- 3  Plans

6. Planning Matters

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**Subject site and surrounds**

1. The key features of the subject site are as follows:
  - The subject site is described on title as Lot 21 Block E on PS 6091, Volume 8803 Folio 94.
  - The site is located on the north side of Progress Road, 100 metres east of Ryans Road.
  - The site has an area of 2,024 square metres.
  - The land rises from front to rear by approximately 18 metres.
  - The site contains an existing dwelling and 20 trees.
  - There is existing vehicle access via a sealed driveway and vehicle crossing Progress Road.
  - There are no covenants, Section 173 Agreements or easements on title.

2. The Surrounding land comprises the following:

North: Single dwellings and a multi-dwelling development (detached).

South: Progress Road Reserve and single dwellings.

East: Single dwellings.

West: Single dwellings and a multi-dwelling development (detached).

The area can be characterised by single dwellings, with well landscaped front and rear setbacks, in a semi bush setting. The tree canopy is a defining feature of the area. There are some examples of multi-dwelling developments in the area. Built form is single storey and double storey. Housing styles are typically brick veneer with pitched tiled or corrugated steel roofs.

**Details of proposal**

3. Refer to the attached plans (**Attachment 1**).

4. Key features of the proposal include:

- Construction of two, double storey dwellings (Dwelling 1 and 3) and an extension to the existing dwelling (Dwelling 2). Part of the existing dwelling would be demolished to accommodate the proposed common driveway.
- Dwelling 1 and 3 each contain four bedrooms, two living rooms, three bathrooms, two living rooms and a dining room.
- Dwelling 2 contains five bedrooms, two living rooms, three bathrooms, two living rooms and a dining room.
- Dwelling 1 and 2 are each provided with a double garage.
- Dwelling 3 is provided with a double garage and additional open car space.
- Vehicle access is provided via a common driveway to Progress Road.

## 6. Planning Matters

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- Each dwelling is provided with private open space at ground level.
- External materials are rendered walls, vertical cladding and skillion, Colorbond roofs. External colours are Basalt, Shale Grey and Monument.
- Earthworks include three site cuts to “bench in” the dwellings to the topography of the land. These site cuts range from 2.3 to 2.64 metres at maximum depth.
- Removal of tree numbers 1, 2 and 6, all Eucalyptus gonicalyx (Long Leaved Box) requiring a permit for removal and the removal of 11 other trees not requiring a permit.

#### **Planning history**

5. Planning application 858/2020/03P was lodged on 19 December 2020 for building and works to construct two double storey dwellings and to extend the existing dwelling. A planning application conference was held in response to objections raised. Planning officers advised that issues around vegetation within the policy context were not resolved. The application was subsequently withdrawn.

It is the expectation of planning officers that a proposed development at this site should protect all high retention value trees and third party trees.

#### **Planning controls**

##### **Zoning**

6. The subject land is zoned Neighbourhood Residential (Schedule 1). Under this zone, a permit is required to construct two or more dwellings on a lot.

##### **Overlays**

7. The subject land is affected by the Significant Landscape Overlay (Schedule 2). Under this overlay, a permit is required for building and works and to remove native vegetation.

#### **Particular provisions**

8. Clause 52.06 (Car Parking) applies to the application. This clause seeks to ensure there is the provision of an appropriate number of car parking spaces; that car parking does not adversely affect the amenity of the locality; and that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.
9. Development of two or more dwellings on a lot must meet the requirements of Clause 55 (commonly known as ‘ResCode’).
10. Clause 65 (Decision Guidelines) outlines general decision guidelines that must be considered when assessing an application. These guidelines include the purpose of the zone or other provision, the orderly planning of the area, and the effect on the amenity of the area.

**6. Planning Matters**

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**Relevant planning policies**

11. Municipal Planning Strategy relevant to this application include:
  - Clause 2.01 (Context)
  - Clause 2.03-1 (Settlement)
  - Clause 2.03-2 (Environmental and landscape values - Landscapes)
  - Clause 2.03-5 (Built environment)
12. The Planning Policy Framework relevant to this application include:
  - Clause 11.01-1S (Settlement)
  - Clause 11.01-1L-02 (Land use and development in the Eltham Gateway)
  - Clause 11.03-1L-02 (Activity Centres in Nillumbik)
  - Clause 13.02-1S (Bushfire Planning)
  - Clause 13.02-1L (Bushfire management in Nillumbik)
  - Clause 15.01-1S (Urban Design)
  - Clause 15.01-2S (Building Design)
  - Clause 15.01-2L-01 (Building Design in Nillumbik)
  - Clause 15.01-2L-02 (Medium Density Housing Design)
  - Clause 15.01-4S (Healthy Neighbourhoods)
  - Clause 15.01-5S (Neighbourhood Character)
  - Clause 15.01-5L (Neighbourhood Character – Nillumbik)
  - Clause 16.01-1S (Housing supply)
  - Clause 16.01-1L (Location of medium density residential development)
  - Clause 16.01-2S (Housing affordability)

**Council plans and policies**

13. Nillumbik's *Live Local Plant Local* guide identifies preferred species for canopy tree planting and other landscaping.

**Advertising**

14. The application has been advertised by way of the posting of notices to the owners and occupiers of neighbouring properties and the erection of a notice board on the site.

**6. Planning Matters**

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**Objections**

15. As a result of advertising, a total of 16 written objections have been received. The objections can be summarised as follows:
- Removal of and impacts to existing vegetation.
  - Insufficient landscaping opportunities.
  - Building bulk, massing, scale and setbacks.
  - Density.
  - Site permeability.
  - Overlooking.
  - Noise, including noise during construction.
  - Traffic and road safety, including delivery vans reversing.
  - Impacts to local fauna, environmental impacts and climate change.
  - Realignment of boundary fence, relating to adverse possession claim.

**Planning application conference**

16. A planning application conference was held via virtual meeting on 10 March 2022. Many of the above issues were discussed at length, and whilst no agreements or compromises were achieved, the position of all parties was clarified.

**Referrals**

**Internal**

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

Council Unit	Comments
Infrastructure	No concerns subject to standard drainage and traffic conditions and condition of permit requiring swept paths to demonstrate satisfactory vehicle turning.
Council's consulting arborist	High retention value trees on site and the Council owned nature strip tree would remain viable subject to condition of permit requiring implementation of a Tree Protection Management Plan during construction. Third party trees would be impacted by the driveway and this should be addressed via the tree protection measures discussed later in this report. Some of the medium retention value trees on site would be removed to facilitate the proposal and others retained.
Building	Building regulations will require ground floor ensuites to have mechanical ventilation and artificial lighting where no windows are provided.

**6. Planning Matters**

**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

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**External**

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

**Planning assessment**

**Introduction**

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

- Strategic location.
- Building bulk, massing and scale.
- Impacts to vegetation and landscaping opportunities.
- Private open space.
- Amenity impacts.
- Car parking and vehicle access.

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

**Strategic location**

21. The proposal makes a positive contribution to the supply and diversity of housing in the municipality but is not located within walkable distance (1.3 km) to the Eltham Activity Centre or train station. This does not preclude a multi-dwelling development, but does set a reasonable expectation for a highly compliant and policy consistent design response. The proposal meets the relevant planning and design objectives for the reasons discussed later in this report.

**Mandatory Requirements**

22. The proposal meets the garden area requirements of Clause 32.09-4 of the Nillumbik Planning Scheme, with 38.6% garden area provided (minimum 35% required).

23. The proposal has a maximum height of two-storeys and 7 metres. This meets the mandatory maximum height requirements of Clause 32.09-10 of two-storeys and 10 metres.

It is noted that the maximum height requirement is 10 metres (rather than 9 metres) as a building may exceed the maximum building height by up to one metre due to the slope of the land.

**6. Planning Matters**

**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

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**Building bulk, massing and scale**

24. The area can be characterised by single dwellings, with well landscaped front and rear setbacks, in a semi bush setting. The tree canopy is a defining feature of the area. There are some examples of multi-dwelling developments in the area. Built form is single storey and double storey. Housing styles are typically brick veneer with pitched tiled or corrugated steel roofs.
25. Overall, building bulk, massing and scale of the proposal is considered sympathetic to the character of the area.
26. The heights of the buildings (maximum heights 6 to 7 metres) are keeping with the developments in the area and are not visually obtrusive. Building heights have been minimised by responding to the natural topography of land.
27. Modest ground floor footprints are tucked under the first floors, using the natural slope of the land. The extent of earthworks is minimised to the extent necessary to position the garages. The skillion roof forms follow the contours of the land. A split level design has been adopted for Dwelling 2. Whilst the dwellings are double storey, the north sides of the dwelling first floors are positioned at ground level. Overall, the development presents as one and a half storeys, due the site responsive design.
28. The size of the building footprints are not excessive and represent 38% of the total site area.
29. Front, side and rear setbacks are sympathetic to the character of the area and adequately mitigate the visual impact to the public realm and adjoining properties. The front setback is 13 metres and rear setback 4.5 metres. Side setbacks vary, but provide sufficient separation between neighbouring dwellings to maintain the detached character of the area. The exception is the Dwelling 2 lounge room wall located on the west boundary, but this is part of the existing dwelling.
30. There is sufficient separation between the proposed dwellings internally within the site and the design response maintains the detached character of the area.
31. Walls are well articulated and recessed to break up the appearance of built form.
32. The garages are located behind the front lines of the dwellings and largely obscured as a subfloor feature. Garages would not dominate the streetscape.
33. The dwellings have a good sense of address, easily identifiable entries and a sufficient landscaping transition at the entries. No front fencing is proposed, maintaining site integration and openness with the street.
34. External materials of rendered walls, vertical cladding and skillion, Colorbond roofs are in keeping with the character of the area. External colours are Basalt, Shale Grey and Monument are suitably muted.
35. The proposal makes sufficient provision for the retention of existing canopy trees. There is sufficient space provided for new canopy tree planting and other landscaping throughout the site. These point are discussed in the next section of this report.

**6. Planning Matters**

**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

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**Vegetation Impacts**

36. There are currently 20 trees on site comprising three high retention value, six medium retention value and 11 low retention value trees.
37. Tree numbers 19, 21 and 27 – *Eucalyptus polyanthemos* (Red Boxes) located within the site have a high retention value, are proposed to be retained and are expected to remain viable subject to the implementation of a Tree Protection Management Plan during construction. The proposal has responded to the site and the shortcomings of the previous application by designing around these trees.
38. Tree number 4 – *Eucalyptus melliodora* (Yellow Box) and tree number 20 – *Eucalyptus polyanthemos* (Red Box) located within the site have a medium retention value, are proposed to be retained and are expected to remain viable subject to a Tree Protection Management Plan.
39. The following trees located on the site have a medium retention value and are proposed to be removed to accommodate the development:
  - Tree number 2 – *Eucalyptus goniocalyx* (Long Leaved Box)
  - Tree number 8 – *Melaleuca linariifolia* (Snow in Summer)
  - Tree number 17 – *Brachychiton populneus* (Kurrajong)
  - Tree number 18 – *Grevillea robusta* (Silky Oak).

