

## Future Nillumbik Committee

to be held at the Civic Centre, Civic Drive, Greensborough  
on Tuesday 12 December 2017 commencing at 7pm.

## Agenda

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

Thursday 7 December 2017

Distribution: Public

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*Wominje ka*

## Future Nillumbik Committee seating plan

**Cr John Dumaresq**  
Edendale Ward  
Infrastructure  
Portfolio

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

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

**Cr Peter Perkins**  
Ellis Ward  
Planning Portfolio

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

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

**Mark Stoermer**  
Chief Executive  
Officer

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

**Matt Kelleher**  
Director Services  
and Planning

**Hjalmar Philipp**  
Director  
Sustainability and  
Place

Visitors in the gallery at Committee meetings are:

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

## Nillumbik Shire Council

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**Nillumbik Shire Council**

**Agenda of the Future Nillumbik Committee Meeting to be held Tuesday 12 December 2017 commencing at 7pm.**

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**1. Welcome and apologies**

**Welcome by the Chair**

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

**Apologies**

**Motion**

**That the apologies be accepted.**

**2. Disclosure of conflicts of interest**

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

**3. Confirmation of minutes**

Confirmation of minutes of the Future Nillumbik Committee Meeting held on Tuesday 14 November 2017.

**Motion**

**That the minutes of the Future Nillumbik Committee Meeting held on Tuesday 14 November 2017 be confirmed.**

**4. Officers' reports**

**FN.046/17 Draft Arts and Cultural Plan 2018-2022**

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**Portfolio: Community Services**

**Distribution: Public**

**Manager: Mark Stoermer, Chief Executive Officer**

**Author: Michelle Zemancheff, Coordinator Arts and Cultural Services  
Adrian Cully, Manager Connected Communities**

**Summary**

The purpose of this report is to advise the Committee of the outcome of recent public exhibition of the Arts and Cultural Plan 2018-2022, and of the further development of that plan to date.

After extensive community consultation and engagement with over 300 community members through the Travelling Teapot and traditional surveys, a Draft Arts and Cultural Plan 2018-2022 and Discussion Paper was developed.

The Draft Plan and Discussion Paper were publicly exhibited, with 27 submissions received in response. Submissions are provided for Future Nillumbik Committee's consideration.

**Recommendation**

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

- 1. Notes the submissions received in response to the public exhibition of the Draft Arts and Cultural Plan 2018-2022 and Discussion Paper.**
- 2. Requests Officers to refer the Arts and Cultural Plan 2018-2022 to the 19 December 2017 Ordinary Meeting of Council.**

**Attachments**

- Summary of Submission Comments
- Arts and Cultural Plan 2018-2022

**Background**

- Engagement with the community for the Arts and Cultural Plan 2018-2022 was undertaken between June and August 2017. The process focused primarily upon community values, which underpin cultural planning principles. The community's three key values confirmed through this process were the importance of:
  - The natural environment
  - Community connectedness
  - The local artistic heritage.
- The Arts and Cultural Plan Discussion Paper was developed to form the framework for the Draft Arts and Cultural Plan 2018-2022 ('the Draft Plan').

**4. Officers' reports**

**FN.046/17 Draft Arts and Cultural Plan 2018-2022**

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3. On 14 November 2017 the Future Nillumbik Committee of Council endorsed the public exhibition of the Draft Plan and Discussion Paper for a two week period from 15 to 29 November 2017.

**Policy context**

4. This report directly supports the achievement of Council Plan 2017-2021 strategy:
- Create and activate places and spaces that have good connectivity, provide needed infrastructure and promote social interaction.

**Budget implications**

5. The Draft Plan is fully costed and will be referred for consideration in the preparation of future Council budgets for the Business and Strategy directorate.
6. The Draft Plan introduces a Percent for Art Policy which will invoke a self-sustaining funding model.

**Consultation/communication**

7. Some 300 diverse community members participated in the Draft Plan's engagement, through the Travelling Teapot focus group sessions, face-to-face interviews with key stakeholders and on-line survey respondents, together with discussions with the Arts Advisory Committee.
8. Overwhelmingly, the community called for:
- Progressive contemporary arts that challenge the audience
  - Innovative public arts that comprise participatory and performing arts, in particular music
  - Opportunities for community to come together and exchange ideas
  - Space for production, presentation, place making and place activation
  - Increased availability of grants and flexible funding models to enable artist and community-led initiatives.
9. The Draft Plan has been developed in close alignment with industry standards and has been peer-reviewed by the peak industry bodies, Municipal Association Victoria and Cultural Development Network. Both organisations have responded positively to the Draft Plan.
10. The Draft Plan and Discussion Paper were publicly exhibited for a period of two weeks from 15 to 29 November 2017. The public exhibition was widely promoted through Council's social media and that of Arts and Cultural Development's social media and e-news, and otherwise shared by other service areas such as Living & Learning Nillumbik and Edendale. The overall response to the draft plan was positive, and 27 survey submissions were received. Of the 27 survey submissions, 16 respondents elected to leave further comments. A summary of the 16 comments is provided in Attachment 1. Some feedback received is outside the scope of the Arts and Cultural Plan, such as marketing and building infrastructure, and will be referred to the appropriate service areas, or alternatively addressed with the adoption of the Arts and Cultural Plan.

**4. Officers' reports**

**FN.046/17 Draft Arts and Cultural Plan 2018-2022**

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11. Members of the community have the opportunity to present their submissions to the Future Nillumbik Committee.

**Issues/options**

12. Based on further feedback in response to the public exhibition of Draft Plan and Discussion Paper, the Arts and Cultural Plan 2018-2022 has undergone minor refinement, particularly surrounding language and terminology.
13. The updated Arts and Cultural Plan 2018-2022 (Attachment 2) is provided for Council's further consideration prior to being submitted to the Ordinary Meeting of Council on 19 December 2017 for adoption.
14. The Arts and Cultural Plan will work to industry best practice, with measurable cultural outcomes that align with peak organisations such as Creative Victoria, Cultural Development Network and Municipal Association of Victoria.
15. Rather than committing Council to an aspirational and exhaustive wish-list, the Arts and Cultural Plan will focus on outcomes, in accordance with industry best practice. This enables an ability to be responsive to needs, and ensures sustainability. The measurable cultural outcomes as outlined in the draft plan are evidence-based following much industry research and development.
16. The first year of the Arts and Cultural Plan will see:
- A suite of exciting innovations in signature programs such as Nillumbik Prize, Literary Nillumbik, and the artist residency program, significantly investing in the local creative industry and cultural tourism.
  - The launch of a progressive new ephemeral public art program.
  - New initiatives to support a flourishing community arts and performing arts sector locally, providing greater access to the arts across Nillumbik.
  - The development of a Percent for Art Policy relating to capital works and development contributions in order to establish a self-sustaining funding model.
  - Together with a Public Art Plan that outlines best practice in public art models and the strategic identification of key sites for public art and major sculptural installations to augment township planning strategies.
17. The four year Plan will:
- Shift from direct service and programming delivery to greater provision of grants, with an emphasis on community and artist-led projects, investing in innovation and capacity building, with a particular emphasis on new technology and media.
  - Provide greater diversity for major programming such as the Nillumbik Prize and Literary Nillumbik through bi-annual events to enable the emergence of new and innovative new opportunities for local creatives.
  - Provide new opportunities to engage with our indigenous heritage through the arts, embrace local history through cross-disciplinary projects and weave Nillumbik's emerging multi-culturalism into community arts.

**4. Officers' reports**

**FN.046/17 Draft Arts and Cultural Plan 2018-2022**

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- Utilise new spaces (built and natural) for the delivery of innovative creative practices.
18. After formal adoption of the Arts and Cultural Plan 2018-2022 by Council, it is intended the plan will be formally launched on 2 February 2018 alongside an exhibition of artworks developed for the Travelling Teapot creative consultation.

**Conclusion**

19. Officers recommend the Committee notes the submissions received in response to the public exhibition of the Draft Arts and Cultural Plan 2018-2022 and Discussion Paper.
20. Officers will refer the Arts and Cultural Plan 2018-2022 to the 19 December 2017 Ordinary Meeting of Council.



**4. Officers' reports**

**FN.047/17 Nillumbik Shire Art Collection Acquisition, Baldessin and Friends Folio, Baldessin Press and Studio**

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**Portfolio: Community Services**

**Distribution: Public**

**Manager: Mark Stoermer, Chief Executive Officer**

**Author: Grace Longato, Cultural Collections Officer**

**Michelle Zemancheff, Coordinator Arts and Cultural Services**

**Summary**

Council has the opportunity to acquire an important limited edition artwork for the Nillumbik Shire Art Collection.

The commemorative, *Baldessin and Friends Folio 2016* (e.14/25), by Baldessin Press and Studio (St. Andrews) celebrates Baldessin Press' 15<sup>th</sup> anniversary as a not-for-profit organisation, continuing the legacy of the renowned printmaker and sculptor George Baldessin (1939-1978) who worked and lived in Nillumbik.

The folio has been recommended for acquisition by the Arts Advisory Committee (Acquisition and Strategy) in accordance with the *Nillumbik Shire Council Art Collection Policy 2014-17*.

**Recommendation**

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

- 1. Recognises the significance of the Baldessin and Friends Folio 2016 by Baldessin Press and Studio in relation to the Nillumbik Shire Art Collection**
- 2. Endorses the recommendation to acquire Baldessin and Friends Folio 2016, having met the acquisition criteria in accordance with the Nillumbik Shire Council Art Collection Policy 2014-2017.**

**Attachments**

- Baldessin and Friends Folio Catalogue
- Acquisition Report Baldessin and Friends Folio

**Background**

- Council is committed to preserving and promoting the rich heritage of the Shire as expressed through the arts. Council actively invests in contemporary artworks that speak to Nillumbik's culture, and is the custodian of the Nillumbik Art Collection on behalf of the community.

**4. Officers' reports****FN.047/17 Nillumbik Shire Art Collection Acquisition, Baldessin and Friends Folio, Baldessin Press and Studio**

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2. George Baldessin (1939-1978) was a renowned artist printmaker and sculptor who built his bluestone studio at St Andrews in 1971. He won many prizes and every State gallery has acquired his work, including his famous Pears sculpture in front of the NGA Canberra. In 1975, he represented Australia in the Sao Paulo Biennale before living and working in Paris until his return to St Andrews in 1977. He died 18 months later in a car accident in 1978.
3. In 2001, a studio and print workshop was founded at Baldessin's studio in St Andrews, Victoria by his widow Tess Edwards. Complete with the custom built press that printed many of his etchings, as well as works by other artist friends like Roger Kemp and John Olsen, the studio has been opened to the public for creative use in memory of his work and as a practical legacy to living artists.
4. The commemorative Baldessin and Friends Folio is an initiative to celebrate Baldessin Press and Studio's 15<sup>th</sup> anniversary as a not-for-profit organisation, continuing the legacy of the renowned printmaker and sculptor. All eight artists in the folio are of national significance and share a personal connection to Baldessin or to the press itself. Each artist has created a new work specifically for this project presented alongside the posthumous print, Portrait II 1966, from the incomplete edition by George Baldessin. An illustrated catalogue with an introduction by esteemed art historian, writer, critic and curator, Professor Sasha Grishin is also included.

**Policy context**

5. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Create and activate places and spaces that have good connectivity, provide needed infrastructure and promote social interaction.

**Budget implications**

6. The purchase price of Baldessin and Friends Folio is \$17,500 and funded through the Art Reserve for special acquisitions.
7. Framing of the folio is funded through the Council's 2017-2018 operational budget.

**Consultation/communication**

8. The *Nillumbik Shire Council Art Collection Policy 2014-2017* sets out acquisition criteria for visual arts, namely:
  - a) An artwork of excellence that contributes to contemporary art practice and theory; shows distinctive and verifiable connection with the Shire of Nillumbik; consolidates and enriches the existing collection as a whole, or which expands the range of representation of art forms or artists with the Collection; and which enhances the status and diversity of the Shire of Nillumbik.
  - b) An original artwork of excellence, or limited edition, signed and numbered by the artist.
  - c) An artwork of excellence within budget, public safety, display, storage and transport imperatives and interpretative possibilities at the time of acquisition.

**4. Officers' reports**

**FN.047/17 Nillumbik Shire Art Collection Acquisition, Baldessin and Friends Folio, Baldessin Press and Studio**

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9. The Arts Advisory Committee (AAC) has recommended the acquisition of Baldessin Press and Studio's Baldessin and Friends Folio, 2016 for the Nillumbik Shire Art Collection. The recommendation is made in accordance with the *Nillumbik Shire Council Art Collection Policy 2014-2017* and recorded in minutes of the AAC meeting held on Monday 23 October 2017.

**Issues/options**

10. Pursuant to the *Nillumbik Shire Art Collection Policy 2014-2017*, any acquisitions of artworks above \$10,000 are to be approved by Council.
11. The folio is presented and stored in a solander box which is the usual practice for a folio of works.
12. It is proposed to promote this new acquisition for the 2018 Nillumbik Ekphrasis Poetry Award, which will provide national reach. Public education programs will also be developed around the folio for the purposes of the Ekphrasis Award. The individual works will be framed and displayed at the Diamond Valley branch of the Yarra Plenty Regional Library to provide greatest access to the community to access the folio for the Ekphrasis Award.

**Conclusion**

13. Baldessin and Friends Folio, 2016, is identified as an important piece for the Nillumbik Shire Art Collection. The works speaks to Nillumbik's artistic heritage and expands on the stories and histories of George Baldessin and his legacy. Given that the Baldessin Press and Studio is local and the works have been produced locally by nationally recognised artists, there is much weight to the integrity of this folio and its contribution as a prized asset in the Nillumbik Shire Art Collection.

**4. Officers' reports**

**FN.048/17 Sub-Regional Indoor Sports Needs Analysis**

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**Portfolio: Social Infrastructure**

**Distribution: Public**

**Manager: Mark Stoermer, Chief Executive Officer**

**Author: Naomi Paton, Manager Integrated Strategy**

**David Shepard, Recreation and Open Space Coordinator**

**Summary**

The preparation of the Sub-Regional Indoor Sports Needs Analysis (Needs Analysis) was a joint initiative led by the City of Banyule in partnership with Nillumbik Shire Council, Darebin City Council, Netball Victoria and Basketball Victoria.

The Needs Analysis was developed to address the undersupply and non-compliance of courts across the sub-region and recommend future facility provision to address the growing participation levels.

In Nillumbik, the draft Needs Analysis underwent community engagement from 14 June to 17 August 2017. Thirteen submissions (Attachment 1) were received, and netball-specific feedback provided through a netball forum.

Feedback was supportive of the study's directions and recommendations. Comments reinforced the need for additional courts and delivery of upgrades to better respond to participation demands and gaps in facility compliance.

Priorities in Nillumbik remain unchanged, and Council will commence implementation of the stage 1 of the upgrade to Diamond Valley Sports and Fitness Centre in 2018, and continue to explore locations for additional courts for Eltham Wildcats Basketball Club across the sub-region as the highest priorities.

Feedback has been considered in the preparation of the final report (Attachment 2), which will proceed to the December Ordinary Meeting of Council.

**Recommendation**

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

- 1. Acknowledges and considers feedback from stakeholders and community members on the draft Sub Regional Indoor Sports Needs Analysis**
- 2. Acknowledges presentations to the Committee.**
- 3. Requests a further report be presented to the Ordinary Meeting of Council on 19 December to adopt the final Sub Regional Indoor Sports Needs Analysis.**

**Attachments**

1. Sub Regional Indoor Sports Needs Analysis- Feedback
2. Sub Regional Indoor Sports Needs Analysis- Final report for adoption

**4. Officers' reports****FN.048/17 Sub-Regional Indoor Sports Needs Analysis**

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**Background**

1. Preparation of the Sub-Regional Indoor Sports Needs Analysis (Needs Analysis) has been a joint initiative led by the City of Banyule in partnership with Nillumbik Shire Council, Darebin City Council, Netball Victoria and Basketball Victoria.
2. Indoor courts in Nillumbik serve a regional catchment, providing for people for the northern parts of Banyule and the growth areas of Whittlesea in addition to providing for Nillumbik residents. The Needs Analysis assessed the current provision of and future demands for indoor sports courts across the study area in response to the high occupancy rate of facilities particularly at peak times, forecast growth, and non-compliance of many facilities with regard to court size and run-off, which restricts use, particularly competition.

**Policy context**

3. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Provide a range of infrastructure that encourages people of all ages to participate in a variety of active and passive opportunities.

**Budget implications**

4. Nillumbik contributed \$10,000 towards the preparation of the Needs Analysis. The total cost was \$29,000 with Banyule, Darebin, Basketball Victoria and Netball Victoria also making financial contributions.
5. The recommendations of the Needs Analysis include significant capital works.
6. A priority recommendation for Nillumbik in the short term is to redevelop and extend Diamond Valley Sport and Fitness Centre. Council secured \$2.5 million from the Growing Suburbs Funding Program towards a stage 1 upgrade totalling \$12.5 million with Council allocating \$10 million in forward estimates. A separate \$3 million Better Indoor Stadiums Fund application remains pending. Later stages of the Centre's upgrade are being defined through the current preparation of the facility masterplan, due for completion in mid-2018.
7. Delivering other recommendations will be subject to additional Council allocations, external funding primarily through state government, contributions from tenants and/or through negotiations with third-party facility operators.
8. Facility maintenance and renewal is funded in Council's annual operating budget, with approximately \$600,000 per annum allocated across all major leisure and community facilities.

**Consultation/communication**

9. Preparation of the study was undertaken through engagement with major facility tenants, schools and operators of Council's major leisure facilities.
10. The draft Needs Analysis was made available for public comment from 14 June to 17 August 2017.
11. Thirteen submissions were received, and feedback obtained at a forum held with netball associations and clubs. A summary of all feedback is presented in Attachment 2.

**4. Officers' reports****FN.048/17 Sub-Regional Indoor Sports Needs Analysis**

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**Issues/options**

12. The draft Needs Analysis makes a series of prioritised recommendations.
13. The highest priority for Nillumbik is the redevelopment and extension of the Diamond Valley Sport and Fitness Centre, currently subject to the development of a Masterplan. It is proposed the development will provide additional courts including a show court with spectator seating, improved player, referee and spectator amenities and compliant access throughout. Stage 1 of the redevelopment will be delivered through the now confirmed receipt of a Growing Suburbs Fund grant, with scope confirmed once the outcome of the separate Better Indoor Stadiums Fund is known.
14. Other recommendations include:
  - a) Review community access to Community Bank Stadium, focussing on female participation, including netball.
  - b) A one-court extension of Hurstbridge Stadium currently under consideration in the development of the Hurstbridge Open Space Masterplan.
  - c) Advocacy to identify further opportunities to access school sites and improve these facilities.
  - d) Increased collaboration with state sporting bodies to advocate for funding.
  - e) Identifying the future requirements of the Diamond Creek Community Centre court, tested through broader community infrastructure needs analysis.
  - f) Exploration of additional courts across the sub-region to respond to participation demands, including Eltham Wildcats Basketball Club (EWBC) in partnership with the City of Banyule. EWBC have indicated a willingness to make a significant investment in additional facilities.
15. Community feedback was largely in support of the study findings and need for additional and upgraded courts.
16. During the consultation period, officers have explored with EWBC potential sites for additional courts, including St Helena Secondary College stadium extension (located in the City of Banyule). Officers will continue to work with the Club and the City of Banyule to consider the most suitable location.
17. One submitter recommended the development of an indoor facility in Yarrambat. Demand for a separate facility in Yarrambat will be informed by through the finalisation of the DVSFC Masterplan, community support for a second court at the proposed expanded Hurstbridge Stadium as well as future court provision in neighbouring City of Whittlesea.

**Conclusion**

18. The provision of sports courts in Nillumbik serves a regional catchment.
19. The Sub-Regional Indoor Sports Needs Analysis responds to demands for additional and upgraded courts across the sub-region of Banyule, Nillumbik and Darebin local government authority areas. Development of the study has undergone extensive consultation with peak sporting bodies, facility operators, tenants/clubs and schools.

**4. Officers' reports**

**FN.048/17 Sub-Regional Indoor Sports Needs Analysis**

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20. Adjustments to the final Needs Analysis have been made reflecting community feedback, which will be recommended by officers for adoption at the December 2017 Ordinary Meeting of Council.
21. The Needs Analysis supports Council and partners to address the priorities and guides future investment in facilities.

**4. Officers' reports****FN.049/17      Rodger Road Special Charge Scheme, Panton Hill****Portfolio:      Infrastructure****Distribution:   Public****Manager:      Hjalmar Philipp, Director Sustainability and Place****Author:        Matthew Theuma, Engineer****Summary**

Following a consultation process, Council resolved on 31 October 2017 (Item OCM.124/17), to commence the statutory process for a Special Charge Scheme for Rodger Road, Panton Hill.

Council's notice of its intention to declare a scheme was publicly advertised in the *Diamond Valley Leader* newspaper on 8 November 2017.

A letter and notice of the proposal was sent to all property owners with a liability under the scheme. Council has received six pieces of correspondence from affected property owners which constitute a submission and no correspondence constituting an objection under the *Local Government Act 1989*.

This report recommends that the Committee refers a decision regarding the formal declaration of the Rodger Road Special Charge Scheme, to the next Ordinary Meeting of Council on 19 December 2017.

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

- 1. Notes that six submissions and no objections were received for this scheme.**
- 2. Refers a decision regarding the formal declaration of the Rodger Road Special Charge Scheme, to the next Ordinary Meeting of Council on 19 December 2017.**

**Attachments**

1. Properties included in proposed scheme
2. Guidelines for Apportionment of Costs for Road Construction
3. Apportionment to affected properties

**Policy context**

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



**4. Officers' reports****FN.049/17 Rodger Road Special Charge Scheme, Panton Hill**

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**Budget implications**

2. Council has incorporated costs for administering the scheme in the current services budget. The survey and design costs incurred will be recovered if the scheme proceeds and the charge is levied.
3. Council will have a liability of \$48,691 for the Council property at 105 Rodger Road, known as Bunjil Reserve, that is included as part of the scheme. This cost has been allocated within the 2017-2018 Capital Works Program, if a scheme is to proceed.
4. Council has agreed to investigate an alternative alignment for a section of Nillumbik's regional trail network. Any works associated with this alternative alignment will need to be funded by Council.

**Consultation/communication**

5. Consultation was carried out in accordance with the Council's Special Rates and Charges Policy and Procedure. Information sessions for all residents and meetings with task group members, to finalise design details for the street, were held. All affected property owners have been advised of Council's intention to declare the scheme and their rights to make submissions or objections to this.

**Issues/options**

6. Council resolved its intention to declare the Rodger Road Special Charge Scheme on 31 October 2017 (Item OCM.123/17). Property owners were notified of the resolution via public notice in the *Diamond Valley Leader* newspaper on 8 November 2017. A letter and notice of the proposal was sent to all property owners with a liability to the scheme.
7. Both the public notice and the letter sent to property owners of intention to declare a scheme outlined the rights of any person to make a submission under Section 223 or an objection under Section 163B of the *Local Government Act 1989* (the Act), in relation to this Special Charge Scheme. Submissions and objections were to be made in writing by 6 December 2017.
8. Correspondence representing six submissions was received by Council. All submissions were in relation to a solution to maintain horse-riding access along the southern section of Rodger Road. A copy of the submissions has been separately circulated to all Councillors. A summary of the issues raised in the submissions is as follows:
  1. Any measures being considered to maintain horse-riding access should not delay the construction of the road (two submissions)
  2. Alternative access to be provided for horse-riding, including the following measures:
    - i) Creation of a new trail access, within the road reserve, along the north-eastern side of Rodger Road, connecting the existing trail and the current entrance to Bunjil Reserve (two submissions)
    - ii) Reinstating access to Bunjil Reserve for horse-riding (three submissions for, two submissions against)

**4. Officers' reports**

**FN.049/17 Rodger Road Special Charge Scheme, Pantan Hill**

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- iii) Finish the sealing of Rodger Road at the top of the hill, at the entrance to Bunjil Reserve, removing the impact that the works will have on horse-riding (four submissions)
  - iv) Establishing a trail easement on the south-west side of Rodger Road (one submission)
9. Council officers are currently assessing the options for the realignment of the trail. A decision on the preferred alignment will then be made and then any necessary preparations carried out. If a scheme is to proceed, this process should be completed prior to the estimated start date for the road construction.
10. No correspondence representing an objection under Section 163B of the Act, was received in relation to this Special Charge Scheme.

**Conclusion**

11. Council has commenced its statutory obligations in relation to the Rodger Road Special Charge Scheme. Six submissions and no objections were received by Council.

**4. Officers' reports****FN.050/17 Worns Lane, Yarrambat - Special Charge Scheme**

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**Portfolio: Infrastructure****Distribution: Public****Manager: Hjalmar Philipp, Director Sustainability and Place****Author: Matthew Theuma, Engineer****Summary**

Following a consultation process, Council resolved on 31 October 2017 (Item OCM.124/17), to commence the statutory process for a Special Charge Scheme for Worns Lane between Latrobe Road and Licola Street, Yarrambat.

Council's notice of its intention to declare a scheme was publicly advertised in the *Diamond Valley Leader* newspaper on 8 November 2017.

A letter and notice of the proposal was sent to all property owners with a liability under the scheme. Council has not received any correspondence from affected property owners which constitutes a submission and objection under the *Local Government Act 1989*.

This report recommends that the Committee refers a decision regarding the formal declaration of the Worns Lane Special Charge Scheme, to the next Ordinary Meeting of Council on 19 December 2017.