It is noted that tree numbers 8, 17 and 18 are planted, non-Victorian species and therefore a planning permit is not required for their removal under the Significant Landscape Overlay (Schedule 2).
40. The remaining 11 trees on site have a low retention value. Tree numbers 1, 6, 7, 9, 10, 13, 14, 22, 23 and 26 are proposed to be removed. Tree number 5 is proposed to be retained.
41. Tree number 1 and 6, both *Eucalyptus goniocalyx* (Long Leaved Box), require a planning permit for removal. Tree number 7 – *Eucalyptus goniocalyx* (Long Leaved Box) benefits from the bushfire exemptions due to its proximity to the dwelling at 115 Progress Road. Tree number 9 – *Eucalyptus sideroxylon* (Red Ironbark) and tree number 26 – *Allocasuarina torulosa* (Forest Oak) are planted Victorian natives. Tree numbers 10, 13, 14, 22 and 23 are various environmental weeds.
42. The Council owned nature strip tree number 3, is not expected to be impacted by the proposal and expected to remain viable subject to a Tree Protection Management Plan.
43. Third party tree numbers 11, 12 and 15 would be impacted by the proximity of the driveway. This impact can be addressed by condition of permit requiring the driveway to be setback 0.5 metres from the east boundary, requiring root sensitive construction methods and driveway surface construction from a permeable material. The remaining third party tree numbers are expected to remain viable under the proposal.

**6. Planning Matters**

**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

- 44. On balancing competing planning objectives, the removal of the low retention value trees and medium retention value tree numbers 2, 8, 17, 18 are considered appropriate, given that the design achieves the protection of all high retention value trees, third party trees, the Council owned nature strip tree and the remaining medium retention value trees on site.
- 45. There is sufficient opportunity for canopy tree planting and other landscaping throughout the site in the front setback and each of the secluded private open space areas.
- 46. The Semi Bush precinct policy seeks canopy tree planting at a density of one tree to every 50 - 100 square metres of site area.
- 47. There are currently nine trees on site with a high or medium retention value, with all three high retention value trees and two medium retention value trees proposed to be retained. Based on the density ratio as referred to above, the development should provide for a total of 20 canopy trees (including the 6 trees to be retained and 14 to be planted). This tree density would represent a significant improvement to the current vegetation on site and enhance landscape character of the area. This density would maximise the canopy tree cover on the site without exceeding the threshold of overplanting. A condition of permit would require the exact species and location of canopy tree planting and secondary plantings to be submitted via an endorsed landscape plan in the event a permit is issued.
- 48. The driveway is proposed to be constructed against the east boundary, with no landscape buffer to soften the appearance of the accessway. A condition of permit is recommended to relocate the landscape strip to the east side of the driveway for its entire length in the event a permit is issued. Landscaping breaks would still be maintained at intervals along the west side of the driveway.

**Private Open Space**

49. The proposal provides the following private open space:

Dwelling number	Private open space (m <sup>2</sup> )	Minimum required (m <sup>2</sup> )	Including secluded private open space (m <sup>2</sup> )	Minimum required (m <sup>2</sup> )	Complies with Clause 55
1	254	40	100	25	Yes
2	224	40	159	25	Yes
3	273	40	257	25	Yes

**6. Planning Matters**

**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

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50. The secluded private open space areas have minimum widths ranging from 6.3 metres to 9.9 metres, well in excess of the minimum three metres required, good solar access and convenient access from a living room.

The provision of private open space substantially exceeds the minimum requirement of the standard.

**Amenity Impacts**

51. The degree of overshadowing to the secluded private open space of adjoining properties is reasonable as adequate sunlight will still be received through the day measured at the equinox. The proposal complies with Clause 55.04-5 (Overshadowing Open Space).
52. The solar access to the habitable room windows and solar panels of adjoining properties would not be unreasonably impacted and complies with Clause 55.03-5 (Energy Efficiency) and Clause 55.04-4 (North-facing Windows).
53. Overlooking from habitable room windows to the secluded private open space and habitable room windows of adjoining properties is avoided and complies with Clause 55.04-6 (Overlooking). This is largely achieved through topographically responsive floor positioning, building setbacks, window positioning and minimal reliance on highlight windows, obscure glazing and balcony screens.
54. Overall, the proposal complies with all other standards and objectives of Clause 55 (ResCode).

**Car Parking and Vehicle Access**

55. Dwelling 1 and 2 are provided with two car spaces in the form of a double car garage. Dwelling 3 is provided with three car spaces in the form of a double car garage and uncovered car space. The number of car spaces and the internal dimensions of the garages meet the requirements of Clause 52.06 (Car Parking). It is noted that the uncovered car space is surplus to the minimum requirements.
56. The car spaces are accessed via a common driveway to Progress Road. The width of the driveway meets the requisite three metres. Ramp grades are not clearly shown but this can be addressed by condition of permit requiring sectional diagrams to show driveway gradients in accordance with Clause 52.06-9.
57. Vehicles are able to enter each car space in a single manoeuvre and in a forward direction. To ensure that vehicles exiting the car spaces do not rely on corrective manoeuvres, the garage doors will be required to be widened to 4.8 metres (to a standard double garage door width), together with minor reconfigurations to the garden beds adjacent to the common driveway. Swept paths will be required to illustrate the above manoeuvring arrangements and to ensure that the amended design achieves the right balance between landscaping outcomes and vehicle access.
58. Vehicle sight lines should be shown on the plans in accordance with the standard to ensure vehicles can exit the site clear of visual obstruction.
59. The proposal is not expected to produce traffic volumes that would exceed the capacity of local streets.

**6. Planning Matters**

**PCC.010/22 Construction of two double storey dwellings, buildings and works to alter the existing dwelling and removal of vegetation at 117 Progress Road, Eltham North**

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**Response to objections received**

60. The written objections have raised a number of concerns with respect to the proposed development. Issues regarding removal of and impacts to existing vegetation, landscaping opportunities, built form, site permeability, overlooking and traffic and road safety have been discussed in earlier sections of this assessment. A response to those issues not previously discussed and addressed is included below.

Density

61. The planning scheme does not contain specific density controls. Rather, density is limited through the application of the various planning policies and objectives discussed in this report.

Noise, including noise during construction

62. Noise generated by occupants would be residential noise and subject to Environmental Protection Authority (EPA) regulations. A condition of permit is recommended to ensure air-conditioning and other plant and equipment is positioned and baffled so that noise disturbance is minimised.

Noise during construction is regulated through EPA regulations. Planning officers are unable to consider noise during construction as a ground of refusal.

Delivery vans reversing

63. The planning scheme does not require delivery vans or other commercial vehicles to exit the site in a forward direction.

Impacts to local fauna, environmental impacts and climate change

64. The relevant planning provisions are focused on landscape character, rather than the protection of local habitat and fauna. Notwithstanding, the proposal makes sufficient provision for the retention and planting of indigenous canopy trees for the reasons discussed earlier in this report.

65. The proposal is not expected to adversely impact waterways, soil quality or air quality.

66. The proposal responds to the importance of energy efficiency by providing north orientations to the dwellings and maximising north facing windows to the principle living spaces. The solar access to the habitable room windows and solar panels of adjoining properties would not be unreasonably reduced.

Realignment of boundary fence, relating to adverse possession claim

67. Planning decisions must be based on the status of boundaries as shown on title. Planning officers form no view on any potential adverse possession claim.

**Conclusions**

68. It is considered that the proposal is an acceptable outcome for the site and surrounding area and approval is recommended, subject to conditions.

**Conflicts of interest**

69. All officers involved in the preparation of this report have made a declaration that they do not have a conflict of interest in the subject matter of this report.

6. Officers' reports

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

**Item: Planning Matter**

**Distribution: Public**

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

**Author: Kamal Hasanoff, Acting Manager Planning Services**

**Application summary**

Address of the land	30 Waigo Way, Diamond Creek
Site area	1,574 m2
Proposal	Buildings and works associated with the construction of five triple storey and two double storey dwellings
Application number	818/2020/03P
Date lodged	10 December 2020
Applicant	Cornetta Partners Architects
Zoning	General Residential Zone (Schedule 1)
Overlay(s)	None
Reason for being reported	Called in by Ward Councillor.
Number of objections	13
Key issues	<ul style="list-style-type: none"> <li>• Strategic location</li> <li>• Building bulk, massing, scale and setbacks.</li> <li>• Impacts to vegetation and landscaping opportunities</li> <li>• Private open space</li> <li>• Amenity impacts</li> <li>• Car parking and vehicle access</li> <li>• Waste management</li> <li>• Potentially contaminated land</li> <li>• Consent under the Section 173 Agreement</li> </ul>

6. Planning Matters

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

<b>Recommendation</b>
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- A.** That the Committee (under delegation from Council) issue to the land located at 30 Waigo Way, Diamond Creek for buildings and works associated with the construction of five triple storey and two double storey dwellings, a:
- Notice of Decision to Grant a Permit; and
  - Miscellaneous consent for buildings and works within Tree Protection Zones.
- B.** That the Notice of Decision to Grant a Permit to the land located at 30 Waigo Way, Diamond Creek for buildings and works associated with the construction of five triple storey and two double storey dwellings be in accordance with the submitted plans and subject to the following conditions:
1. Before the development commences 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 submitted with the application but modified to show:
    - a) First floor and second floor habitable room windows and balconies treated in accordance with Clause 55.04-6 (Overlooking) of the Nillumbik Planning Scheme to prevent overlooking to the secluded private open space and habitable windows of adjoining properties.
    - b) A landscape plan in accordance with Condition 3.
    - c) The Tree Protection Zones (TPZ) for trees on site to be retained and all third party trees.
    - d) Tree protection measures in accordance with the arborist report by Stem Arboriculture dated 9 November 2021 to protect trees on site to be retained and all third party trees.
    - e) Tree protection measures in accordance with Condition 9 to protect the Council owned nature strip Tree 18.
    - f) A Tree Protection Management Plan in accordance with Condition 10.
    - g) The location of all trenched services.
    - h) A detailed Environmental Site Assessment in accordance with Condition 13.
    - i) Provision of a communal bin storage area to the immediate east of Dwelling 6 garage while maintaining the visitor car space.
    - j) A Waste Management Plan in accordance with Condition 15.
    - k) A notation showing the common driveway with minimum width of 3 metres throughout its entire length.

6. Planning Matters

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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- l) The garages of Dwelling 3, 4 and 5 setback 5.7 metres from the east boundary and the adjacent garden beds to their respective accesways modified to facilitate convenient vehicle access.
  - m) The swept paths within the site to be illustrated to allow convenient access to car spaces.
  - n) The swept paths to and from all crossovers along the front boundary to Waigo Way to demonstrate convenient access. If the crossovers are required to be increased in width to facilitate sufficient swept paths, it must be done to the satisfaction of the Responsible Authority.
  - o) Vehicle sight lines in accordance with Clause 52.06-9 (Car Parking) of the Nillumbik Planning Scheme to ensure vehicles can exit the site clear of visual obstruction.
2. The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
  3. Before the development commences, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The plan must show:
    - a) A survey of all existing vegetation and natural features;
    - b) The area or areas set aside for landscaping;
    - c) A schedule of all proposed trees, shrubs/small trees and ground cover. This schedule shall include a mixture of selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing;
    - d) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material;
    - e) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill;
    - f) Appropriate irrigation systems; and
    - g) Appropriate maintenance details.
  4. 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.
  5. No native vegetation on site (unless specified on the endorsed plans) shall be removed, destroyed, felled, lopped, ringbarked, uprooted or otherwise damaged except with the prior written consent of the Responsible Authority.
  6. Prior to development commencing (including any boring of piers, demolition, excavations, tree removal, delivery of building/construction materials and/or

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**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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temporary buildings), the trees marked on the endorsed plans as being retained must have a Tree Protection Zone (TPZ) established 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 TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009)

Fencing may be reduced directly adjacent to the works area only to allow access during construction (i.e. no more than 1 metre away from the works/ construction area)

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 and must be a minimum height of 1.5 metres and of chain mesh or similar 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) 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.

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

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**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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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; and
  - h) Unauthorised entry by any person, vehicle or machinery.
  
9. The Council owned nature strip Tree 18 must be protected in accordance with the following tree protection measures:
  - All works within the Tree Protection Zone (TPZ) of Tree 18 must be conducted under the direct supervision of a Project Arborist.
  - Existing concrete within the TPZ must be carefully excavated to ensure excavation of soil below is minimised and roots which may be located beneath the concrete remain unscathed.
  - The existing service pit must be either retained as is, or, removed as per the following methods:
    - Any decommissioned service lines beneath the TPZ of Tree 18 must remain in situ.
    - Any new services required to pass through the TPZ of Tree 18 must be installed via directional boring to a depth of at least 800mm with bore entry located outside of the TPZ. Alternatively, it may be possible to utilise hydro-excavation to expose channels into which services may be threaded so as to avoid roots.
  - Within the TPZ of Tree 18, the proposed footpath entry to Dwelling 3 must be constructed at or above grade, with no excavation or compaction of the subgrade and a maximum of 100mm of fill used to create a level surface.
  
10. Before the endorsement of plans a Tree Protection Management Plan by a suitably qualified arborist must be submitted to, and to the satisfaction of, and endorsed by the Responsible Authority. The plan must show all measures required during construction to ensure protection of trees to be retained.

6. Planning Matters

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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The plan must include (but not be limited to) the following:

- Locations of tree protection fencing to isolate TPZs from impact, or ground protection where appropriate in lieu of fencing.
  - Crown pruning requirements to be conducted in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
  - Site ingress/egress routes for vehicles, machinery, equipment and materials.
  - Suitable on-site areas for material storage (if any).
  - Locations and timing of works within TPZs required to be supervised by the Project Arborist.
  - Certification templates to allow the Project Arborist to induct contractors and monitor compliance at all stages of site works; which should be provided to Council at the completion of the project.
11. The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type and finished in muted tones, to the satisfaction of the Responsible Authority.
  12. Air-conditioning and other plant and equipment installed on the subject buildings shall be so positioned and baffled so that noise disturbance is minimised, to the satisfaction of the Responsible Authority.
  13. Prior to the development commencing, a detailed Environmental Site Assessment by a suitably qualified professional (such as a member of the Australian Contaminated Land Consultants Association, ACLCA) submitted to, and to the satisfaction of the Responsible Authority. The assessment must have regard to the findings in the report by Atma Environmental dated 5 March 2021 and provide and implement recommendations as appropriate in relation to the development approved under this permit.
  14. In the event contamination has been identified on site and there are obligations resulting from the recommendations of the detailed Environmental Site Assessment referred to in Condition 13, the owner may be required (to the satisfaction of the Responsible Authority) to enter into an agreement with the Responsible Authority in accordance with Section 173 of the *Planning and Environment Act 1987* to inform future land owners and occupiers of those obligations.

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

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

6. Planning Matters

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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15. Prior to the development commencing, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to, and to the satisfaction of, and endorsed the Responsible Authority. When approved, the plan will be endorsed as evidence of its approval. The plan must specify but limited to, the following:
  - a) The details and location of bin storage and bin collection points by a private waste contractor.
  - b) Access route and method of access for the vehicles collecting waste.
  - c) Details and location of bin storage areas for each approved dwelling.
  - d) Odour control from bin storage areas.
  - e) Collection of waste and emptying of bins inside the subject site.
  
16. Before the development commences, the owner must enter into an agreement with the responsible authority and in accordance with Section 173 of the Planning and Environment Act 1987. The agreement must provide for:
  - a) The provision of private waste collection from the site in accordance with the Waste Management Plan endorsed under the permit.
 

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

The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.
  
17. Driveways, access lanes, and areas set aside for the parking and access of vehicles must be constructed and formed to such levels to ensure they can be utilised at all times and in accordance with the endorsed plans. Car parking must be line-marked or provided with some other adequate means of showing the car parking spaces. 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.
  
18. Stormwater from the driveway must be collected using 225mm wide trench-grates across the driveway and/or grating pits positioned within the driveway at a maximum spacing of 15 metres to the satisfaction of the Responsible Authority.
 

Stormwater must be connected to the on-site detention device to the satisfaction of the Responsible Authority. Overflow of stormwater must be connected to the nominated point of discharge.

Use minimum 225mm diameter underground drains for the internal drainage system underneath the driveway.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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19. 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 unless with the prior written consent of the responsible authority). The engineer that is designing the on-site detention device must obtain tc and tso figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event.
20. An on-site detention device must be installed, at no cost to Council, to restrict the property storm water discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority (Nillumbik Shire). The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge.  
  
Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and specifications and under an Infrastructure Works permit.
21. Stormwater must not be discharged from the subject land other than by means of an underground pipe drain to the Nominated point of stormwater discharge.
22. The nominated point of stormwater discharge is outside of the development site and requires the construction of drainage works outside the boundaries of the site. Such drainage works must be designed by a qualified engineer and plans and computations submitted to the Responsible Authority (Nillumbik Shire) for approval prior to the commencement of the development. Plans must detail underground drains, types and sizes of drainage pits, drainage longitudinal sections, pit schedule, etc. for approval. The construction plans and computations are to be prepared in accordance with Nillumbik Shire Council's "Subdivisional Design and Construction Standards" and "Drainage Design Guidelines".
23. Stormwater drainage works are to be constructed, at no cost to Council, and must be carried out under Council supervision, in accordance with the approved plans and Council's specifications and must be carried out under Council supervision and an Infrastructure Works permit.

**Permit Expiry:**

24. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within 2 years of the date of this permit.
  - b) The development is not completed within 4 years of the date of this permit.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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

**End Permit Conditions:**

- C. That** the Committee (under delegation from Council) approve miscellaneous consent to the land located at 30 Waigo Way, Diamond Creek for buildings and works inside the Tree Protection Zones in accordance with the submitted plans and the following list of consents:
1. Building and works for paving, fences, rainwater tanks and hot water units within the Tree Protection Zones of the Section 173 Agreement in accordance plans endorsed under planning permit 818/2020/03P.
  2. The vegetation within Tree Protection Zones must be protected in accordance with the tree protection measures contained in the Section 173 Agreement and the conditions of planning permit 818/2020/03P.
  3. The plans endorsed under planning permit 818/2020/03P form part of this consent.

**Attachments**

- 1  Aerial Map
- 2  Site and Surrounds
- 3  Plans
- 4  Precinct 4 plan

**Subject site and surrounds**

1. The key features of the subject land and surrounds are as follows:
  - The subject site is described on title as Lot 2 on Plan of Subdivision 600496W, Volume 11106 Folio 761.
  - The site is located on the south side of Waigo Way, 60 metres west of Wensley Street.
  - The site is located adjacent to the Diamond Creek Activity Centre and has a frontage to Waigo Way, a laneway providing access to residential properties and the rear of shops.
  - The site has an area of 1,574 square metres and a front boundary width of 30.2 metres.
  - The land rises from front to rear by approximately 3 metres.
  - The site is vacant and contains a number of trees.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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- There is a Section 173 Agreement on title, protecting the trees on site. The details of the Agreement are described later in this report.
- The site is encumbered by a sewerage easement (north boundary) and drainage and sewerage easement (east boundary).

2. The surrounding land comprises the following:

North: Shops within the Diamond Creek Activity Centre.

South: Telstra exchange building and single dwelling (double storey).

East: Multi-dwelling development (single storey, attached).

West: Multi-dwelling development (double storey, detached).

The area can be characterised by multi-dwelling developments, in a Garden Court setting, at the interface with the Diamond Creek Activity Centre. Housing styles are typically brick veneer with pitched tiled roofs.

**Details of proposal**

3. Refer to the attached plans.

4. Key features of the proposal include:

- Construction of five triple storey dwellings (Dwelling 1, 2, 3, 4 and 5) and two double storey dwellings (Dwelling 6 and 7).
- Dwelling 1 and 2 each have two bedrooms and are provided with a single garage.
- Dwelling 3, 4 and 5 have three bedrooms and are provided with a double garage.
- Dwelling 6 and 7 have four bedrooms and are provided with a double garage.
- Vehicle access is provided via separate driveways for Dwelling 1 and 2 and a common driveway for the remaining dwellings. All vehicles access the site from Waigo Way.
- Dwelling 1, 2, 3, 4 and 5 is provided private open space through first floor balconies.
- Dwelling 6 and 7 is provided with private open space at ground level and first floor balconies.
- With the exception of skillion features to the rear dwellings, roof forms are flat and constructed of sheet metal. External walls are face brickwork, render, matrix cladding, timber look cement sheeting and aluminium battens. External colours are white, light grey, dark grey and timber (light and dark).
- Building and works are proposed for paving, fences, rainwater tanks and hot water units within the Tree Protection Zones of the Section 173 Agreement.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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**Planning history**

5. Planning permit 22/2007/14P was issued on 29 May 2007 for the subdivision of 35-37 Haley Street, Diamond Creek into two lots. This created the subject site and the lot containing the Telstra exchange to the south. A condition of the subdivision permit required the owner enter into a Section 173 Agreement with Council.

**Section 173 Agreement**

6. The Section 173 Agreement has ongoing owner obligations relating to the protection of the trees within the Tree Protection Zones, including no building and works within those zones. Any deviation from these obligations requires the prior written consent of Council.
7. The proposal includes building and works for paving, fences, rainwater tanks and hot water units within the Tree Protection Zones of the Section 173 Agreement. These building and works require Miscellaneous Consent.

**Planning controls**

**Zoning**

8. The subject land is zoned General Residential (Schedule 1). Under this zone, a permit is required to construct two or dwellings on a lot.