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

- 1. Notes that no submissions and/or objections were received for this scheme.**
- 2. Refers a decision regarding the formal declaration of the Worns Lane Special Charge Scheme, to the next Ordinary Meeting of Council on 19 December 2017.**

**Attachments**

1. Properties included in proposed scheme
2. Guidelines for Apportionment Costs for Road Construction
3. Apportionment to affected properties

**Policy context**

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

**Budget implications**

2. Council has incorporated costs for administering the scheme in the current services budget. The survey and design costs incurred will be recovered if the scheme proceeds and the charge is levied.

**4. Officers' reports**

**FN.050/17 Worns Lane, Yarrambat - Special Charge Scheme**

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**Consultation/communication**

3. Consultation was carried out in accordance with the Council's Special Rates and Charges Policy and Procedure. Information sessions for all residents were held, as well as meetings with task group members to finalise design details for the street. All affected property owners have been advised of Council's intention to declare the scheme and their rights to make submissions or objections to this.

**Issues/options**

4. Council resolved its intention to declare the Worns Lane Special Charge Scheme on 31 October 2017 (Item OCM.124/17). Property owners were notified of the resolution via public notice in the *Diamond Valley Leader* newspaper on 8 November 2017. A letter and notice of the proposal was sent to all property owners with a liability to the scheme.
5. Both the public notice and the letter sent to property owners of the intention to declare a scheme outlined the rights of any person to make a submission under Section 223 or an objection under Section 163B of the *Local Government Act 1989*, in relation to this Special Charge Scheme. Submissions and objections were to be made in writing by 6 December 2017. No submissions or objections have been received.

**Conclusion**

6. Council has commenced its statutory obligations in relation to the Worns Lane Special Charge Scheme. No submissions or objections to the scheme were received by Council.

4. Officers' reports

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

**Portfolio: Planning**  
**Distribution: Public**  
**Manager: Jonathan McNally, Acting Manager Planning and Health Services**  
**Author: Lisa Hunt, Statutory Planner**

**Application summary**

Address of the land	8 Coniston Street, Diamond Creek
Site area	854 square metres
Proposal	Buildings and works to construct three dwellings
Application number	124/2017/03P
Date lodged	30 March 2017
Applicant	John Henry Architects
Zoning	General Residential Zone (GRZ)
Overlay(s)	Nil
Reason for being reported	Called in by Ward Councillor.
Number of objections	Three
Key issues	<ul style="list-style-type: none"> <li>• Strategic Location</li> <li>• Siting, Layout and Design</li> <li>• Neighbourhood Character</li> <li>• Tree Impacts</li> <li>• Compliance with Clause 55 (ResCode)</li> <li>• Clause 52.06 – Car Parking</li> </ul>

4. Officers' reports

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

Location map





**4. Officers' reports****FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek****Recommendation**

That the Committee (under delegation from Council) issues a Notice of Decision to Grant a Permit to the land located at 8 Coniston Street, Diamond Creek, for Buildings and works to construct three dwellings, in accordance with the submitted plans and subject to the following conditions:

1. Before the development commences, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans prepared by John Henry Architects but modified to show:
  - a) Tree Protection Zones to be shown and clearly dimensioned in accordance with the Arborist Report prepared by Stem Arboriculture.
  - b) Tree Protection Fencing for trees to be retained as per Condition 6 of this permit.
  - c) Amended materials and colours schedule to include a greater variety of external materials. The materials must consist of muted and earthy tones.
  - d) Modifications to the roof form of Unit 3 as per the plan submitted to Council dated 12 October 2017 (Revision D).
2. The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
3. Unless with the prior written consent of the Responsible Authority, within 3 months of the completion 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.
4. The nature and colour of building materials employed in the construction of the buildings and works hereby permitted shall be harmonious with the environment, to the satisfaction of the Responsible Authority.
5. The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type, to the satisfaction 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 Zone (TPZ) to the satisfaction of the Responsible Authority. The fencing associated with this TPZ must meet the following requirements:
  - a) Extent  
The tree protection fencing (TPF) is to be provided to the extent of the identified TPZ.

**4. Officers' reports**

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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**b) Fencing**

All tree protection fencing required by this permit must be erected in accordance with the approved TPZ.

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

**c) Signage**

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

**d) Irrigation**

The area within the TPZ and TPF must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.

**e) Provision of Services**

Unless with the prior written consent of the Responsible Authority, all services (including water, electricity, gas and telephone) must be installed underground, and located outside of any TPZ, to the satisfaction of the Responsible Authority.

**f) Access to TPZ**

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

**7. 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**



**4. Officers' reports**

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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**g) Temporary buildings and works**

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

- 9. An onsite detention device is to be installed onsite and designed by a qualified engineer. Plans are to be submitted to the Responsible Authority for approval prior to the commencement of the development.**

**The engineer that is designing the onsite detention unit must contact Council's development engineer for tc and tso figures. For calculation adopt for pre development one in five years average occurrence interval, post development use one in 10 years average occurrence interval.**

**The onsite stormwater detention device must be installed, at no cost to Council, as per approved plans and Council's specification.**

**The construction of the on-site detention device must be carried out under Council supervision and under a Minor Works within the Municipal Road Reserves Permit.**

- 10. Stormwater from the roof of the dwellings hereby approved must be directed to an individual holding tank with a minimum storage capacity of 2,000 litres.**

**Water in the holding tank may be used for toilet flushing, property irrigation, vehicle washing or any other purposed approved by the Responsible Authority. The overflow from the tank must be directed to the on-site detention unit. The overflow from the on-site detention unit must be directed to the Council nominated point of stormwater discharge.**

- 11. Vehicular access and egress to each dwelling from the roadway must be by way of a vehicle crossing constructed / upgraded to the requirements of the Nillumbik Shire Council, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an Infrastructure Works Permit. Width of the driveway at property boundary must match the width of the vehicle crossing.**

- 12. The vehicular driveway must be properly formed and constructed to such levels to ensure that it can be utilised at all times. 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.**

- 13. Stormwater from the driveway must be collected using 225mm wide trench-grates across the driveways at the property boundary in Coniston Street where it meets road reserve and connected to the internal drainage system or on-site detention device.**

4. Officers' reports

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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14. The drainage system within the subject site must be designed to the requirements and satisfaction of the Responsible Authority. Any connection to Council's underground drainage system within road reserves or drainage easements must be carried out under Council supervision and an Infrastructure Works Permit.
15. 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.

In this regard, sediment fencing and/or pollution/litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.

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

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

**NOTES**

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

Failure to undertake the requisite tree protection fencing in accordance with the conditions of this permit will result in the issuing of Planning Infringement Notices to the land owner, occupant (if this is a different person), and the person or company undertaking the works on-site. The minimum penalty on the Planning Infringement Notice for land owners and occupants will be \$792 for the land owner and occupant, and \$1,586 for any company which may be undertaking works on-site.

**4. Officers' reports**

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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**Attachments**

1. Site and surrounds
2. Plans

**Subject site and surrounds**

1. The key features of the subject land and surrounds are as follows:
  - The site is located on the southern side of Coniston Street, in an established residential area of Diamond Creek.
  - The site is legally described as Lot 34 on Lot Plan 12250.
  - A drainage easement runs along the southern rear boundary of the site.
  - The site is a rectangular shaped allotment, with a width of 18.29 metres, depth of 45.48 metres and a total area of 854 square metres.
  - The site is currently occupied by a single storey dwelling that is setback approximately 13 metres from Coniston Street.
  - Access to the site is currently gained via an existing crossover and driveway that is located along the eastern side boundary.
  - The site contains a number of scattered trees which are a mix of exotics, weeds and natives (NSW, VIC and QLD).
  - The subject site is located within close proximity to the following services and amenities:
    - 400 metres south of the Diamond Creek Activity Centre
    - 600 metres south-east of the Diamond Creek Train Station
    - 500 metres south-west of the Diamond Valley College and Community Bank Stadium
    - 200 metres west of the Phipps Crescent Reserve
    - 250 metres south of the Diamond Creek Police Station.
  - Land to the south (40 Patyah Street) is currently occupied by a single storey brick dwelling that is setback approximately 16 metres from the common boundary with the subject site and approximately three metres from Patyah Street.
  - Land to the north (7 Coniston Street) is currently occupied by a single storey brick dwelling that is setback approximately seven metres from Coniston Street.
  - Land to the west (4 Coniston Street) is a subdivided lot, containing six double storey dwellings, finished in a mixture of timber, weatherboards and render. Units 1 and 4 (fronting Coniston Street) are setback approximately seven metres from the front boundary and 1.2 metres from the common boundary with the subject site.

**4. Officers' reports****FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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- Land to the east (10 Coniston Street) is currently occupied by a double storey dwelling that is setback approximately 12 metres from Coniston Street and approximately two metres from the common boundary with the subject site.
- There are a number of examples of dual occupancy and multi-unit development with the surrounding area, particularly to the north of Patyah Street, closer to the Diamond Creek Activity Centre.

**Details of proposal**

2. Refer to the attached plans.
3. Key features of the proposal include the development of the land for three double storey dwellings.
4. Dwelling one is proposed to be a double storey dwelling with a sub floor double garage. The ground floor level will comprise an entryway, master bedroom with adjoining ensuite, two additional bedrooms, separate bathroom and toilet facilities, built in laundry and balcony. The first floor level will comprise an open plan living, kitchen and dining area, study nook and balcony. Dwelling one is proposed to have a total floor area of 238 square metres.
5. Dwelling one is proposed to be setback 6.9 metres from the northern (front) boundary, 4.285 metres from the eastern boundary and 1.353 metres from the western boundary. The maximum overall height of the dwelling is proposed to be 8.5 metres from natural ground level.
6. Dwelling one is proposed to be finished in a mixture of face brickwork (walls), Colorbond Manor Red (roofing) and painted external doors (red, yellow and blue).
7. Dwelling two is proposed to be a double storey dwelling, including a single car garage. The ground floor level will comprise an entryway, master bedroom with adjoining ensuite, additional bedroom with adjoining ensuite, storage and a built in laundry. The first floor level will comprise an open plan living, kitchen, dining and balcony area. Dwelling two is proposed to have a total floor area of 208 square metres.
8. Dwelling two is proposed to be setback 4.2 metres from the eastern boundary and 1.35 metres from the western boundary. The maximum overall height of the dwelling is proposed to be 6.335 metres from natural ground level.
9. Dwelling two is proposed to be finished in a mixture of face brickwork (walls), Colorbond Manor Red (roofing) and painted external doors (red, yellow and blue).
10. Dwelling three is a double storey dwelling, with a double garage. The ground floor level will comprise an entryway, master bedroom with adjoining ensuite, two additional bedrooms, storage, laundry, bathroom and toilet facilities. The first floor level will comprise of an open plan living, kitchen, dining and balcony area. Dwelling three will have a total floor area of 226 square metres.
11. Dwelling three is proposed to be setback approximately two metres from the southern boundary, 1.4 metres from the western boundary and a zero setback to the eastern boundary. The maximum overall height of the dwelling is proposed to be 7.105 metres from natural ground level.

**4. Officers' reports**

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12. Dwelling three is proposed to be finished in a mixture of face brickwork (walls), Colorbond Manor Red (roofing) and painted external doors (red, yellow and blue).
13. The proposal will involve the removal of 19 trees from the site. The removal of vegetation does not require planning permission.

**Planning history**

14. There is no relevant planning history with respect to the subject site.

**Planning controls**

**Zoning**

15. The subject land is zoned General Residential Zone. Under this zone, a permit is required to construct two or more dwellings on a lot. In addition, a lot greater than 650 square metres must set aside 35 per cent of the site for Garden Area.

**Overlays**

16. No overlays apply to the subject site.

**Particular provisions**

17. 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.
18. Development of two or more dwellings on a lot must meet the requirements of Clause 55 (commonly known as 'ResCode').
19. 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**

20. State Planning Policies which are relevant to this application include:
  - Clause 15.01-1 – Urban Design
  - Clause 15.01-5 – Cultural Identity and Neighbourhood Character
  - Clause 16.01-1 – Integrated Housing
  - Clause 16.01-2 – Location of Residential Development
  - Clause 16.01-4 – Housing Diversity
21. The Local Planning Policies which are relevant to this application include:
  - Clause 21.05-1 – Settlement and Housing
  - Clause 22.01 – Medium Density Housing Policy
  - Clause 22.12 – Neighbourhood Character Policy

**4. Officers' reports**

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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**Policy context**

22. The planning controls and policies identified above encourage residential development in the General Residential Zone at a range of densities, which includes medium density housing. This intent is also reflected specifically in the purpose of that zone. However, in both State and local policy, the strength of encouragement for medium density housing is greater the closer the site is located to an activity centre or other commercial and community facilities, and reduces the further the site is located from necessary urban infrastructure.
23. The encouragement afforded by the zone and planning policies is counter-balanced by objectives that require development to be site responsive (i.e. minimise landscape and vegetation impacts), and complementary to desired neighbourhood character.
24. Assessment of the degree of policy support for medium density housing is dependent upon a balancing of these sometimes contradictory policy objectives. In this regard, a flat site with little vegetation located near an activity centre can be seen to have strong policy support for development in the form of medium density housing. A steep, heavily vegetated site, remotely located from services will have a significantly reduced level of policy support for medium density housing development. As each site is generally different, the degree of policy support for medium density housing will often vary depending upon the site's location, its individual characteristics, and its response to neighbourhood character

**Public consultation**

**Advertising**

25. 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 on-site.

**Objections**

26. As a result of advertising, a total of three written objections have been received. These objections can be summarised as follows:
  - The proposal is out of character
  - The proposal is not in accordance with the Diamond Creek Major Activity Centre Policy
  - The proposal will result in a loss of privacy
  - The proposal will result in a loss in property value
  - The proposal will impacts on the health and lifestyle of residents
  - Requiring assurances that each dwelling be provided with a double garage to ensure that on street car parking is not impacted.

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**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

**Planning application conference**

27. A planning application conference was not held for this application. The submissions were made available to the applicant and an amended elevation plan was provided to address specific concerns regarding the southern (rear) elevation of Unit 3. However, it was considered that the concerns raised could not be adequately resolved through a planning application conference.

**Referrals**

**Internal**

28. 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
Arborist (Homewood Consulting)	<p>19 trees are proposed for removal.</p> <p><b>High Retention Value Trees</b> Tree no 28 has a high retention value however; this tree may be removed without a permit.</p> <p><b>Medium Retention Value Trees</b> Tree no's 8, 10, 13, 14, 15, 22, 24, 25, 29, 30 and 32 have medium retention value. These trees make a modest contribution to site amenity with the majority being exotic shrubs less than five metres in height. Removal and replacement is considered to be acceptable.</p> <p><b>Low Retention Value Trees</b> Tree no's 3, 9, 11, 12, 18, 27 and 31 have low retention value. The removal of these trees should not be a constraint on development.</p> <p><b>Replanting</b> The proposal planting schedule nominates four large indigenous canopy trees and three small medium/small indigenous trees to be planted on site. While the loss of tree no 28 is expected to impact the local landscape, proposed replanting is considered adequate to compensate for the loss of amenity and in time will make a positive landscape contribution.</p> <p><b>Impacts to other trees</b> Proposed works will have a minor tree protection zone encroachment (less than 10%) on tree nos 7, 17 and 19. The trees are expected to remain viable with standard tree protection zone provisions and exclusions and with compensation for the area lost to encroachment.</p>

4. Officers' reports

**FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

Council Unit	Comments
	Proposed works are outside of the tree protection zone of tree no's 1, 2, 4, 5, 6, 16, 20, 21, 23, and 26. The trees are expected to remain viable with standard tree protection zone provisions and exclusions.
Infrastructure Development	<p>Initial Concerns</p> <ul style="list-style-type: none"> <li>• Sight line requirements for garage 1 are of concern</li> <li>• Driveway grades are not consistent across the drawing set</li> <li>• Grading of the proposed car space does not meet AS2890.1.</li> </ul> <p>Further information was provided to Council to address the above concerns. The application was re-referred to Infrastructure Development. The grades are now considered to be satisfactory. Conditions have been provided relating to the design of an onsite detention system, vehicle crossing, driveway construction, stormwater runoff and runoff control.</p>
Building Surveyor	Building permit required.

**External**

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

**Planning assessment**

**Introduction**

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

- Strategic location
- Siting, layout and design
- Neighbourhood character
- Tree impacts
- Compliance with Clause 55 (ResCode)
- Clause 52.06 – Car parking

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



**4. Officers' reports****FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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**Strategic location**

32. The site is considered to be suitable for some form of medium density residential development. This is a view that is supported by State Policy which seeks to increase residential density in established urban areas with good access to facilities such as public transport, activity centres and public open space. The subject site is located within a General Residential Zone, as are the majority of the urban areas of Diamond Creek. The 'hierarchy' of residential zones tempers development with the consideration of a site's context, including the existing and preferred neighbourhood character.
33. The site's inclusion within the General Residential Zone identifies that the subject site and surrounding area should encourage a diversity of housing types and growth in locations offering good access to services and transport, whilst being mindful of the neighbourhood character of the area.
34. The Municipal Strategic Statement contains an objective to encourage medium density housing with good access to commercial and community services, public transport, open space and other infrastructure, and to discourage medium density housing where access to these facilities is inadequate. This objective is given more direct effect in the Medium Density Housing Policy at Clause 22.01, which encourages medium density housing development to be located close to activity centres or other urban services.
35. The subject site is located within close proximity to the following services and amenities:
- 400 metres south of the Diamond Creek Activity Centre
  - 600 metres south-east of the Diamond Creek Train Station
  - 500 metres south-west of the Diamond Valley College and Community Bank Stadium
  - 200 metres west of the Phipps Crescent Reserve
  - 250 metres south of the Diamond Creek Police Station.
36. It is evident from the pattern of development in the surrounding area that dual occupancy and multi-unit development is a common and increasing feature in this pocket of Diamond Creek. In terms of strategic location, the site is ideally suited for some form of medium density housing, and this location has strong policy support at both state and local policy level. This position is further supported by the VCAT Decision *Henry vs. Nillumbik SC 2009* (VCAT ref no: P2504/2007). This decision relates to no. 4 Coniston Street, the adjoining property to the west of the subject site. With regards to strategic location, the Member states that 'on reviewing both the state and local planning policy frameworks, to simply say that there is no policy support would be somewhat of an understatement'. Furthermore, 'Council's own local policies provide clear and unambiguous support for higher densities in this location'.

**4. Officers' reports****FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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**Siting, layout and design**

37. The subject site is rectangular, with a frontage of 18.29 and length of 46.48 metres. The site has a sloping topography with a fall of eight metres from the south west (rear) corner the north west corner (front). The dwellings have been sited and designed to ensure a considerable separation between the units across the length of the site. This has reduced the overall site coverage and allows for extensive landscaping and compliance with the Garden Area provision.
38. The proposal is considered to be of a more contemporary design that is not typically characteristic of the Diamond Creek area. As discussed in Henry v Nillumbik SC, 'there is no predominant building style or form in this street' and that the existing housing stock is varied in 'design, style, materials and roof form'. Therefore, in this context, 'a development that reflects contemporary architectural styling is appropriate'.
39. Development within the residential areas of Shire need to respond to the built form and environmental elements that make up the neighbourhood character of Nillumbik. Clause 22.12 – Neighbourhood Character Policy separates residential areas into precincts, providing localised direction through a statement of desired future character. The subject site is located within the Garden Court Precinct. Garden Court areas contain development that is 'sited so that it nestles into the landform and surrounding vegetation'. With regards the siting, the statement notes that 'buildings maintain the pattern of orientations and setbacks of adjoining properties and the streetscape'. However, it is noted that 'variation occurs in the Diamond Creek Garden Court 3 and 4 precincts where higher density housing has and will develop'. Whilst the proposal is of a more contemporary design, this does not necessarily mean it is out of character, which is acknowledged in the statement with respect to precincts 3 and 4, where innovative design is expected. This variation is discussed in Henry vs Nillumbik, with Member Cimono citing the Garden Court character statement, which acknowledges that there will be 'differences from other garden court precincts given that this is a location where innovative higher density has and will develop'.
40. Each dwelling has been provided with a first floor balcony which breaks up any sheer wall presentation. This also allows for additional open space, beyond the minimum requirements of Standard B28- Private Open Space. Excavation on the site is significant, with a maximum height of three metres. However, given the fall of the land, excavation is considered to be preferable over an increase in the overall height of the dwellings across the site. Excavation has allowed the dwellings to remain under 8.5 metres in height, which is well below the maximum permissible height of 11 metres (as per Clause 32.08-9).
41. Pursuant to Clause 32.08-4, a lot greater than 650 square metres must set aside at least 35 per cent garden area. The proposal has set aside 36.22 per cent garden area. The provision of garden area has allowed for more open space between the dwellings, encouraging separation of built form across the length of the site and increased opportunities for landscaping. Garden area aims to ensure that the open character of neighbourhoods is protected as the demand for housing increases. The proposal has met this provision by providing 36.22 per cent garden area across the site.

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42. It is proposed to use brickwork (in colours Chapel Red and Spencer Tan) for all external walls and Colorbond Manor Red for the roofed areas. Balcony areas will be constructed of brick but will utilise a hit and miss pattern, which creates transparency through the wall. External doors are to be finished in a variety of colours (yellow, red and blue).
43. Overall, the siting, layout and design of the proposal is considered to be appropriate. As stated above, the proposal is considered to be of a more contemporary style which is not characteristic of the surrounding area. However, the proposal has been sited to avoid continuous built form, designed to ensure there is appropriate articulation (thereby reducing any sheer wall presentation) and that the maximum overall height of the dwellings is less than 8.5 metres from natural ground level. However, the proposed materials and colours are considered to contribute to a heavier and bulkier appearance. It is considered that the use of more than one material will assist further in breaking up the built form and allowing for a more lightweight appearance. As such, it is recommended that a condition be placed on any issuing permit requiring an amended schedule with a variety of materials.
44. Overall, it is considered that the proposal meets the common concerns with multi-unit development such as built form separation, articulation, sheer walls, setbacks and landscaping opportunities.

**Neighbourhood character**

45. As mentioned above, the subject site is located within a 'Garden Court' character precinct as identified by the Neighbourhood Character Policy at Clause 22.12. The preferred character sought within the precinct is set out as follow.
46. The proposal will result in the removal of 19 trees from the subject site (one of which is considered to be a significant tree with a high retention value). It is noted that the subject site is not subject to any tree controls and therefore, trees can be removed from the site as of right. Whilst there is significant tree removal on the site, there is adequate open space in and around the development to provide replacement planting. Council's consulting Arborist has considered that whilst the removal of tree no 28 is expected to impact the local landscape, proposed replanting is considered adequate to compensate for the loss of amenity and in time will make a positive landscape contribution.
47. The proposal does not include any front fencing, which is consistent with the surrounding area and with the directives provided in the Garden Court precinct statement.
48. Due to the sloping topography of the area, the southern side of Coniston Street sits higher than the northern side. The subject site is located on the 'high side' which contains a terraced front garden with low lying shrubs and the occasional canopy tree. Tree no 2 (Oleander) and 7 (Golden Ash) are to be retained as part of the proposal and are located within the Coniston Street frontage. Tree no 2 is an Oleander (exotic), with a height of three metres. Tree no 7 is a Golden Ash (exotic), with a height of eight metres and are considered to be worthy of retention. The retention of trees and additional proposed landscaping will ensure that the frontage is consistent with adjoining and surrounding properties.

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49. There is a variance between the front setbacks of properties along Coniston Street. Land immediately adjoining the subject site to the west and east is setback seven and 12 metres respectively. Front setback distances along Coniston Street distances vary from between five metres and 15 metres and side setbacks between properties are minimal. Dwelling one of the proposal is setback approximately 6.8 metres from Coniston Street. Pursuant to Clause 55.03 – Standard B6 (Street Setback), development should be setback the average distance of the setbacks of the front walls of existing building on abutting allotments or nine metres (whichever is the lesser). In this instance, the development should be setback nine metres from Coniston Street. However, consideration can be given to the appropriateness of a different setback when taking into account the prevailing setbacks of existing buildings on nearby lots, visual impact when viewed from the street and the value of retaining vegetation within the front setback. Whilst this is considered to be a reduced front setback when compared with land to the east, the development to the west is setback seven metres from Coniston Street. A number of dwellings on the northern side of Coniston Street are setback between five and seven metres from the street. In the absence of a consistent setback pattern and an emerging development trend in the area (north of Patyah Street and south of Main Hurstbridge Road), a setback of 6.8 metres is considered to be an appropriate variation. The reduced setback will allow for the retention of trees, whilst providing opportunities for landscaping (beyond what currently exists on site), in keeping with the objectives of the Garden Court precinct.
50. Dwellings in the surrounding area vary from single to double storey. The low side of Coniston Street consists of single storey dwellings that sit below street level. The high side of Coniston Street consists of a mixture of double storey and split level dwellings due to the topographic constraints of the area. The proposal, whilst containing three double storey dwellings (one of which incorporates a basement level), maintains an overall height no greater than 8.5 metres from natural ground level. The overall height of the dwellings has been lowered due to proposed excavation with a maximum height of three metres. Excavation is considered to be preferable where it can result in a reduced building height, lessening impacts to adjoining properties. In this instance, double storey dwellings have allowed for separation of built form across the site which creates generous open space around each dwelling and provides opportunities for meaningful landscaping.
51. The proposal adopts a design that is considered to be more contemporary, with an angled roof form. When viewing the proposal from the eastern and western elevations, the dwelling has been designed to have a staggered built form appearance, with the ground and first floor balconies creating a visual point of interest. An angled roof form has been adopted for each dwelling to take advantage of the northern aspect as the kitchen, living and dining areas are located on the first floor. Dwellings in the surrounding area vary with regards to roof form and therefore, the use of this style of roof is considered to be acceptable. The proposed roof form would increase the internal amenity of living areas through the provision of large north-facing windows, due to the angled nature of the roof.