**Overlays**

9. The subject land is not affected by any overlays.

**Particular provisions**

10. Clause 52.06 (Car Parking) applies to the application. This clause seeks to ensure there is the provision of an appropriate number of car parking spaces; that car parking does not adversely affect the amenity of the locality; and that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.
11. Development of two or more dwellings on a lot must meet the requirements of Clause 55 (commonly known as 'ResCode').
12. Clause 65 (Decision Guidelines) outlines general decision guidelines that must be considered when assessing an application. These guidelines include the purpose of the zone or other provision, the orderly planning of the area, and the effect on the amenity of the area.

**Relevant planning policies**

13. Municipal Planning Strategy which are relevant to this application include:
  - Clause 2.01 (Context)
  - Clause 2.03-1 (Settlement)
  - Clause 2.03-5 (Built Environment)

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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14. The Planning Policy Framework which are relevant to this application include:

- Clause 11.01-1S (Settlement)
- Clause 11.02-2S (Structure Planning)
- Clause 11.03-1L-02 (Activity Centres in Nillumbik)
- Clause 15.01-1S (Urban Design)
- Clause 15.01-2S (Building Design)
- Clause 15.01-2L-01 (Building Design in Nillumbik)
- Clause 15.01-2L-02 (Medium Density Housing Design)
- Clause 15.01-4S (Healthy Neighbourhoods)
- Clause 15.01-5S (Neighbourhood Character)
- Clause 15.01-5L (Neighbourhood Character – Nillumbik)
- Clause 16.01-1S (Housing supply)
- Clause 16.01-1L (Location of medium density residential development)
- Clause 16.01-2S (Housing affordability)

**Council plans and policies**

15. Diamond Creek Major Activity Centre / Structure Plan adopted by Council on 8 September 2020.

**Advertising**

16. The application has been advertised by way of posting notices to the owners and occupiers of neighbouring properties and the erection of a notice board on site. Following an amendment to the application, re-advertising was undertaken by the same method.

**Objections**

17. As a result of advertising, a total of 13 written objections have been received, including one petition of 39 signatories and one petition of three signatories. The objections can be summarised as follows:

- Building bulk, massing, scale and setbacks.
- Overdevelopment of the site and density.
- Vegetation removal and insufficient landscaping opportunities.
- Housing style.
- Overshadowing, overlooking, noise and reflective materials.
- Car parking, vehicle access and traffic.
- Waste management.
- Impacts to local habitat and fauna.
- Management of common property.
- Loss of property value.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

**Planning application conference**

18. A planning application conference was held by virtual meeting on 28 June 2021. Many of the above issues were discussed at length, and whilst no agreements or compromises were achieved, the position of all parties was clarified.

**Referrals**

**Internal**

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

Council Unit	Comments
Infrastructure Department	No drainage concerns subject to standard drainage conditions. Amended swept paths are required for all car spaces to demonstrate vehicle ingress and egress movements. The swept paths must also account for existing vehicles parked in Waigo Way.
Waste Management Team	Private waste collection is required. A Waste Management Plan is required to show how waste storage and collection would be implemented.
Building Services	A building permit is required. Side setbacks do not meet the minimum requirements. This was subsequently resolved through an amendment to the plans to reduce building heights and increase the east boundary setbacks.
Environmental Planning	Tree number 18 is a <i>Eucalyptus blakelyi</i> (Blakely's Red Gum) located in the road reserve. A planning permit and native vegetation offsets would be required for its removal.
Parks and Open Space	Tree number 18 is a Council owned nature strip tree and should be retained.
Council's consulting arborist	Tree numbers 4a, 15, 16, 17 and 19 on site are located outside the Tree Protection Zones imposed by the Section 173 Agreement and are proposed to be removed. They have a low retention value, poor condition and short useful life expectancy. They are not suitable for retention.  The remaining trees on site are located within the Tree Protection Zones of the agreement and would remain viable subject to tree protection measures.  Tree number 18 and third party trees would remain viable subject to tree protection measures.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

Council Unit	Comments
	Tree protection measures include a Tree Protection Management Plan to ensure trees are not damaged during construction.
Urban Design	<p>The Diamond Creek Major Activity Structure Plan (2020) envisages four storeys at the activity centre opposite the subject site.</p> <p>Three vehicle crossings would impact the Activity Centre’s walkability and safety. Consolidation to one vehicle crossing is recommended.</p> <p>The common driveway should be setback from the east boundary to provide a landscape buffer to soften the appearance of the accessway.</p> <p>Relocating the rear dwellings further north would enable a northern orientation at all floor levels, improving solar access.</p> <p>The front elevation to Waigo Way is deficient in activation and passive surveillance to the street.</p>

**External**

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

**Planning assessment**

**Introduction**

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

- Strategic location
- Building bulk, massing and scale.
- Impacts to vegetation and landscaping opportunities.
- Private open space.
- Amenity impacts.
- Car parking and vehicle access.
- Waste management.
- Potentially contaminated land.
- Consent under the Section 173 Agreement.

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

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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**Strategic location**

23. Directing more intensive developments to areas in and around activity centres goes some way in alleviating development pressures in areas where minimal change is desired.
24. The proposal makes a positive contribution to the supply and diversity of housing in the municipality (Clause 2.03-1, 16.01-1R and 16.01-2S). It is located adjacent to the Diamond Creek Activity Centre and a short walk to the train station. There is strong strategic justification for development intensification at this site due to this proximity (Clause 2.03-1 and 16.01-1L).
25. The Diamond Creek Major Activity Centre / Structure Plan was adopted by Council on 8 September 2020. The subject site is not located within the Activity Centre but is located adjacent to it. The structure plan envisages four storeys at the activity centre opposite the subject site, in Precinct 4 Area – Retail Core (see tan colour on **Attachment 4**).

**Building bulk, massing and scale**

26. Overall, building bulk, massing and scale of the proposal is consistent with the preferred character of the area and represents incremental change from the existing character.
27. The proposed three-storey height at the front of the site is appropriate given the interface with the Activity Centre, where four storeys is envisaged. The development provides an appropriate height transition from the activity centre to the lower scale developments to the south. The proposed two-storey height at the rear of the site further facilitates this transition. The two-storey height has regard to the scale of the adjoining residential properties to the east and west. A Telstra exchange is located on the adjoining property to the south and, whilst not a sensitive interface, the two-storey built form would ensure that views from Haley Street would not be visually obtrusive.
28. The size of the building footprints are not excessive and represent 41% of the site area. The buildings are formed into groups, which provide meaningful separation between buildings and enhances the sense of openness between buildings.
29. The front setback of between 3 metres and 3.6 metres is largely in line with the setbacks of the dwellings either side of the subject site, although it is highlighted that these represent side and rear setbacks and have back fencing to Waigo Way. The front setback is considered appropriate at the interface with the Activity Centre. The rear setback is significant and provides a substantial landscape area at the rear of the site. The side boundary setbacks comply with Clause 55.04-1 (Side and Rear Setbacks).
30. The second floors are recessed from the first floors below. A combination of minor building articulation and external colours and materials are adopted to further break up the appearance of built form.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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- 31. Only two single car garages face the street, and are not located forward of the dwelling facades. All double garages are located internally within the site and would not dominate the streetscape.
- 32. The extent of hard surface area internally within the site is limited and landscaping is the dominant feature. The front setback treatment encompasses a combination of landscaping, driveways and paths that are considered appropriate in the context of the street and its proximity to the Activity Centre. Three vehicle crossings is acceptable under Clause 55.03-9 (Access); and a front boundary width of 30.2 metres is compatible with the streetscape. The low open-style front fence with a height of 0.9 metres, minimises impact on the integration and openness of the site with the streetscape.
- 33. Minor skillion roof features are provided to the rear dwellings, but roof forms are largely flat. External walls are a blend of face brickwork, render, matrix cladding, timber look cement sheeting and aluminium battens. External colours are white, light grey, dark grey and light and dark timber. The roof forms, materials and colours are suitably muted and considered appropriate at the interface with the Activity Centre.
- 34. The proposal makes sufficient provision for the retention of existing canopy trees. There is sufficient space provided for landscaping throughout the site. These points are discussed further in the next section of this report.

**Vegetation impacts and landscaping**

- 35. The Section 173 Agreement on title includes Tree Protection Zones and ongoing measures required to protect the existing trees on within those zones.  
 Tree numbers 1, 2a, 3 and 4 located within the Tree Protection Zone at the rear of the site are proposed to be retained. These trees are expected to remain viable subject to tree protection measures being adopted via conditions in the event that a permit is issued.
- 36. Tree numbers 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 located within the Tree Protection Zone located centrally on the site are proposed to be retained. These trees are expected to remain viable subject to tree protection measures.
- 37. Tree numbers 4a, 15, 16, 17 and 19 are located on the subject site, outside of the Tree Protection Zones and are not protected by the Section 173 Agreement. These trees are proposed to be removed and have a low retention value, are in poor condition and have a short useful life expectancy. Their condition means retention is not vital and so removal is supported.
- 38. Tree number 18 is a Council owned nature strip tree proposed to be retained. This tree would remain viable subject to tree protection measures.
- 39. Tree numbers 2, 20, 21, 22 and 23 are third party trees and therefore should not be adversely impacted. They proposed to be retained. These trees are expected to remain viable subject to tree protection measures. Third party tree's being tree numbers 4b and 4c have been removed and therefore no protection measures are required for these trees.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

- 40. The Garden Court precinct guidelines found at Clause 15.01-5L Neighbourhood Character, seek canopy tree planting at a density of one tree to every 200 square metres of site area, equating to a requirement for eight canopy trees. There are 14 canopy trees on site proposed to be retained, which exceeds this requirement, and these would have ongoing protection via the existing Section 173 Agreement on title and conditions in the event a permit is issued.
- 41. There is sufficient provision for other landscaping throughout the site including the front, rear and side setbacks; internally within the site; around driveways and dwelling entrances.

**Private open space**

- 42. The following dwellings are provided with private open space by way of balconies:

Dwelling number	Balcony (m <sup>2</sup> )	Minimum required (m <sup>2</sup> )	Width (m)	Minimum required (m)	Complies with Clause 55
1, 2, 3	8	8	2	1.6	Yes
4, 5	8.6	8	2.4	1.6	Yes

Further provision of private open space is provided at ground level, in the front yards and service yards.

- 43. Balconies are considered appropriate in place of ground level private open space given the site is located adjacent to the Activity Centre where development intensification is supported. This is in combination with the provision of 300 m<sup>2</sup> of communal open space located centrally on site. The subject site is also in proximity to areas of public open space.
- 44. The balconies meet the minimum area and width requirements under Clause 55 and have convenient access from the living rooms. The balconies for Dwelling 3 and 4 have good solar access.
- 45. The following dwellings have provision for ground level private open space:

Dwelling number	Private open space (m <sup>2</sup> )	Minimum required (m <sup>2</sup> )	Including secluded private open space (m <sup>2</sup> )	Minimum required (m <sup>2</sup> )	Complies with Clause 55
6	188	40	173	25	Yes
7	122	40	95	25	Yes

The secluded private open space areas exceed the minimum width requirement of 3 metres and have reasonable solar access. However, the proposal initially did not have convenient access from the living rooms, located at the first floor. This issue has since been addressed by providing compliant balconies adjacent to the living rooms.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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**Solar access and daylight**

46. The dwellings have reasonable solar access, with north orientation and windows to Dwelling 1, 2, 3, 6 and 7 and east-west orientation and windows to Dwelling 4 and 5. The orientations and windows comply with Clause 55.03-5 (Energy Efficiency).
47. All habitable rooms have access to daylight in accordance with Clause 55.05-3 (Daylight to New Windows).