**4. Officers' reports****FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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52. The proposal will incorporate a single crossover and driveway which will provide access directly to Dwelling one. The driveway crosses the site, sweeping towards the eastern side boundary, providing access to Dwelling two and Dwelling three. With the exception of the garage for Unit 1, which is located underneath the dwelling, Dwellings two and three have been provided with garages that sit adjacent to each dwelling and will not be visible from the streetscape. Access has been designed to ensure that driveway grades and turning circles comply with the relevant standards, trees can be retained and excessive hard surfacing can be reduced where possible.

**Tree impacts and landscaping**

53. The proposal will involve the removal of 19 trees. However; this does not require planning permission and the trees can be removed as of right. That being said, consideration should be given to the contribution that existing vegetation makes to the surrounding landscape and to ensure that appropriate replacement planting is conducted onsite to compensate for the removal of significant vegetation. A landscaping plan was provided with the application and is considered to be acceptable. The front setback is proposed to be landscaped with a mixture of indigenous canopy trees and shrubs, in addition to retaining tree numbers 2 (Oleander) and 7 (Golden Ash). It is considered that as a result of the proposal, greater landscaping is to be provided, making a positive contribution to the streetscape.
54. Council's Arborist noted that whilst the loss of Tree 28 is expected to impact the local landscape, proposed replanting (four large indigenous canopy trees and three medium/small indigenous trees) is considered by Council's Arborist to be adequate to compensate for the loss of amenity and in time will make a positive landscape contribution. Due to the layout and design of the dwellings, generous open space has been provided, which allows for and can accommodate the extent of landscaping proposed. The proposed works will have a minor (less than 10 per cent) encroachment on the tree protection zone of tree numbers 7, 17 and 19. However, Council's Arborist has considered that with standard tree protection zone provisions and exclusions, the trees will remain viable. As such, it is considered appropriate to include a condition on any issuing permit that requires tree protection fencing to be shown on the site plan and adhered to, in accordance with the Arborist Report prepared by Stem Arboriculture.

**Compliance with Clause 55 (ResCode)**

55. The development must meet the requirements of Clause 55 (commonly known as 'Rescode'). This clause sets out a range of objectives and standards that test a design's responsiveness to its site and surrounds, and provides objective tests regarding potential amenity impacts. Whilst meeting the specified objectives is mandatory, satisfying the standards can be varied, provided that the proposal satisfies the objective. The proposed development meets all but one of the standards and objectives of Clause 55.

**4. Officers' reports****FN.051/17 Buildings and works to construct three dwellings at 8 Coniston Street, Diamond Creek**

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56. The proposal seeks a variation to Clause 55.03-1 Standard B6 (Street Setback). Buildings should be setback the average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or nine metres, whichever is the lesser. The dwelling at no. 10 Coniston Street is setback 12.075 metres and the dwelling at Unit 1/4 Coniston Street is setback seven metres. The average of the two setbacks is 9.53 metres and therefore, the dwelling should be setback 9 metres as per Clause 55.03. Dwelling one is setback approximately 6.8 metres from Coniston Street. Clause 55.03 – Standard B6 allows for the consideration of a relevant neighbourhood character objective, policy or statement in determining the appropriateness of a front setback. The Garden Court precinct statement requires buildings to 'maintain the pattern or orientations and setbacks of adjoining properties' but states that 'some variation occurs in the Diamond Creek Garden Court 3 and 4 precincts where innovative higher density housing has and will develop'. The site is located within precinct 4, where some variation is expected to occur. Clause 55.03 provides the ability to consider the appropriateness of a different setback when taking into account the prevailing setback of existing buildings on nearby lots. As there is no consistent street setback pattern, a variation to this standard is considered to be appropriate when assessed against the decision guidelines at Clause 55.03 and the relevant Neighbourhood Character Policy.

**Clause 52.06 – Car parking**

57. The proposal meets the car parking provisions at Clause 52.06 of the Nillumbik Planning Scheme. Dwellings 1 and 3 contain three bedrooms and are required to provide two car parking spaces. Dwellings 1 and 3 comprise a double garage that can accommodate two car parking spaces. Dwelling 2 contains two bedrooms and is required to provide one car parking space. Dwelling 2 has provided a single garage which can accommodate one car parking space.

**Response to objections received**

58. The written objections have raised a number of concerns with respect to the proposed development. Issues regarding neighbourhood character, strategic location and car parking have been discussed in earlier sections of this assessment. A response to those issues not previously discussed and addressed is included below.
59. The proposal is not in accordance with the Diamond Creek Activity Centre Policy State Planning Policy at Clause 16.01- encourages new housing in close proximity to activity centres with good access to jobs, services and transport. The Diamond Creek Activity Centre Policy (Clause 22.14) focuses on developing shopping, services, facilities, employment and meeting places which complement those available in the regional network of activity centre and facilities. The policy encourages medium density housing in close proximity to the centre. In addition, the Medium Density Housing Policy provides direction as to the most appropriate locations for further development. Pursuant to Clause 22.01 – Medium Density Housing Policy, 'sites considered suited to medium density development are those within appropriate infrastructure in localities within walking distance (approximately 400 metres)'. The site is located approximately 400 metres south of the Diamond Creek Activity Centre and 470 metres south-east of the Diamond Creek Train Station and has strong policy support for medium density development.

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## 60. The proposal will result in a loss of privacy

The proposal has been sited and designed to take advantage of the northern solar orientation. Windows are predominantly located on the northern elevation of each dwelling, providing adequate light to the proposed living areas. The dwellings are of a more narrow design and therefore, windows along the western, eastern and southern elevations are not considered to be necessary.

## 61. However, the southern elevation of Unit 3 (abutting 40 Patyah) contains two windows which are highlight windows and have a lower sill height of 1.7 metres above the finished floor level. In addition, a balcony area sits atop the garage of Dwelling three along the southern elevation and will be screened to a height of 1.7 metres above the ground. Concerns were raised regarding the appearance of the dwelling from this elevation and the potential impact on privacy. In response, the applicant has proposed to recess the roof to minimise visual bulk and to break up any sheer wall appearance. All windows and the balcony area have been screened in accordance with Clause 55-Standard B22 (Overlooking). The proposed southern elevation to Dwelling 3 is broken up through recessed elements, an altering roof line and the open balcony area atop the garage. With additional amendments to the materials and colours, it is considered that built form along this elevation is acceptable.

## 62. The proposal will result in a loss of property value

Council is unable to consider objections made in relation to commercial advantage under section 57(2A) of the *Planning and Environment Act 1987*. This is discussed in VCAT decision Coffey and Ors v Darebin CC [VCAT reference no. P2431/2010] with the Member stating 'loss of property value is not a town planning consideration'.

## 63. Negative impact on health and lifestyle

The planning application process considers the amenity impacts of a development, within the objectives and standards of Clause 55 with regards to privacy, height and setbacks etc. A number of these standards relate to the amenity impacts to adjoining properties. Overall, health and wellbeing fall outside of what matters can be considered when assessing a planning application under the Nillumbik Planning Scheme.

**Conclusion**

## 64. The applicant has sought approval to develop the land for the construction of three dwellings. The proposed development is afforded strong strategic merit for medium density residential development by the planning controls that apply to the site, such as Clause 16.01-3 (Location of Residential Development), Clause 22.12 (Medium Density Housing Policy) and Clause 22.14 (Diamond Creek Major Activity Centre Policy). The proposed development will contribute to a growing demand for housing in areas that are located within close proximity to major activity centres which access to services, jobs and public transport. The proposal results in design outcome that has addressed the common concerns with multi-unit development such as built form separation, articulation, sheer walls, setbacks and landscaping opportunities.

## 65. In light of the above planning assessment, the application warrants support as reflected in the officer recommendation.

4. Officers' reports

**FN.052/17 Use and development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat**

**Portfolio: Planning**  
**Distribution: Public**  
**Manager: Jonathan McNally, Acting Manager Planning and Health Services**  
**Author: Tim Oldfield, Statutory Planner**

**Application summary**

Address of the land	6 Youngs Road, Yarrambat
Site area	8,071 square metres
Proposal	Use and Development of the land for a childcare centre for 80 children and associated signage
Application number	205/2017/01P
Date lodged	18 May 2017
Applicant	Michelle Smith – Yarrambat Children Pty Ltd
Zoning	Low Density Residential Zone
Overlay(s)	Design and Development Overlay (Schedule 2) Bushfire Management Overlay
Reason for being reported	Called in by Councillor
Number of objections	62 letters of objection and 56 letters of support
Key issues	<ul style="list-style-type: none"> <li>• Previous VCAT decision Smith v Nillumbik SC (2017) VCAT 74</li> <li>• Suitability of the use and strategic location</li> <li>• Capability of the land</li> <li>• Car parking and traffic</li> <li>• Amenity impacts</li> <li>• Bushfire provisions</li> <li>• Signage</li> </ul>



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FN.052/17 Use and Development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat

Location map



**4. Officers' reports**

**FN.052/17 Use and Development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat**

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<b>Recommendation</b>
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**That the Committee (under delegation from Council) issues a Notice of Decision to Grant a Permit to the land at 6 Youngs Road, Yarrambat, for the use and development of the land for a childcare centre for 80 children and associated signage, in accordance with the submitted plans and subject to the following conditions:**

- 1. Before the development and use commences, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans received on 11 August 2017 prepared by LSA Architects, but modified to show:**
  - a) An amended vehicle crossover detailing a left hand turn only lane/splay for vehicles exiting the property (to prevent 'right hand turn' movements into and along Youngs Road to the east).**
  - b) Location of associated direction signage stating 'no right turn' for vehicles exiting the property.**
  - c) Provision of a pedestrian footpath within the Youngs Road road reserve between the vehicle crossing for the subject land and the existing Yan Yean Road footpath (approximately 34 metres in length). This will provide formal pedestrian access to the site from the existing footpath network.**
  - d) Plan notations showing that the construction works required by conditions 1(a), (b) and (c) above will be entirely at the cost of the permit holder.**
  - e) A notation on the plans stating outdoor play areas are only to be utilised between 8am and 6pm Monday to Friday.**
  - f) The deletion of the acoustic fence along the western side property boundary.**
  - g) An amended Landscape Plan as required by Condition 8 of this permit.**
  - h) A Business Management Plan as required by Condition 10 of this permit.**
  - i) An amended Bushfire Management plan as required by Condition 41 of this permit.**
- 2. The use and development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority, to the satisfaction of the Responsible Authority.**
- 3. The location and details of the sign(s), including those of the supporting structure, as shown on the endorsed plans, must not be altered unless with the prior written consent of the Responsible Authority, to the satisfaction of the Responsible Authority.**

**4. Officers' reports**

**FN.052/17 Use and Development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat**

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- 4. No more than 80 children and 15 staff are to be accommodated on the land at any one time unless with the prior written consent of the Responsible Authority, to the satisfaction of the Responsible Authority.**
- 5. Unless with the prior written consent of the Responsible Authority, the operating hours of the child care centre use hereby permitted shall only be between:**
  - Monday to Friday: 6.30am to 6.30pm.**
- 6. Unless with the prior written consent of the Responsible Authority, the operating hours of the outdoor play areas shall only be between:**
  - Monday to Friday: 8am to 6pm.**
- 7. Unless with the prior written consent of the Responsible Authority:**
  - a) No more than 30 children are to be permitted in the northern outdoor play area at any one time.**
  - b) No more than 45 children are to be in the southern play areas (including the swimming pool) at any one time.**
- 8. Before the development and/or use commences, three copies of a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The landscaping plan must be generally in accordance with the landscape concept plan dated 11 August 2017 prepared by John Patrick Landscape Design. 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 exotic plants and plants selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing.**
  - d) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material.**
  - e) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill.**
  - f) Appropriate irrigation systems.**
  - g) The provision of canopy trees throughout the development as appropriate, including in the front setback area of the proposed buildings.**
  - h) Additional screen planting between the effluent disposal areas and the child care centre and western car parking area.**

**4. Officers' reports**

**FN.052/17 Use and Development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat**

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- 9. Unless with the prior written consent of the Responsible Authority, before the occupation of the development and/or use commences, the landscaping works shown on the endorsed plans must be carried out, completed and maintained to the satisfaction of the Responsible Authority.**
- 10. Before the development and/or use commences, three copies of a Business Management Plan for the child care centre must be prepared, 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 include but is not limited to the following information:**
- a) Children shall be supervised at all times when located in outdoor play areas.**
  - b) Not all children are allowed to be in the play areas at the same time. With outdoor play time for each age group occurring at different times during the day.**
  - c) Children shall be permitted within outdoor play areas only during the hours of 8am to 5pm Monday to Friday.**
  - d) Waste/recycling collection shall occur only between 7am and 6pm Monday to Friday unless with the prior written consent of the Responsible Authority.**
  - e) Use of amplified music shall be limited to internal spaces within the existing building.**
  - f) Crying children are to be taken inside the centre and comforted as soon as practical.**
  - g) Behaviour of children to be monitored by suitably trained child care workers.**
  - h) Parents and guardians are to be informed of the importance of minimising noise when entering the site, dropping off or collecting children. A sign notifying visitors and staff to minimise noise at all times should be visible on entry to the site.**
  - i) Loudspeakers apart from those required for security/emergency purposes shall not be located in outdoor areas.**
  - j) Plant and equipment servicing the development shall comply with SEPP N-1.**
  - k) All acoustic fencing within the site shall be a minimum 1.8 metres high and be of imperforate construction. The fence can be constructed from materials such as double lapped timber, FC sheet, masonry, glazing or similar.**