**Amenity impacts**

48. The degree of overshadowing to the secluded private open space of adjoining properties is reasonable as adequate sunlight will still be received through the day measured at the equinox.
49. The solar access to the habitable room windows and solar panels of adjoining properties would not be unreasonably impacted and complies with Clause 55.03-5 (Energy Efficiency) and Clause 55.04-4 (North-facing Windows).
50. The design plans do not adequately demonstrate how potential overlooking to the secluded private open space and habitable room windows of adjoining properties would be mitigated. More specifically, potential overlooking from habitable first floor and second floor windows and balconies. In the event a permit is issued, conditions can be applied which can ensure all windows and balconies comply with Clause 55.04-6 (Overlooking).

**Car parking, vehicle access and traffic**

51. Dwelling 1 and 2 have two bedrooms and are provided with one car space in the form of a single car garage. Dwelling 2 has a study nook, but this does not constitute a bedroom.  
  
Dwelling 3, 4, 5, 6 and 7 have three or four bedrooms and are provided with two car spaces in the form of a double car garage.  
  
The number of car spaces and the internal dimensions of the garages meet the requirements of Clause 52.06 (Car Parking).
52. Vehicle access is provided to Waigo Way, via separate driveways for Dwelling 1 and 2 and a common driveway for the remaining dwellings.
53. The widths of the driveways meet the requisite 3 metres minimum, and ramp gradients are provided in accordance with Clause 52.06-9. However, the width of the driveways need to be clearly notated on the plans.
54. To ensure that vehicles can enter and exit the garages and the site conveniently the following changes and additional information are recommended:
  - The garage of Dwelling 3, 4 and 5 setback 5.7 metres from the east boundary (increased from 5.5 metres).
  - Minor reconfigurations to the garden beds adjacent to the common driveway.
  - Swept paths to illustrate convenient vehicles access from all accessways and crossovers.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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- The potential for crossovers to be increased in width to facilitate necessary swept paths.

Swept paths will be required to illustrate the above manoeuvring arrangements and to ensure that the amended design achieves the right balance between landscaping outcomes and vehicle access.

55. Existing and proposed crossovers along Waigo Way would impose a natural restriction and help regulate on street parking to help maintain traffic flow.
56. Vehicle sight lines should be shown on the plans in accordance with the standard to ensure vehicles can exit the site clear of visual obstruction.
57. Traffic assessment provided with the application indicates that the proposal would not produce traffic volumes exceeding the capacity of local streets.

**Urban Design**

58. The referral advice from Council's Urban Design unit is discussed and addressed below.

59. *The Diamond Creek Major Activity Structure Plan (2020) envisages four storeys at the activity centre opposite the subject site.*

The proposed three-storey height at the front of the site is appropriate given the interface with the Activity Centre, where four storeys is envisaged. The development provides an appropriate height transition from the activity centre to the lower scale developments to the south.

60. *Three vehicle crossings would impact the Activity Centre's walkability and safety. Consolidation to one vehicle crossing is recommended.*

The provision of three vehicle crossings complies with Clause 55.03-9 (Access) across the front boundary width of 30.2 metres, and is not expected to unreasonably impact the Activity Centre's walkability and safety.

It is noted that the subject site is the only property with an active frontage to Waigo Way and for this reason, the concern around undermining broader street activation objectives would not be applicable in the case of this development, particularly when safety through passive surveillance would be enhanced.

61. *The common driveway should be setback from the east boundary to provide a landscape buffer to soften the appearance of the accessway.*

The application responded by introducing a landscape buffer to the first six metres of the driveway.

62. *Relocating the rear dwellings further north would enable a northern orientation at all floor levels, improving solar access.*

The dwellings have reasonable solar access, with north orientation and windows to Dwelling 1, 2, 3, 6 and 7 and east-west orientation and windows to Dwelling 4 and 5. The orientations and windows comply with Clause 55.03-5 (Energy Efficiency).

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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63. *The front elevation to Waigo Way is deficient in activation and passive surveillance to the street.*

The application responded to the urban design feedback by removing the aluminium battens, which had obscured first floor windows, and by increasing the size of the second floor windows. Overall, the proposal now provides acceptable activation and passive surveillance by its orientation, entries and windows facing the street.

**Waste management**

64. For site context, waste collection from the commercial premises along Waigo Way occurs daily and by private collection. Notably, within the Waigo Way road reserve there are line markings which is intended to discourage car parking in order to facilitate waste collection.

65. Private waste collection for this proposed development is required as it not feasible for Council's waste vehicles to enter the common area for individual bin collection. A Waste Management Plan is required to show how waste storage and collection on the site would be implemented.

66. Specifically, the Waste Management Plan would include:

- The days and times for collection to provide certainty and to avoid conflict with the commercial premises along Waigo Way.
- Nominating the size of the waste vehicle to service the development based on potential site constraints and how they would access the site.
- A dedicated common area on site to store waste.
- The volume and type of waste generated by the development and required bin capacities.

67. The Waste Management Plan would be implemented as an ongoing owner obligation under a Section 173 Agreement in the event a permit is issued.

**Potentially contaminated land**

68. An Environmental Assessment by Atma Environmental dated 5 March 2021 was submitted with the application. The environmental site inspection did not identify any indications of overt contamination, hazardous wastes, or past evidence of utility (or council) depot use, although some areas of limited plant vigour were noted.

69. The report concluded that the past land uses pose a medium potential for contamination from the past Telstra Corporation and Council ownership considering the absence of details on specific site activities carried out. The report concluded that in assessing an application for a sensitive land use, an environmental audit is not considered to be appropriate for the site.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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- 70. The report recommended that a detailed Environmental Site Assessment by a suitably qualified professional (such as a member of the Australian Contaminated Land Consultants Association, ACLCA) be conducted. The detailed assessment should have regards to the findings in the report and provide clear advice on the suitability of the land for the proposed use.
- 71. In the event a permit is issued, a condition of permit is recommended to require a detailed Environmental Site Assessment in accordance with the recommendations by Atma Environmental. The detailed Environmental Site Assessment should be endorsed by Council and form part of the permit, before development commences.

**Sewerage easements**

- 72. On 18 November 2020 the owner obtained build over consent from Yarra Valley Water to construct the driveways and minor structures over the sewerage easements.

**Consent under the Section 173 Agreement**

- 73. All trees located within the Tree Protection Zones of the Section 173 Agreement are proposed to be retained and are expected to remain viable subject to tree protection measures.
- 74. The trees proposed to be removed are located outside of the Tree Protection Zones and not protected by the Section 173 Agreement. These trees have a low retention value, poor condition and short useful life expectancy. Their condition means retention is not vital and so removal is supported.

**Response to objections received**

- 75. The written objections have raised a number of concerns with respect to the proposed development. Issues regarding built form, vegetation removal and landscaping opportunities, amenity impacts, car parking, vehicle access and traffic and waste management have been discussed in earlier sections of this assessment. A response to those issues not previously discussed and addressed is included below.

Overdevelopment of the site and density

- 76. The proposal meets the strategic planning objectives and design guidelines of the Nillumbik Planning Scheme for the reasons discussed in this report.
- 77. There are no density controls applicable to the subject site. Density is determined indirectly through the application of the strategic planning objectives and design guidelines discussed in this report.

Noise

- 78. Noise generated by occupants would be residential noise and subject to EPA regulations. A condition of permit is recommended to ensure air-conditioning and other plant and equipment is positioned and baffled so that noise disturbance is minimised.

**6. Planning Matters**

**PCC.011/22 Buildings and works associated with the construction of five triple storey and two double storey dwellings at 30 Waigo Way, Diamond Creek**

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Impacts to local habitat and fauna

79. The relevant planning provisions are focused on landscape character, rather than the protection of local habitat and fauna. Notwithstanding, the proposal makes sufficient provision for the retention of indigenous canopy trees for the reasons discussed earlier in this report.

Management of common property

80. The layout of the proposed development is such that subdivision could occur in an orderly manner and common areas clearly delineated. An owners' corporation could be established for the orderly management of the common property.

Loss of property value

81. Planning officers are unable to consider loss of property value as a ground of refusal.

**Conclusion**

82. It is considered that the proposal is an acceptable outcome for the site and surrounding area and approval is recommended, subject to conditions.

**Conflicts of interest**

83. All officers involved in the preparation of this report have made a declaration that they do not have a conflict of interest in the subject matter of this report.

6. Officers' reports

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

**Item: Planning Matter**

**Distribution: Public**

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

**Author: Leigh Northwood, Strategic Planning Lead**

**Summary**

The purpose of this report is to brief Council in regard to submissions received to the formal exhibition of Amendment C142nill (the Amendment).

The Planning and Consultation Committee (PCC) Meeting of 16 November 2021, resolved (among other matters) to request the Minister for Planning, under Section 8A of the *Planning and Environment Act 1987* (the Act), to authorise the preparation of the Amendment and to undertake public exhibition, which will apply permanent planning controls through the use of the Heritage Overlay (HO) to the structure, outbuildings and the immediate surrounding land located at 50 Oatland Road, Plenty.

It is noted this property was programmed to be reviewed as part of Council's Stage B Heritage Review, however Council received a Section 29A demolition consent application pursuant the *Building Act 1993* to demolish the dwelling located on the property in September 2021 which facilitated the need to bring review of this property forward.

Given threat of demolition, officers sought approval (under delegation) from the Minister for Planning for Amendment C141nill to introduce the HO to the property on an interim basis pursuant to Section 20(4) of the Act, providing protection and allowing this planning scheme amendment to introduce the HO permanently.

Authorisation to prepare and exhibit the Amendment was formally granted by the Minister on 9 December 2021.

Subject to Ministerial authorisation, the Amendment was placed on exhibition in accordance with Section 19 of the Act, from 27 January 2022 to 02 March 2022 and notifications were sent out to relevant stakeholders as well as being advertised. It is noted officers also advised the property owner of the upcoming exhibition prior to the start of the formal notification period to allow for as much time as possible for preparation of any submission material.

At the time of preparing this briefing, Council has received twenty eight (28) submissions in total, all objecting. Twenty three (23) submissions are in the format of a pro-forma. Three (3) of the submitters provided both the pro-forma and an individual submission. The main objections to the application of the permanent Heritage Overlay relate to the condition of the property along with support for the current owners who (as identified in submissions) were not aware of the heritage significance of the property when they purchased the land.

The property owners (refer Submitter 1) have had a submission prepared by a consultant (Planning Appeals Pty Ltd) addressing amongst other matters a reduction in curtilage to the mapping of the HO and structural matters. Officers have referred this submission to Councils heritage consultant for advice.