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**FN.052/17 Use and Development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat**

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- 11. Before the use commences and/or the building(s) is/are occupied, an acoustic fence must be erected and must be put in place along the southern and part eastern boundaries of the site, in accordance with the recommendations of the Acoustic Report dated 30 June 2017 and prepared by Acoustic Logic, to a minimum height of 1.8 metres above natural ground level. The design of the fence must be prepared by a suitably qualified acoustic engineer. The details of the design and acoustic qualities of the fence must be to the satisfaction of the Responsible Authority.**
- 12. The sign(s) must not contain any flashing or moving light, to the satisfaction of the Responsible Authority.**
- 13. The sign(s) must be constructed and maintained to the satisfaction of the Responsible Authority.**
- 14. Unless with the prior written consent of the Responsible Authority, waste collection for the use hereby approved must be through a private contractor and be managed appropriately by the operators of the child care centre, to the satisfaction of the Responsible Authority.**
- 15. Unless with the prior written consent of the Responsible Authority, the premises must provide and maintain a suitable area for the storage and cleaning of rubbish receptacles, as shown on the endorsed plans. The waste storage area must be appropriately located and of sufficient size to contain all refuse bins used on the premises, to the satisfaction of the Responsible Authority.**
- 16. The development and use hereby permitted must be managed so that the amenity of the area is not detrimentally affected, through the:**
  - a) Transport of materials, good or commodities to or from the land**
  - b) Appearance of any building, works or materials**
  - c) Emissions of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil**
  - d) Presence of vermin.**
- 17. All vehicles exiting the site must be by left hand turn only onto Youngs Road, to the satisfaction of the Responsible Authority.**
- 18. 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 Nillumbik Shire Council, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. The cost of construction must be borne by the permit holder, and all vehicle crossing works are to be carried out with Council supervision under an Infrastructure Works permit.**



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- 19. A pedestrian footpath within the road reserve of Youngs Road must be constructed to the satisfaction of the Responsible Authority. The footpath must be constructed between the vehicle crossing to the subject land and connect to the existing pedestrian footpath along Yan Yean Road. The cost of construction must be borne by the permit holder, and all works are to be carried out with Council supervision under an Infrastructure Works permit.**
- 20. 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.**
- 21. The development hereby permitted, including any new paved areas, must be drained so as to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land. Stormwater must not cause any nuisance or loss of amenity in any adjacent or nearby land by reason of the discharge of stormwater.**
- 22. Stormwater from the roof of existing structures must be directed to a holding tank with a minimum storage capacity of 2000 litres. The overflow from the tank must be directed to the onsite detention device.**
- Water in the holding tank may be used for one or more of the following purposes: toilet flushing; property irrigation; vehicle washing and any other purpose approved by the Responsible Authority.**
- 23. Prior to works commencing on-site, construction plans and computations must be submitted to and be approved by the Responsible Authority detailing water sensitive urban design, underground drains, types and sizes of drainage pits, drainage longitudinal sections, pit schedule, etc. 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.**
- 24. An on-site detention device must also 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. The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge.**
- The on-site detention device shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval.**
- 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.**

**4. Officers' reports**

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- 25. All drainage must be designed to minimise damage to existing vegetation required to be retained on-site, and the construction work must be carried out in accordance with the approved plans.**
- 26. The drainage system within the subject site must be designed to the requirements and satisfaction of the Responsible Authority.**
- 27. Any connection to Council's underground drainage system within road reserves or drainage easements must be carried out under Council supervision and an Infrastructure Works permit.**
- 28. No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property. In this regard, pollution or litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.**
- 29. All sewage and sullage waters shall be treated in accordance with the requirements of the *Environment Protection Act 1970*. All wastewater shall be disposed of within the curtilage of the land and sufficient area shall be kept available for the purpose of wastewater disposal to the satisfaction of the Responsible Authority. No wastewater shall drain directly or indirectly onto an adjoining property, street or any watercourse or drain to the satisfaction of the Responsible Authority.**
- 30. Approval of wastewater disposal must be obtained from Council (Environmental Health) prior to a Building Permit being issued.**
- 31. The existing septic system must be upgraded in accordance with the requirements of the *Environment Protection Act 1970* and Council (Environmental Health).**
- 32. Unless with the prior written consent of the Responsible Authority, all effluent must be disposed of within the designated effluent envelope to the satisfaction of the Responsible Authority.**
- 33. The layout and construction of the premises, must comply with the Food Safety Standard 3.2.3 Food Premises and Equipment to the satisfaction of Council's Environmental Health Unit.**
- 34. Air-conditioning and other plant and equipment installed on the subject building(s) shall be so positioned and baffled so that noise disturbance is minimised, to the satisfaction of the Responsible Authority.**
- 35. Secondary treatment of wastewater followed by sub-surface irrigation must be installed within the designated effluent envelope to the satisfaction of the Responsible Authority.**
- 36. The permit holder must ensure that a current maintenance agreement is in place for the septic tanks system. Servicing must be completed by a competently trained person or servicing agent at least once every three (3) months, with a copy of the report sent to the Council (Environmental Health).**

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- 37. Unless with the prior written consent of the Responsible Authority, the commercial waste collection must not occur outside the following hours to the satisfaction of the Responsible Authority.**
- For one collection per week, between 7am- 6pm Monday to Friday.
  - For two or more collections per week, between 7am-6pm Monday to Friday.
- 38. Unless with the prior written consent of the Responsible Authority, deliveries must not occur outside the following hours:**
- Between 7am-10pm Monday to Saturday and between 9am-10pm Sundays and Public holidays.
- 39. This permit will expire if one of the following circumstances applies:**
- a) The development is not commenced within two years of the date of this permit.
  - b) The development is not completed within four years of the date of this permit.
  - c) The use is not commenced within two years of the completion of the development
  - d) The signage approved under this permit expires 15 years from the date of issue or when the use ceases on site, whichever occurs first.

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

The following conditions are required by the CFA:

**40. Bushfire Management Plan**

Before the development starts, an amended bushfire management plan which is generally in accordance with bushfire management plan prepared by ABZECO Pty Ltd, Attachment 4, dated July 2017 must be submitted to and endorsed by the Responsible Authority. The plan must show the following bushfire mitigation measures, unless otherwise agreed in writing by the CFA and the Responsible Authority:

- a) **Defendable space**
  - Show an area of defendable space for a distance of 50 metres around the proposed building/ or to the property boundary where vegetation (and other flammable materials) will be modified and managed in accordance with the following requirements:
  - Grass must be short cropped and maintained during the declared fire danger period.



**4. Officers' reports**

**FN.052/17 Use and Development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat**

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- All leaves and vegetation debris must be removed at regular intervals during the declared fire danger period.
- Within 10 metres of a building, flammable objects must not be located close to the vulnerable parts of the building.
- Plants greater than 10 centimetres in height must not be placed within three metres of a window or glass feature of the building.
- Shrubs must not be located under the canopy of trees.
- Individual and clumps of shrubs must not exceed five square metres in area and must be separated by at least 5 metres.
- Trees must not overhang or touch any elements of the building.
- The canopy of trees must be separated by at least five metres.
- There must be a clearance of at least two metres between the lowest tree branches and ground level.

**b) Construction standard**

Nominate a minimum Bushfire Attack Level of BAL – 12.5 that the building will be designed and constructed.

**c) Water supply**

Show 10,000 litres of effective water supply for firefighting purposes which meets the following requirements:

- Is stored in an above ground water tank constructed of concrete or metal.
- All fixed above-ground water pipes and fittings required for firefighting purposes must be made of corrosion resistant metal.
- Incorporate a ball or gate valve (British Standard Pipe (BSP) 65mm) and coupling (64mm CFA three thread per inch male fitting).
- The outlet/s of the water tank must be within four metres of the accessway and be unobstructed.
- Be readily identifiable from the building or appropriate identification signage to the satisfaction of CFA must be provided.
- Any pipework and fittings must be a minimum of 65 mm (excluding the CFA coupling).

**d) Access**

Show the access for firefighting purposes which meets the following requirements:

- Curves must have a minimum inner radius of 10 metres.

4. Officers' reports

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- The average grade must be no more than one in seven (14.4 per cent) (8.1 degrees) with a maximum of no more than one in five (20 per cent) (11.3 degrees) for no more than 50 metres.
- Have a minimum trafficable width of 3.5 metres of all-weather construction.
- Be clear of encroachments for at least 0.5 metres on each side and four metres above the accessway.
- Dips must have no more than a one in eight (12.5 per cent) (7.1 degrees) entry and exit angle.

**Council Notes**

- The premises is required to be registered with Council (Environmental Health Team) under the *Food Act 1984*.
- Prior to undertaking any construction works on the food premises, approval should be obtained from a Council Environmental Health Officer.
- Applicants who wish to allow smoking in outdoor dining and drinking areas need to ensure that the area/s comply with the requirements outlined in the *Tobacco Act 1987*. This may involve seeking independent legal advice, where necessary.
- The owner/builder is responsible to protect Council assets during the works and to obtain an Asset Protection Permit unless an exemption applies.
- When Council receives notification of the proposed building/development works from the appointed Building Surveyor, we will forward an Asset Protection Permit application and payment form to the building permit applicant. Should you require additional information, please contact Council's Infrastructure team on 9433 3234.
- The wetland may be used as on-site detention to satisfy drainage conditions within this permit.
- For any clarification or enquiries concerning the drainage or stormwater conditions contained in this permit, please contact Council's Development Engineer on 9433 3255.

**Attachments**

1. Site and surrounds
2. Plans

#### 4. Officers' reports

##### **FN.052/17 Use and Development of the land for a childcare centre for 80 children and associated signage at 6 Youngs Road, Yarrambat**

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#### **Subject site and surrounds**

1. The key features of the subject land and surrounds are as follows:

- The site is located on Lot 1 of Plan of Subdivision 511111, CT-10759/556. A Section 173 Agreement (No. AC204174Q) is registered on the title of the land and refers to building and effluent envelopes for the lot, landscaping and vehicle access.
- The subject site is located on the south-east corner of the Youngs Road and Yan Yean Road intersection, in Yarrambat.
- The site is rectangular in shape and has an overall area of 8,071 square metres. The site has an existing access (driveway) from Youngs Road, with no vehicle access from Yan Yean Road to the west.
- The site contains an existing single storey dwelling which is located centrally to the southern half of the site, an existing outbuilding (barn) located in the south-east corner of the site, and an existing swimming pool located on the southern side of the existing dwelling. The site also contains a dam located in the north-east corner of the site, adjacent to the existing driveway.
- The site contains vegetation, all of which is planted vegetation around the property boundaries, with some patches of manicured garden space around the existing dwelling.
- In relation to onsite car parking, the existing dwelling contains a three car garage and existing barn which also contains vehicle access.
- The site is located within the residential area of Yarrambat and all abutting properties as well as properties along Youngs Road are characterised by low density residential living, consisting of single dwellings on medium sized lots. The surrounding area has light vegetation cover, comprising mainly of scattered trees and planted gardens.
- Diagonally across the road on Yan Yean Road is an existing dog kennels and cattery facility (No. 605 Yan Yean Road) and a church at No. 615-623 Yan Yean Road. Yan Yean Road is an arterial road and currently contains one traffic lane in each direction.
- The commercial and community 'centre' of Yarrambat is located approximately 400 metres to the south, running along Ironbark Road. This area contains a general store, primary school, café, CFA building and outdoor recreation facility (sporting oval).
- The area is served by public transport with the No. 520 bus route operating along Yan Yean Road. The nearest bus stop is on the north-east corner of the Youngs Road and Yan Yean Road intersection.