6. Planning Matters

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

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Where objecting submissions cannot be resolved, Officers will recommend that Council at the upcoming April Council Meeting, pursuant to Section 23(1)(b) of the *Planning and Environment Act 1987*, request the Minister for Planning appoint an independent planning panel to consider the Amendment.

**Recommendation**

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

1. Notes the submissions to Amendment C142nill to the Nillumbik Planning Scheme.
2. Resolves the confidential unredacted copy of the written submissions to Amendment 142nill remain confidential on the grounds specified in the definition of confidential information in section 3(1)(f) of the *Local Government Act 2020*.
3. Considers a further report at the April Council Meeting to resolve to either:
  - a. Adopt Amendment C142nill pursuant to Section 29 of the *Planning and Environment Act 1987* and pursuant to Section 31 of the *Planning and Environment Act 1987* request the Minister for Planning approve the Amendment (with or without changes); or
  - b. Request the Minister for Planning appoint an independent planning panel to consider Amendment C142nill pursuant to Section 23(1)(b) of the *Planning and Environment Act 1987*; or
  - c. Abandon Amendment C142nill.
4. Requests that Officers notify submitters to Amendment C142nill of the Committee’s resolution.
5. Requests that Officers provide an update onto Participate Nillumbik advising next stages for Amendment C142nill.

**Attachments**

- 1 Amendment C142nill Statement of Significance  

- .
- 2 Amendment C142nill Explanatory Report  

- .
- 3 Amendment C142nill Instruction Sheet  

- .
- 4 Amendment C142nill Map  

- .
5. Submissions to Amendment C142nill - Unredacted – **CONFIDENTIAL s3(1)(f)**

6. Planning Matters

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

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6 Redacted Submissions for Amendment C142nill



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7 Redacted Summary of Submissions for Amendment C142nill



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6. Planning Matters

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

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**Discussion**

1. 50 Oatland Road was programmed to be reviewed as part of Council's Stage B Heritage Review, however Council received a Section 29A demolition consent application pursuant the *Building Act 1993* to demolish the dwelling located on the property in September 2021 which facilitated the need to bring the review of this property forward.
2. Given threat of demolition, officers sought approval (under delegation) from the Minister for Planning for Amendment C141nill to introduce the HO to the property on an interim basis pursuant to Section 20(4) of the *Planning and Environment Act 1987* (the Act), providing protection and allowing this planning scheme amendment to introduce the HO permanently.
3. The significance of the property is outlined in the Statement of Significance (see **Attachment 1**). 50 Oatland Road, Plenty, is noted as historically significant for its association with the development of Plenty in the interwar years. As an intact timber bungalow built for William Charles and Priscilla Mary Lierse in c1928, originally on a 30 acre lot, it provides tangible evidence of the interwar subdivision pattern in which large rural landholdings in the Plenty area were divided for sale in allotments of 10 of 30 acres. A description of the relevant heritage criterion is identified in the Statement of Significance.
4. Amendment C142nill (the Amendment) was authorised by the Minister for Planning on 9 December 2021.

Exhibition

5. In accordance with Section 19 of the Act, the Amendment was placed on exhibition from 27 January 2022 to 02 March 2022.
6. The Explanatory Report, Instruction Sheet and Amendment Map are attached. (**Attachments 2, 3 and 4**)
7. Notification letters were sent out to the following stakeholders:
  - Owners and occupiers of 50 Oatland Road, Plenty and properties adjacent.
  - Prescribed Ministers
8. Notifications advertisements were also posted in the *Victorian Government Gazette* and Herald Sun on 27 January 2022.

Submissions

9. Twenty eight (28) submissions have been received all objecting to the application of the potential Heritage Overlay (refer **Attachment 5** Confidential unredacted Submissions and **Attachment 6** Redacted Submissions). Twenty three (23) submissions are in the format of a pro-forma. Three (3) of the submitters provided both the pro-forma and an individual written submission.

6. Planning Matters

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

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10. The key points raised in the submissions relate to the current poor condition of the property, the fact that the owners were unaware of the potential Heritage Overlay when they purchased the property and the fact that the property would be unsuitable for a wheelchair compatible dwelling even if restored. A redacted summary of the submissions can be found at **Attachment 7**.
11. The land owner has provided independent planning advice for the site as part of their submission. Please see **Attachment 5** (Submitter 1).
12. The key points raised in Submission 1 are:
  - The existing farm house is no longer a functional dwelling.
  - Restoration would be prohibitively expensive and the current owners bought intending to demolish.
  - The current owners first became aware of Council’s interest the demolition consent order was suspended.
  - The property is of limited heritage value and changes to the site mean that there is very little of the early farming settlement story visible on this site, other than the existence of the old house (it is unclear on the heritage basis for this advice as no heritage criterion assessment has been provided).
  - The proposal for heritage protection of a disused, unliveable dwelling shell is not warranted and is not an appropriately balanced outcome.
  - The building report attached confirms the current uninhabitable state of the building as an empty shell. It also highlights major structural deficiencies requiring significant maintenance or replacement work, if the building were to be brought back to habitable condition.
  - It is a prohibitive cost proposition that will not deliver the type of functional wheelchair accessible dwelling as required by the property owner (and user).
  - The heritage overlay should be removed completely but if it must be applied the extent is considered excessive and a reduced extent is proposed.

**Related Council decisions**

13. At Council’s Meeting of **29 June 2021** Council resolved:
 

That Council:

  - *Adopts the Final Draft Citations (**Attachment 1**) for Stage A of the Nillumbik Heritage Review.*
  - *Adopts the Priority Lists for Stage B of the Nillumbik Heritage Review (**Attachment 2**).*
  - *Publishes the Final Draft Citations (**Attachment 1**) for Stage A of the Nillumbik Heritage Review on Council’s website.*

**6. Planning Matters**

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

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14. At Council's Meeting of **26 October 2021** Council resolved:

That Council:

- *Defers consideration of CM.155/21 Amendment C142nill to Apply the Heritage Overlay (permanently) to 50 Oatland Road, Plenty.*
- *Requests officers to undertake consultation with the owners of 50 Oatland Road, Plenty to advise:*
  - *the reasons for the proposed Planning Scheme Amendment and*
  - *Of the Planning Scheme Amendment process.*
- *Requests officers to prepare a report for the 16 November 2021 Planning and Consultation Committee meeting for consideration and determination.*
- *Subject to the above resolution officers have continued discussions with the owners of 50 Oatland Road, and at the preparation of this report were identifying in collaboration with the owners a suitable time to for a face to face pre application meeting (the owners requesting face to face) to discuss not only the amendment but other proposed plans for development of the parcel.*

15. At the Planning and Consultation Committee meeting **16 November 2021**, the Committee resolved:

That the Committee (acting under delegation from Council):

- *Notes Amendment C141nill requested under delegation pursuant to Section 20(4) of the Planning & Environment Act 1987 to seek application of the Heritage Overlay on an interim basis to 50 Oatland Road, Plenty;*
- *Requests the Minister for Planning, under Section 8A of the Planning and Environment Act 1987, to authorise the preparation and exhibition of Amendment C142nill to the Nillumbik Shire Planning Scheme; and*
- *Undertakes public exhibition of Amendment C142nill which will apply permanent planning controls through the use of the heritage overlay should authorisation be granted.*

**Options**

16. Council officers have forwarded the planning advice prepared for the submitter by planning consultants to Council's heritage consultant (who prepared the citation) for advice and comment. Advice will be brought to Council's April meeting as part of the officer report.

17. As part of considering the submissions received, Council at the 22 April 2022 Council Meeting will be presented with an officer's recommendation. This recommendation will consider the following options:

- *Request the Minister for Planning appoint an independent planning panel to consider Amendment C142nill pursuant to Section 23(1)(b) of the Planning and Environment Act 1987; or*

**6. Planning Matters**

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

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- Adopt the amendment (with or without changes) pursuant to Section 29(1) of the Planning and Environment Act 1987 and seek approval from the Minister for Planning pursuant to Section 31 of the *Planning and Environment Act 1987*; or
- Abandon the amendment.

**Council plans and policies**

18. This report directly supports the achievement of the Council Plan 2021-2025 strategy:
- We respect and enhance the unique neighbourhood character in our communities to ensure a considered approach to planning and development.
19. 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**

20. The conservation of Nillumbik's heritage places plays an important role in the strengthening of both personal and community identities. This work aids in the social sustainability of Nillumbik's various communities.

**Community engagement**

21. In accordance with Section 19 of the *Planning and Environment Act 1987* the Amendment was notified and exhibited from 27 January 2022 to 02 March 2022.
22. There has been substantial engagement with the landowner, and their representatives. An initial meeting with the owners was attended by Councillor Eagan and Councillor Stockman.
23. A subsequent meeting, with the owner's and their representatives, regarding both the Heritage Overlay and a future dwelling application has been held with officers from the Strategic and Statutory teams working together although no detailed plans have yet been presented to enable a formal pre application meeting with the relevant advice.

**Innovation and continuous improvement**

24. The Amendment achieves continuous improvement through the implementation of Council's partially adopted Heritage Review; ensuring that Nillumbik Shire continues to better protect and conserve places of heritage significance that will be enjoyed and appreciated by generations of residents and visitors.

**Collaboration**

25. There have been discussions with the Department of Environment, Land, Water and Planning (DELWP) on this matter to ensure that the Statement of Significance meet their expectations and requirements.
26. Strategic Planning has been working with the pre-application planning officer in Council's Planning Services team to try to assist the current owners.

**6. Planning Matters**

**PCC.012/22 Response to Public Exhibition of Planning Scheme Amendment C142nill, 50 Oatland Road, Plenty**

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**Budget implications**

27. Costs associated with this amendment will be funded from the Planning scheme amendment budget allocation for the 21/22 financial year and 22/23 financial year.

**Relevant law**

28. *Planning and Environment Act 1987.*

**Regional, state and national plans and policies**

29. Plan Melbourne (2017-2050)

- Outcome 4 - Melbourne is a distinctive and liveable city with quality design and amenity.
  - Direction 4.4 - Respect Melbourne's heritage as we build for the future
    - 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.
    - Policy 4.4.4 - Protect Melbourne's heritage through telling its stories.
      - There is more to heritage than place. The stories of Melbourne, including stories from before European settlement, help citizens understand the places where they live and work. They also help create a sense of belonging and community by encouraging tolerance and respect.

**Conflicts of interest**

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

**6. Planning Matters**

**PCC.012/22    Response to Public Exhibition of Planning Scheme Amendment  
C142nill, 50 Oatland Road, Plenty**

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6. Officers' reports

PCC.013/22 Draft Nillumbik General Local Law Community Consultation

**Item:** Consultation Matter

**Distribution:** Public

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

**Author:** Heath Gillett, Community Safety Manager

**Summary**

This report provides the Committee with the feedback of the community engagement on the Draft Nillumbik General Local Law (**Attachment 1**).

This report provides an update on Phase 2 of community engagement that involved consultation of the draft Nillumbik General Local Law on Participate Nillumbik and a number of facilitated drop in sessions hosted by consultants, Chatterbox.

Chatterbox has provided an independent in-depth analysis (**Attachment 2**) that summarises all feedback.

Officers will use this feedback and submissions heard at the Planning and Consultation Committee meeting to consider changes to the Local Law to be put on Public Exhibition later in 2022.

**Recommendation**

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

1. Acknowledges and notes the 185 submissions (**Attachments 3 and 4**) from stakeholders and community members who provided feedback on the Draft Nillumbik General Local Law.
2. Considers the feedback contained in the submissions and this report during further reviews and finalisation of the Nillumbik General Local Law.
3. Acknowledges presentations to the Committee.
4. Receives a report at a future Council Meeting to consider the next steps.
5. Resolves the confidential unredacted copy of the written submissions to the Draft General Local Law (**Attachment 4**) remain confidential on the grounds specified in the definition of confidential information in section 3(1)(f) of the *Local Government Act 2020*.

**Attachments**

1 Nillumbik Draft General Local Law



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2 Nillumbik Draft General Local Law Consultation Findings Report



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6. Consultation Matters

PCC.013/22 Draft General Local Law Community Consultation

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3 Written Submissions Draft General Local Law - Redacted



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4. Written Submissions Draft General Local Law - Unredacted - *CONFIDENTIAL s3(1)(f)*

**6. Consultation Matters**

**PCC.013/22 Draft General Local Law Community Consultation**

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**Discussion**

1. As per the adopted Community Consultation Plan, Phase 2 engagement was carried out for a 6 week period from 1 November 2021 to 10 December 2021. Marketing on the diverse engagement options included;
  - a. Participate Nillumbik
  - b. Council Website
  - c. Emails
  - d. Advertised via Social Media
  - e. Booking marketing through Eventbrite
2. The objective of the community engagement was to gather feedback on the provisions within the Draft Nillumbik General Local Law, their effectiveness, and whether they are still fit for purpose for the Nillumbik community in 2022 and beyond.
3. People who live, work or play in Nillumbik were identified as the target population to engage in this public consultation. In response to the engagement period, the following feedback was received (**Attachments 3 and 4**):
  - a. 149 online surveys
  - b. 36 written submissions
  - c. three online information sessions (verbal comments captured in the consultant's report)
4. This round of consultation re-engaged community (including those who participated in Phase 1 of consultation) and enabled them to question and clarify provisions that impacted them.
5. The consultation report provides an in depth analysis of all the feedback, including; purpose, participant profile, detailed findings and recommendations.
6. The following are the top three key categories of the Draft Nillumbik General Local Law that attracted the most negative feedback;

**Part 6. Animals** - referenced by 41 participants.

35. Keeping animals - 20 participants, unsupportive
37. Animal noise - 18, mostly unsupportive
34. Collection and disposal of animal excrement - 5, unsupportive
36. Animal buildings and cleanliness - 12, unsupportive
38. Feeding of wild birds on private land - 11, mostly unsupportive

**Part 7. Land Use and Amenity** - referenced by 67 participants.

63. Protection of amenity trees - 27 participants, mostly supportive
62. Shipping containers - 20, mostly unsupportive
43. Unsightly land - 15, mixed views
51. Burning open air - 12, mostly unsupportive)
44. Environmental weeds – 11 mixed views
60. Caravans, movable and temporary dwellings - 10, mostly unsupportive

**6. Consultation Matters**

**PCC.013/22 Draft General Local Law Community Consultation**

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**Parts 11-13. Permits, Enforcement and Penalties** - referenced by 42 participants

- a. Mixed views on implementation approach - 19 participants
  - b. Many of the draft Local Laws are not enforceable – 11 participants
  - c. Mixed views on penalties and revenue – 8 participants
7. Throughout the consultation it was observed by both the consultants and officers that there is the requirement to continue to engage and educate on the purpose and role of Local Laws.

**Related Council decisions**

8. At its Council Meeting held 26 October 2021, Council resolved as follows;
  - a. Invite written submissions on the Draft Nillumbik General Local Law to Council between 1 November and 10 December 2021.
  - b. Considers public submissions at the Planning and Consultation Committee meeting to be held in February 2022.
9. The existing Amenity Local Law and Infrastructure Assets Local Law have been in place since 2013. More recently Council adopted the Fireworks Local Law in October 2019, to prohibit the display of fireworks within the rural areas of the Shire.
10. Council also revoked the majority of the Meeting Procedure Local Law in August 2020 as that content is now in the Governance Rules.

**Council plans and policies**

11. This report directly supports the achievement of the Council Plan 2021-2025 strategy:
  - We seek to enhance community safety, public health, amenity and the environment through improved planning and community engagement, prioritising fair and transparent approaches to managing compliance and enforcement.

**Sustainability implications**

12. The proposed approach has been designed to ensure that the processes used in the development, adoption and implementation of both the engagement program and individual project deliverables will utilise available resources and be tailored to meet Nillumbik's unique social, economic and environmental needs.
13. The review of the amenity local law in particular represents an opportunity to ensure that activities on or affecting Council land or assets are carried out in a responsible manner that protects natural assets and reduces any impact on the environment.

**Community engagement**

14. Phase 3 includes public exhibition and will allow submitters to present their submissions at a future Planning and Consultation Committee on the final draft of the Local Laws.

**Innovation and continuous improvement**

15. The COVID-19 pandemic has precipitated the need to develop and adopt new ways of connecting with the community. This has been considered in the project planning of the Local Laws review and provides a range of adaptive approaches.

**6. Consultation Matters**

**PCC.013/22 Draft General Local Law Community Consultation**

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**Collaboration**

16. Key stakeholders, both internal and external have been engaged through Phase 2 of consultation and will be engaged again through Phase 3.

**Budget implications**

17. No negative budget implications.

**Relevant law**

18. The *Local Government Act 2020* prescribes the process for developing, exhibiting and adopting Local Laws. The Act also specifies the following governing principals for the development of a Local Law:

19. The Local Law requirements are as follows-

- a. a local law must not be inconsistent with any Act (including the *Charter of Human Rights and Responsibilities Act 2006*) or regulations;
- b. a local law must not duplicate or be inconsistent with a planning scheme that is in force in the municipal district;
- c. a local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles;
- d. a local law must not exceed the power to make local laws conferred by this Act or any other authorising Act;
- e. a local law must be consistent with the objectives of this Act or any other authorising Act;
- f. a local law must be expressed as clearly and unambiguously as is reasonably possible;
- g. unless there is clear and express power to do so under this Act or any other authorising Act, a local law must not—
  - i. seek to have a retrospective effect; or
  - ii. impose any tax, fee, fine, imprisonment or other penalty; or
  - iii. authorise the sub-delegation of powers delegated under the local law;
- h. a local law must comply with any details prescribed in the regulations relating to the preparation and content of local laws.

**Regional, state and national plans and policies**

20. The Guidelines for Local Laws resources recognise Local Government as a distinct and essential tier of government best placed to make Local Laws in the interests of Victorian communities. The resources seek to equip Councils to undertake best practice Local Law making and achieve a consistent level of performance, rather than impose rigid uniformity.

**Conflicts of interest**

21. None of the officers preparing this report has a conflict of interest.

6. Officers’ reports

PCC.014/22 Draft Local Law Bend of Islands – Community Consultation

**Item:** Consultation Matter

**Distribution:** Public

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

**Author:** Heath Gillett, Community Safety Manager

**Summary**

This report provides the Committee with the feedback of the community engagement on the Draft Bend of Islands Local Law (**Attachment 1**).

This report provides an update on Phase 2 of community engagement that involved consultation of the Draft Bend of Islands Local Law on Participate Nillumbik and a number of facilitated drop in sessions hosted by consultants, Chatterbox.

Chatterbox has provided an independent in-depth analysis (**Attachment 2**) that summarises all feedback.

Officers will use this feedback and submissions heard at the Planning and Community Consultation meeting to consider changes to the Local Law to be put on Public Exhibition later in 2022.

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

1. Acknowledges and notes the 165 submissions (**Attachments 3 and 4**) from stakeholders and community members who provided feedback on the Draft Bend of Islands Local Law.
2. Considers the feedback contained in the submissions and this report during further review and finalisation of the Local Laws.
3. Acknowledges presentations to the Committee.
4. Receives a report at a future Council Meeting to consider the next steps.
5. Resolves the confidential unredacted copy of the written submissions to the Draft Bend of Islands Local Law (**Attachment 4**) remain confidential on the grounds specified in the definition of confidential information in section 3(1)(f) of the *Local Government Act 2020*.

**Attachments**

- 1 Nillumbik Draft Bend of Islands Local Law



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- 2 Nillumbik Draft Bend of Islands Local Law Consultation Findings



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6. Consultation Matters

PCC.014/22 Draft Local Law Bend of Islands – Community Consultation

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3 Written Submissions Draft Bend of Islands Local Law - Redacted



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4. Written Submissions Draft Bend of Islands Local Law - Unredacted - *CONFIDENTIAL*  
*s3(1)(f)*

**6. Consultation Matters**

**PCC.014/22** Draft Local Law Bend of Islands – Community Consultation

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**Discussion**

1. As per the adopted Community Consultation Plan, Phase 2 engagement was carried out for a 6 week period from 1 November 2021 to 10 December 2021. Marketing on the diverse engagement options included;
  - a) Participate Nillumbik
  - b) Council Website
  - c) Targeted Mail Out, both property owners and occupants
  - d) Emails
  - e) Advertised via Social Media
  - f) Booking marketing through Eventbrite
2. The objective of the community engagement was to gather feedback on the provisions within the Draft Bend of Island Local Law, their effectiveness, and whether if they are fit for purpose for the community in 2022 and beyond.
3. People who live in or own property in the Bend of Islands were identified as the target population to engage in this public consultation, with 165 people participating (**Attachments 3 and 4**).
4. 162 of the 165 participants answered the question regarding their support, with 123 (75.9%) of respondents (both residents and non-residents) giving their support.
5. The consultation report (**Attachment 2**) provides an in depth analysis of all the feedback, including; purpose, participant profile, detailed finding and recommendations.
6. 125 of the 165 submissions from respondents provided a personalised response and referred to a range of topics. Around half of the respondents referred to three topics:
  - a) Exclude non-indigenous planting - 69 mentions
  - b) Comments regarding the Bend of Islands Conservation Association (BICA) submission (67 mentions of which 62 were supportive, 5 were not supportive)
  - c) Exclude the use of recreational vehicles on private land (66 mentions)
7. Further review of the draft local law for the Bend of Islands will consider all submissions both written and verbal detailing a response to topics raised and possible changes to the draft local law for Council to consider in upcoming reports to Council for their consideration prior to further consultation later this calendar year.

**Related Council decisions**

8. Council Meeting 26 October 2021, Council adopted the resolution:

**That** Council:

1. Resolves to develop a Bend of Islands local law to introduce restrictions on the keeping of animals within the Bend of Islands among other measures in keeping with the objectives of the Special Use Zone Schedules 1 and 2 area.