#### **Details of proposal**

2. Refer to the attached plans.

4. Officers' reports

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3. Key features of the proposal include:

- To use and develop the land for a child care centre.
- The existing dwelling and barn are to be converted into a child care centre which includes the following:
  - Five rooms within the dwelling and one room in the barn
  - Room 1 is 87.8 square metres in area, to accommodate a maximum of 12 children with two toilets available
  - Room 2 is 81.26 square metres in area, to accommodate a maximum of 12 children with two toilets available
  - Room 3 is 36.4 square metres in area, to accommodate a maximum of 10 children with one toilet available
  - Room 4 is 53.2 square metres in area (including covered alfresco area), to accommodate a maximum of 10 children with two toilets available
  - Room 5 is 40.2 square metres in area, to accommodate a maximum of 12 children with one toilet available
  - Room 6 (within the barn) is to accommodate a maximum of 23 children with four toilets available
  - All rooms contain storage facilities
  - The existing kitchen is to remain and be upgraded
  - The building is also to have an office, staff room and laundry which are centrally located within the building.
- Overall, the child care centre is proposed to cater for up to 80 children onsite, in addition to 15 staff onsite at any one time.
- The proposed hours of operation are from 6.30am to 6.30pm, Monday to Friday and not open on weekends.
- Three fenced play areas are proposed to the east, west and south of the existing main building. These play areas are as follows:
  - The two year old area, to be located to the west of the child care centre with 1.5 metre high fencing around its perimeter.
  - The three year old area, to be located to the east of the childcare centre, with 1.5 metre high fencing around its perimeter.
  - The four year old area, to the south of the childcare centre, with 1.5 metre high fencing around its perimeter.
  - No fencing is to be constructed along the northern boundary.

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- The fencing will be constructed of steel and will be permeable in appearance (in a similar style to steel swimming pool fencing). It is also noted that the boundary fences of the proposed lot will remain unchanged as post-and-wire and all fencing mentioned above will be contained within the site.
- The proposal seeks to extend the accessway to the front of the child care centre, to create a circular driveway. The accessway is to be a minimum width of three metres and constructed of concrete.
- In addition to the extended accessway, the proposal seeks to construct 27 new on-site car parking spaces in three areas. All car spaces are designed in accordance with Clause 52.06 (Car Parking) of the planning scheme and are as follows:
  - Two areas of car parking are proposed to the east of the existing driveway. A line of three spaces and then a line of 10 (including six spaces for staff) 3.5 metres from the eastern boundary of the property.
  - Four spaces, including three 45 degree angled parks are proposed to the side/front of the child care centre. Two of these are disabled spaces and one is identified as a shared space.
  - The remaining eleven angled parks are proposed adjacent to the western edge of the driveway extension.
- The construction of an undercover walkway from the childcare centre to the barn to the south-west corner of the site, which is to be converted into an additional room for the child care centre.
- The proposal seeks to upgrade the existing septic system and effluent disposal area. The effluent disposal area is to be split into two, one to the north west and the other to the south west of the child care centre.
- No landscaping is proposed to be removed to accommodate any buildings and works.
- Two signs are proposed on the corner of Youngs Road and Yan Yean Road. One sign will face Youngs Road with the other facing Yan Yean Road. The signs are proposed to be one metre long and two metres wide and will be fixed to posts with an overall height of between 2.3 and 2.4 metres. The signs are single sided and are not proposed to be illuminated.

#### **Planning history**

4. Planning Permit 109/2005/05P was issued in September 2005 for the development of the land for a dwelling and swimming pool. This planning permit was never acted on and therefore lapsed.
5. Planning Permit 410/2006/05P was issued in October 2006 for the development in the form of a dwelling, driveway, dam and barn. This permit was acted upon and all works have been completed on-site.

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6. Planning Permit Application 524/2015/01P was refused in April 2016 for the Use and Development of the land for a childcare centre for 120 children. This decision was upheld at VCAT.
7. Miscellaneous Consent Application 694/2015/20P for buildings and works outside of the designated building envelope and for effluent disposal outside of the designated effluent envelope was refused on 6 February 2017 as a result of the upheld VCAT decision pertaining to the childcare centre proposal (524/2015/01P).
8. A concurrent Miscellaneous Consent Application is being considered by Council and is for buildings and works outside of the designated the building envelope and for effluent disposal outside of the designated effluent envelope. The miscellaneous consent application is required by the Section 173 Agreement on title and will be determined under delegation following the determination of this current permit application.

**Planning controls**

**Zoning**

9. The land is zoned Low Density Residential Zone. Under this zone, a permit is required to use and develop the land for the purpose of a child care centre. A child care centre is a Section 2 'permit required' use in this zone.
10. Advertising sign requirements are at Clause 52.05. This zone is in Category 3 which relates to high amenity areas. The purpose of this category is to ensure that signs in high-amenity areas are orderly, of good design and do not detract from the appearance of the building on which a sign is displayed or the surrounding area.
11. Business identification signs require a planning permit in this category.

**Overlays**

12. The land is affected by the Design and Development Overlay (Schedule 2) which seeks to ensure development impacts on the local landscape and stormwater runoff are minimised. Under this overlay, a permit is required to construct a building or carry out works.
13. The land is affected by the Bushfire Management Overlay. Under this overlay, a permit is required for buildings and works associated with the use of the land for a child care centre.

**Particular provisions**

14. Clause 52.06 (Car Parking) is relevant to the consideration of this application. This clause seeks to ensure there is the provision of an appropriate number of car parking spaces, to ensure that car parking does not adversely affect the amenity of the locality, and to ensure 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.

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15. Clause 52.47 (Planning for Bushfire) This provision applies to applications under Clause 44.06 – Bushfire Management Overlay and the purpose of this provision is:
- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
  - To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
  - To ensure that the location, design and construction of development appropriately responds to the bushfire hazard.
  - To ensure development is only permitted where the risk to life, property and community infrastructure from bushfire can be reduced to an acceptable level.
  - To specify location, design and construction measures for a single dwelling that reduces the bushfire risk to life and property to an acceptable level.
16. 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**

17. State Planning Policies which are relevant to this application include:
- Clause 10.04 – Integrated decision making
  - Clause 13.05 - Bushfire
  - Clause 17.01-2 – Out of centre development for metropolitan Melbourne
18. The Local Planning Policies which are relevant to this application include:
- Clause 21.05-4 – Economic Development
  - Clause 22.09 – Signage Policy
  - Clause 22.13 – Wildfire Management Policy

**Public consultation**

**Advertising**

19. The application has been advertised by way of the posting of notices to the owners and occupiers of neighbouring properties and the erection of two notices on-site (Yan Yean Road and Youngs Road frontages).

**Objections**

20. As a result of advertising, a total of 62 written objections have been received. These objections can be summarised as follows:
- Increased traffic will damage Youngs Road (single lane dirt road, cars cannot easily pass one another, low visibility at the Youngs/Yan Yean intersection. Traffic will create gridlock).

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- Eisemans Road and DeFredricks Road will be used as cut through roads which are both unsuitable for more traffic. Increased traffic will increase damage to all these roads and accidents will be more likely.
  - No footpath access on Youngs Road, therefore unsafe for pedestrians.
  - Parking on Youngs Road is not achievable and this will occur even though parking is located on the site.
  - Health and wellbeing of residents will be affected from dust caused by increased vehicle movements along Youngs Road.
  - The dam and swimming pool creates an unsafe environment for the children in regards to drownings and snakes.
  - The proposed carpark will require the removal of trees.
  - The proposal is inconsistent with the Yarrambat structure plan and census figures state that there is no demand in Yarrambat for this service.
  - The proposed use will destroy the local residential neighbourhood.
  - The proposal will set a precedent for commercial uses in a residential area.
  - There are already three child care centres located close by to the subject site.
  - Signage distracts from the residential feel and nature of the area, and should not be allowed on Youngs Road.
  - Limited services are available, and the existing drainage and other services cannot support this proposed use (including an impact on water pressure).
  - The noise levels generated by the children playing will be inappropriate.
  - The use will increase the bushfire risk to the local area.
  - This facility will be unsafe in the event of a bushfire (evacuation).
  - Hours of operation and the number of children are inappropriate for the residential area.
  - The use will decrease property values in the area.
  - The facility should be purpose-built, not converted from a dwelling.
  - Fencing, lighting, signage does not fit with Nillumbik Strategic Plan.
  - Removal of trees for fence will increase noise level to residents.
21. A total of 54 letters of support have also been received. The support for the application can be summarised as follows:
- There is a shortage of childcare availability in the area – across all centres.
  - There are waiting lists at all centres in the area.
  - The location is perfect for parents travelling from Doreen/Diamond Creek or Hurstbridge to the CBD – they can do drop off and pick up on the way to and from work.



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**Planning application conference**

- 22. A planning application conference was held at the Shire offices for the previous application on Wednesday 16 March 2016. Many of the above issues were discussed at length, and whilst no agreements or compromises were achieved, the position of all parties was clarified.
- 23. No planning application conference was held for this application as the intensity of the use has reduced and the nature of the objections raised suggested no outcomes could be achieved to satisfy all parties. It is also noted that the concerns raised for the current application were similar to those raised in the previous application and as such, these issues have been discussed at length in the previous planning application conference.

**Referrals**

**Internal**

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

<b>Council Unit</b>	<b>Comments</b>
Environmental Health	No objections subject to conditions relating to effluent disposal, noise, swimming pool equipment and food/tobacco registrations being attached to the permit.
Infrastructure Development	No objections subject to conditions relating to vehicle crossing; carpark construction, stormwater, run off control being attached to the permit.
Landscape Architect	The applicant will be required to produce a full planting plan.
Building Team	Building permit required for change of use of the barn and dwelling. There may be fire rating issues. Applicant should consider access for people with a disability and facilities.
Strategic Planning Team	Commented that the location of the child care centre is not ideal and all community facilities for Yarrambat are preferred to be located within the Ironbark Road precinct to the south. It is acknowledged that this preference is not currently supported by any adopted strategic policy which can be considered seriously entertained planning policy at this point in time.

**External**

- 25. The application was referred to the following statutory referral authority/authorities for advice on particular matters. The following is a summary of the relevant advice.

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Authority	Comments
CFA	<p>No objections subject to conditions relating to the submission of an amended Bushfire Management Plan showing defendable space, construction standard, water supply, and access.</p> <p>The applicant will need to revise the location of the water supply (or proposed accessway) as a fire truck cannot get within four metres of the outlet from the current accessway proposed.</p>
Vic Roads	<p>No objection to the proposal, advised they will take up to 10 metres of the subject site for the future widening of Yan Yean Road. No timeframe has been indicated for these works.</p>

**Planning assessment**

**Introduction**

26. The following have been identified as the key planning issues in relation to the assessment of this planning application:
- Previous VCAT decision
  - Suitability of the use and strategic location
  - Capability of the land
  - Car parking and traffic
  - Amenity impacts
  - Bushfire provisions
  - Signage
27. Assessment of these issues, together with a response to objections received, will be discussed in the remainder of this report.

**Previous VCAT decision**

28. This is a new application, following a refusal by Council that was upheld at VCAT (Smith v Nillumbik SC (2017) VCAT 74) for the Use and Development of the land for a childcare centre for up to 120 Children. The Tribunal member in making their decision provided details of what matters need to be addressed for a successful planning permit application such as effluent disposal including maintenance, vegetation impacts and removal, landscaping, plan details, fencing, pedestrian access, stormwater and clarification on the future widening of Yan Yean Road. The applicant has confirmed that this additional information has now been provided and all the matters raised by the Tribunal member have been addressed in the documentation provided with this application. Council is satisfied the points raised in the VCAT decision have been addressed.

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**The current proposal**

29. It is proposed to develop the land for use as a child care centre to accommodate up to 80 children and 15 staff. The number of children has reduced by a third (40 children) from the last application (up to 120 children) however the staff number of 15 remains the same. The child care centre is proposed to operate between the hours of 6.30am to 6.30pm Monday to Friday as was proposed in the previous application.

**Suitability of the use and strategic location**

30. The subject site is located within the Low Density Residential Zone. The objectives of the zone are to provide low density residential development on lots which in the absence of reticulated sewerage can treat and retain its own waste water. It is a long-established principle that use of land within the Low Density Residential Zone is suitable for the development of a child care centre, subject to the limitation of amenity issues to the surrounding residential properties. This fact was established by the Tribunal in the hearing for the previous application for the site (Smith v Nillumbik SC (2017) VCAT 74 (para. 105).
31. In strategic terms it has been argued that the site's location is not suitable because of its location some 400 metres north of Ironbark Road beyond the core of the Yarrambat township, and contrary to the direction of the Yarrambat Local Structure Plan. The Plan identifies that the eastern section of Ironbark Road near Yan Yean Road will continue to be the focus for community facilities and activities, and that any additional facilities required by the local community will be located in this area.
32. The Tribunal member in the previous decision stated that 'this proposal should not be refused because of the statement in the Yarrambat Local Structure Plan giving preference to Ironbark Road as the location for the focus of community facilities and activities'. In contrast the Tribunal member found that the site is not so remote from Yarrambat's main township core, and it is not uncommon for child care centres to be located on higher order roads in locations more distant from other community facilities and services. In this area of Yarrambat there are other community facilities along Yan Yean Road, (vet clinic, Rose Garden child care centre and a new church) that are not located within the preferred Ironbark Road area, but are close to it.
33. It was also accepted by the Tribunal Member that the location of the child care centre would encompass multi-purpose journeys, with the likely users of the centre coming from the growth suburbs in Whittlesea to the north of the subject site, dropping and collecting their children on their way to and from work. As part of the hearing the issue of 'local need' was discussed and the Tribunal member concluded that the need for a facility or service 'is not just confined to need or even a local community need ... nor does the policy framework suggest that any benefits identified must be confined to municipal boundaries'. The impacts arising from the particular characteristics of a proposed use and development, including its intensity together with its response to the planning and physical contexts, are important considerations that will bear upon a proposal's acceptability in any given location.