**6. Consultation Matters**

**PCC.014/22** Draft Local Law Bend of Islands – Community Consultation

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2. Resolves to engage with the Bend of Islands community to develop a Bend of Islands animal local law provision and identify other provisions that would be appropriate in the Special Use Zone Schedules 1 and 2 area.

**Council plans and policies**

9. This report directly supports the achievement of the Council Plan 2021-2025 strategy:
  - We seek to enhance community safety, public health, amenity and the environment through improved planning and community engagement, prioritising fair and transparent approaches to managing compliance and enforcement.

**Sustainability implications**

10. The proposed approach has been designed to ensure that the processes used in the development, adoption and implementation of both the engagement program and individual project deliverables will utilise available resources and be tailored to meet Nillumbik’s unique social, economic and environmental needs.
11. The development of a Bend of Islands Local Law in particular represents an opportunity to ensure that activities are carried out in a responsible manner that protects natural assets and reduces any impact on the environment.

**Community engagement**

12. Phase 3 includes public exhibition and will allow submitters to present their submissions at a Planning and Consultation Committee meeting.

**Innovation and continuous improvement**

13. The COVID-19 pandemic has precipitated the need to develop and adopt new ways of connecting with the community. This has been considered in the project planning of the Local Laws review and provides a range of adaptive approaches.

**Collaboration**

14. Key stakeholders, both internal and external have been engaged through Phase 2 of consultation and will be again through Phase 3.

**Budget implications**

15. No negative budget implications.

**Relevant law**

16. The *Local Government Act 2020* prescribes the process for developing, exhibiting and adopting Local Laws. The Act also specifies the following governing principals for the development of a Local Law:
17. The Local Law requirements are as follows-
  - a) a local law must not be inconsistent with any Act (including the *Charter of Human Rights and Responsibilities Act 2006*) or regulations;
  - b) a local law must not duplicate or be inconsistent with a planning scheme that is in force in the municipal district;
  - c) a local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles;

**6. Consultation Matters**

**PCC.014/22** Draft Local Law Bend of Islands – Community Consultation

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- d) a local law must not exceed the power to make local laws conferred by this Act or any other authorising Act;
- e) a local law must be consistent with the objectives of this Act or any other authorising Act;
- f) a local law must be expressed as clearly and unambiguously as is reasonably possible;
- g) unless there is clear and express power to do so under this Act or any other authorising Act, a local law must not—
  - i) seek to have a retrospective effect; or
  - ii) impose any tax, fee, fine, imprisonment or other penalty; or
  - iii) authorise the sub-delegation of powers delegated under the local law;
- h) a local law must comply with any details prescribed in the regulations relating to the preparation and content of local laws.

**Regional, state and national plans and policies**

- 18. The Guidelines for Local Laws resources recognise Local Government as a distinct and essential tier of government best placed to make Local Laws in the interests of Victorian communities. The resources seek to equip Councils to undertake best practice Local Law making and achieve a consistent level of performance, rather than impose rigid uniformity.

**Conflicts of interest**

- 19. None of the officers preparing this report has a conflict of interest.



## 6. Officers' reports

## PCC.015/22 Draft Recreation and Leisure Strategy 2022-2030

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**Item:** Consultation Matter  
**Distribution:** Public  
**Manager:** Hjalmar Philipp, Director Operations and Infrastructure  
**Author:** Rebecca Burton, Acting Manager Recreation and Leisure

**Summary**

This report notes the submissions received from the community regarding the draft Recreation and Leisure Strategy 2022-2030 (**Attachment 1**).

The purpose of this strategy is to renew Council's commitment to recreation across the municipality. The strategy provides strategic priorities and objectives, which will inform the development of sport, leisure and active recreation in Nillumbik over the next eight years. It will be underpinned by two 4-year action plans spanning from 2022-2026 and 2027-2030.

Community consultation for the draft Recreation and Leisure Strategy 2022-2030 was undertaken over a 5 week period from 31 January – 6 March 2022. Various stakeholders were invited to review and provide feedback on the document, including community sporting clubs, local and state sporting associations and Council's advisory committees.

Public consultation was facilitated through the *Participate Nillumbik* website, as well as delivering 6 pop-up community consultation sessions at Council's major leisure and community facilities. 103 submissions were received via the *Participate Nillumbik* website (**Attachment 2**), with a further 99 submissions received from children aged 0-5 years through Nillumbik's early years' services.

It is recommended that the Committee note the submissions to the draft Recreation and Leisure Strategy before finalising the document and presenting it to Council for adoption at the Council Meeting scheduled for 28 June 2022.

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

1. Acknowledges and notes the submissions received from community and organisations who provided feedback on the draft Recreation and Leisure Strategy 2022-2030 (**Attachment 2**)
2. Resolves that the confidential unredacted public submissions on the draft Recreation and Leisure Strategy 2022-2030 (**Attachment 3**) remain confidential in accordance with section 3(1) of the *Local Government Act 2020*.
3. Acknowledges the presentations to the Committee.
4. Considers the matters contained in the submissions and this report during finalisation of the draft Recreation and Leisure Strategy 2022-2030 (**Attachment 1**).
5. Requests a further report to be presented at the 28 June 2022 Council Meeting to adopt the final version of the Recreation and Leisure Strategy 2022-2030.
6. Thanks the submitters for providing Council with feedback on this important document.

6. Consultation Matters

PCC.015/22 Draft Recreation and Leisure Strategy 2022-2030

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**Attachments**

- 1 Draft Recreation and Leisure Strategy 2022-2030  

- .
- 2 Participate Nillumbik Submissions - Redacted  

- .
3. Participate Nillumbik Submissions -Unredacted - *CONFIDENTIAL s3(1)(f)*
- 4 Participate Nillumbik Summary Report  

- .

**Discussion**

1. The 2011-2019 Recreation and Leisure Strategy is outdated and a new strategy is required.
2. On 14 December 2021, Council endorsed the engagement plan for the public consultation of the draft Recreation and Leisure Strategy 2022-2030.
3. The draft Recreation and Leisure Strategy 2022-2030 renews Council’s commitment to recreation across the municipality. The strategy provides strategic priorities and objectives, which will inform the development of sport, leisure and active recreation in Nillumbik over the next eight years. It will be underpinned by two 4-year action plans spanning from 2022-2026 and 2027-2030.
4. The draft Recreation and Leisure Strategy 2022-2030 (**Attachment 1**) was informed through extensive internal consultation with relevant Council departments (Community Support Services, Inclusion & Volunteering, Strategic Planning, Community Partnerships, Open Space, Sustainability, Capital Works, Assets, Property and Environment), as well as by the findings from the 2020 Club Development report and the ‘Our People, Our Place, Our Future’ community consultation.
5. The vision of the draft Recreation and Leisure Strategy 2022-2030 is *“to provide high quality, inclusive sport and recreation facilities in partnership with the community to support participation for all.”*
6. To support this vision, the draft Recreation and Leisure Strategy 2022-2030 identifies six priority areas:
  - a) Priority 1: Increasing Participation and Usage of Facilities and Open Space
  - b) Priority 2: Promoting Equity and Inclusion
  - c) Priority 3: Infrastructure Renewal and Upgrade
  - d) Priority 4: Community Engagement and Partnerships
  - e) Priority 5: Community Development and Strengthening
  - f) Priority 6: Sustainable Environments

**6. Consultation Matters**

**PCC.015/22 Draft Recreation and Leisure Strategy 2022-2030**

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7. Objectives have been included under each priority area. The strategy also identifies where priority areas and objectives align to the Council Plan and the Municipal Health and Wellbeing Plan to demonstrate how the Recreation and Leisure Strategy integrates and responds to these strategic documents.
8. Council officers will operationalise the Recreation and Leisure Strategy through the creation and implementation of two 4 year action plans, spanning from 2022-2026 and 2027-2030. These will detail the specific actions committed to being delivered each year in response to the priority areas and objectives outlined. A progress report will be presented to Council at the end of each financial year.

**Submissions**

9. At the close of the community consultation period, 103 submissions were received on the draft Recreation and Leisure Strategy (**Attachment 2**). A further 99 submissions were received from children aged 0-5 years through Nillumbik's early years services.
10. Submissions demonstrated significant support from the community on the draft Recreation and Leisure Strategy 2022-2030 and the 6 priority areas outlined (**Attachment 4**)
11. Submitters have been invited to attend this meeting of the Planning and Consultation Committee to speak to their submissions.

**Related Council decisions**

12. At the 14 December 2021 Council meeting, Council endorsed the engagement plan for public consultation between 31 January and 6 March 2022.

**Options**

13. Council officers have reviewed the public consultation submissions on the draft Recreation and Leisure Strategy 2022-2030.
14. A number of submitters may present to the Planning and Consultation Committee Meeting on 12 April 2022.
15. Following the committee's consideration of submissions, the finalised Recreation and Leisure Strategy will be presented to Council at the 28 June Council Meeting with the view to adopting the Recreation and Leisure Strategy 2022-2030.

**Council plans and policies**

16. This report directly supports the achievement of the Council Plan 2021-2025 strategy:
  - We address the social, environmental and economic factors of health to improve health and wellbeing outcomes for our communities.

**Sustainability implications**

17. Not applicable

**Community engagement**

18. The draft Recreation and Leisure Strategy was subject to public consultation from 31 January – 6 March 2022 to provide the broader community and key stakeholders with the opportunity to provide feedback. During this time, community members were invited to make submissions to the draft Recreation and Leisure Strategy and have the

**6. Consultation Matters**

**PCC.015/22 Draft Recreation and Leisure Strategy 2022-2030**

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opportunity to speak to their submission at the Planning and Consultation Committee meeting on 12 April 2022.

**6. Consultation Matters**

**PCC.015/22 Draft Recreation and Leisure Strategy 2022-2030**

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**Innovation and continuous improvement**

19. Opportunities for innovation and continuous improvement will be identified through the implementation of the Recreation and Leisure Strategy and the associated action plans.

**Collaboration**

20. Key stakeholders involved in the community consultation of the draft Recreation and Leisure strategy included community sporting clubs, local and state sporting associations, relevant Council advisory committees (Positive Ageing Advisory Committee, Regional Trails Advisory Committee, Youth Council and Inclusion and Access Advisory Committee) and children from Nillumbik's early year's services.

**Budget implications**

21. The development and implementation of the draft Recreation and Leisure Strategy will be delivered within existing operational budget
22. The draft Recreation and Leisure Strategy is a high-level strategic document and does not make specific budget commitments
23. Each year, in line with the budget process, Council officers will produce an annual implementation plan identifying how Council will work towards the 4 year action plan and the priorities and strategies of the Recreation and Leisure Strategy, which will be resourced by existing operational budget. Where gaps exist in resources or new opportunities for initiatives are presented, additional budget or grant funding opportunities will be sought.

**Relevant law**

24. Not applicable.

**Regional, state and national plans and policies**

25. Sport and Recreation Victoria – *Active Victoria Framework*
26. VicHealth – *Physical Activity Strategy 2019-2023*.

**Conflicts of interest**

27. Officers who have been involved in the preparation of this report declare they do not have a conflict of interest in the subject matter of this report.

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