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- 34. The Tribunal member concluded that ‘this facility would contribute to a diversity of choice’. Such choice would translate to potential social and economic benefits in the form of travel efficiencies for working parents, greater workforce participation and the potential for additional employment opportunities, including within the local community.
- 35. On the basis of the Tribunal members’ findings, it is considered that there is strategic support for the child care centre use at the subject site and the need for the facility, whilst not an immediate local community need, is considered to be viable.
- 36. With the suitability of the use established, the critical matter to be addressed is the potential amenity impacts of the proposal. The potential amenity impacts to be assessed as identified by the previous Tribunal decision for the site include waste water management, stormwater management, proposed buildings and works, traffic impacts and landscaping. A number of technical reports were submitted with the application that addresses these issues.

**Capability of the land**

- 37. The subject site is located within an area that does not have access to reticulated sewer services. As such, these properties rely on all purpose effluent disposal systems to treat and retain all wastewater on-site. A number of objectors raised concerns with the ability of the land to adequately treat and dispose of wastewater within the boundaries of the site, without affecting the amenity of the area or impacting the existing dam situated in the north-east corner of the site. The application was accompanied by a Land Capability Assessment (LCA) that assessed the land area available, the location of the dam, and existing septic system to determine if the increase in load to 80 children and 15 staff members associated with the proposed use could be accommodated on-site.
- 38. The Land Capability Assessment detailed that the site currently contains a 3,200 litre secondary treatment system for the existing dwelling which is understood to be performing well. A new system (which may include existing components) is to be designed and constructed to accommodate a population of 95 people producing up to 1360 litres/day effluent (load-balanced) and to address several items detailed in the Smith v Nillumbik (2017) VCAT 74 decision.
- 39. The hydraulic loading of the proposed system has been calculated based on the number of children to be accommodated on-site as well as anticipated staff numbers. The anticipated hydraulic loading under Clause 10.3 of the Land Capability Assessment is as follows:

<b>Number of children</b>	<b>Number of staff</b>	<b>Hydraulic loading (litres/day)</b>
80	15	1,360

- 40. Based on a hydraulic loading of 1,360 litres per day, the Land Capability Assessment recommends that a sub-surface drip irrigation area of 775 square metres is adopted on-site. Council’s records indicate an existing 400 square metres effluent envelope existing on-site (approved for the existing dwelling). As such, a further 375 square metres of irrigation area is required, which can be readily accommodated on-site.

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41. The application was referred to Council's Environmental Health Team that conducted a desktop assessment and undertook a site visit. Council's Environmental Health Team is satisfied with the recommendations outlined in the submitted Land Capability Assessment and has stated that an 'Application to alter a septic tank system' will need to be submitted to Environmental Health Team in the event that a planning permit is issued for the proposed use. Further to this, the proposed use also requires registration under the *Food Act 1984*. In the event that a planning permit is obtained, it is recommended that conditions be included that address these requirements.
42. A key objective of the Design and Development Overlay – Schedule 2 is to ensure adverse impacts upon the local drainage system are minimised. The Stormwater Management Plan demonstrates that the development complies with the best practice guidelines and will not result in the discharge of polluted or sediment laden run-off. Drainage has been re-configured on the site to incorporate Water Sensitive Urban Design (WSUD) measures including a drainage swale, a rainwater tank and a treatment wetland which will act to improve stormwater quality through actively reducing the pollutants and total suspended solids before stormwater is released off site.
43. Council's Infrastructure Development Unit reviewed the Stormwater Management Plan and was satisfied with its recommendations. Conditions are recommended to be placed on any issuing permit to ensure these recommendations are implemented.

**Car parking and traffic**

44. When considering a new use, it is important that the proposal provides sufficient car parking facilities and in a manner that is not detrimental to the surrounding area. Many concerns were raised by objectors that on-site car parking has not been sufficiently provided, and that vehicles will be parked in the street (Youngs Road).
45. The proposal is seeking to have a maximum of 80 children on-site at any one time. Pursuant to Table 1 of Clause 52.06-5 of the Nillumbik Planning Scheme, a child care centre has a car parking rate of 0.22 car spaces to each child. This equates to a total of 17.6 car spaces for the proposed use, and as Clause 52.06 directs that all numbers must be rounded down to the nearest whole number, a total of 17 car parking spaces are therefore required to be provided on-site.
46. Overall, the proposal provides 27 on-site car parking spaces (surplus of 10), consisting of 13 spaces in the eastern area of the site (including 10 car spaces along the eastern property boundary), four spaces along the frontage of the building (including 2 disabled spaces and one shared space) with the remaining 11 spaces located adjacent to the western edge of the driveway. Accordingly, the car parking provision proposed for the site exceeds the amount required under the planning scheme, and has been located to ensure accessibility and to minimise amenity impacts to adjoining properties.

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47. The Traffic Impact Assessment was reviewed by Council's Traffic Engineer who whilst being satisfied with the assessment undertaken by GTA Consultants and having no objections to the proposal did advise that there may be an opportunity to be more efficient with the car parking layout, by reducing the number of spaces proposed (an excess of 10 spaces proposed) and by making the road a one-way circulating roadway thereby reducing the width of the access driveway. It is considered that while a surplus of car parking has been provided, these car parks have been designed and located to be amalgamated with the building and in areas that minimises landscape impacts and as such, does not warrant any amendments to the design. Notwithstanding this, a number of conditions were provided that are recommended to be placed on any issuing permit.
48. A number of concerns were raised by objectors in regards to increased traffic that may be generated by the proposed use, and the impacts this will have on nearby residents. A number of local residents stated that exiting from Youngs Road onto Yan Yean Road is already difficult, and increased traffic generated by the proposed use will exacerbate this issue. Council has recently upgraded Yan Yean Road by constructing turning lanes on a number of intersections including Youngs Road, to improve traffic along Yan Yean Road.
49. This issue was discussed during the previous Tribunal hearing. The member concluded that traffic generated by the proposal would capture a large portion of work based vehicle journeys already occurring on Yan Yean Road rather than generating additional traffic on this road to any appreciable or unreasonable degree. The member was not persuaded by objector's submissions that the current capacity issues along Yan Yean Road provide a valid reason to refuse the proposal.
50. It was also accepted by the Tribunal member that traffic movements would be restricted to the section of Young's Road outside the subject site (which is already sealed) and parents are unlikely to use the unsealed section that provides an alternative 'rat runner' route.
51. In regards to the issues of turning onto Yan Yean Road during peak times, Council's Infrastructure Development Unit conducted gap analysis surveys for the previous application to determine whether vehicles have adequate space to turn right out of Youngs Road (and travel north-bound along Yan Yean Road) in afternoon peak hour traffic conditions. This gap analysis involved documenting the timed gaps between vehicles travelling both north and south bound along Yan Yean Road to determine whether there is adequate time for a vehicle to turn right. The gap analysis was conducted on Thursday 19 and Thursday 26 of February 2016, between 4pm and 6pm. During the survey, weather was dry, clear and sunny.
52. The results of the surveys concluded that sufficient gaps in traffic are available for approximately 70 vehicles to turn right out of Youngs Road between 4pm to 5pm, and for 61 vehicles between 5pm to 6pm. In total, there are sufficient gaps for approximately 131 vehicles between 4pm and 6pm. According to Road Transport Authority (RTA) Guidelines, the traffic generation rate for a child care centre is 0.7 vehicle trips per child between 4pm and 6pm. The proposed child care centre is for 80 children, and therefore traffic generation during afternoon peak hours would be approximately 56 vehicles (0.7 x 80 children). As such, the survey data indicates that

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the current intersection at Youngs Road and Yan Yean Road can accommodate for the increased vehicle numbers generated by the proposed use during afternoon peak times.

53. This gap analysis was accepted by the Tribunal member at the previous hearing and was not a refusal ground in the final decision.
54. The Yarrambat Local Structure Plan identifies the potential widening of Yan Yean Road to accommodate increased usage and expected increases from the growth areas within Whittlesea. The referral response from Vic Roads stated that  
'... the project team has determined that an approximate offset of 10 metres from the western boundary will allow for any upgrade works to be undertaken in the future'.
55. The site plan submitted with the application has been amended to include a minimum 10 metre buffer from the existing western boundary to accommodate the future widening of Yan Yean Road. No buildings or works (including effluent disposal areas) are proposed within this buffer area.
56. As part of the previous decision for this proposal, Council's Infrastructure Development Unit requested that the construction of a footpath between the vehicle access for 6 Youngs Road and the existing footpath along Yan Yean Road (approximately 34 metres). Furthermore, Council's Infrastructure Development Unit has advised that a 'no right turn' sign as well as a modified crossover splay should be implemented at the exit of the site to prevent vehicle movements along the unsealed sections of Youngs, Eisemans and DeFredricks Roads. This arrangement will in turn address dust control issues as identified by some objectors. These requirements were requested to be included as a planning condition if a permit is issued for the proposed childcare centre. It is recommended these requirements form part of any permit issued for the use and development.

**Amenity impacts**

57. The assessment of any new proposal must consider the effect on the amenity of the area as required by Clause 65 of the planning scheme. The site is located within an existing residential area, with properties to the north, south and east characterised as large low density residential lots with single dwellings and associated outbuildings. As such, any increase in noise generated from the proposed use requires appropriate consideration to ensure no adverse amenity impacts are caused to surrounding allotments. A number of objections raised concern in regards to the potential noise generated by the children on-site, particularly from children playing outdoors. It is noted that this area is characterised by post-and-wire fencing to property boundaries, and there is a lack of existing solid fencing to provide opportunities to baffle or dampen sound within the area.
58. An acoustic report (prepared by Acoustic Logic Pty Ltd) was submitted with the application to assess the noise levels and potential impacts of the proposed use. The monitoring of noise was conducted from Saturday 7 to Wednesday 11 November 2015, and from Friday 30 June 2017 to Monday 3 July 2017. An attended background measurement was conducted on 7 July 2017.

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59. The November 2015 monitoring produced a range of decibel readings ranging from 40 decibels for daytime hours, 30-36 decibels for night time hours and a peak background noise level of 45 decibels which was between 6am and 7am. The background noise measured was predominantly noise generated by traffic along Yan Yean Road to the west of the site.
60. The June/July 2017 monitoring again produced a range of decibel readings ranging from 45 decibels for daytime hours, 28-45 decibels for night time hours and a peak background noise level of 45 decibels which was between 6am and 7am. The background noise measured was predominantly noise generated by traffic along Yan Yean Road to the west of the site.
61. The acoustic report was based on the State Environmental Protection Policy SEPP N-1 criteria which states the following maximum zoning levels for commercial uses within close proximity to residential uses based on the time of the day:
- Daytime – 51 decibels
  - Evening – 45 decibels
  - Night time – 40 decibels
62. The above shows that the maximum reasonable decibel level during daytime hours is 51 decibels.
63. Noise emissions from the proposed development site will be governed by children playing in the proposed outdoor play areas and cars entering and exiting the site. The subject site has four residential 'noise sensitive receivers' within close proximity, all being existing dwellings. These receivers include the dwelling at No. 626-636 Yan Yean Road to the north (receiver 1), the dwelling at No. 15 Youngs Road to the north east (receiver 2), the dwelling at No. 20 Youngs Road to the east (receiver 3), and the dwelling at 614 Yan Yean Road to the south (receiver 4). As such, the aim of the assessment was to ensure decibel levels from these four receivers do not exceed the maximum zoning levels outlined above.
64. The assessment stated that the predicted noise levels for the car park operation would be 32-34 decibels for receivers 1, 2 and 3 with receiver 4 being lower at 30-32 decibels. These are lower than the maximum 37 decibels allowed.
65. In regards to the predicted noise levels for children in outdoor play areas between 8am and 5pm, this would be <40 decibels for receivers 1, 2 and 3 with receiver 4 being between 46 and 48 decibels. Again these are lower than the maximum 50 decibels allowed.
66. Given that the proposed use will only operate during daytime hours, the predicted noise levels comply with this measure. As such, it is considered these levels are acceptable in the context of the subject site and surrounding area. The submitted acoustic report has recommended that in order for maximum noise levels to be in keeping with the SEPP N-1 requirements that a number of management controls should be enforced as part of any planning permit issued for the use.



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67. These management controls will help ensure that noise levels are kept to an acceptable level for the surrounding residential uses (particularly for 'receiver 4') as the dwelling potentially most impacted by noise as identified by the acoustic report, and are recommended to be incorporated into conditions on any permit issued.
68. One of the management controls identified is the construction of a 1.8 metre high acoustic fence along the south and part of the eastern boundary of the property. The plans submitted also show the acoustic fence along the western boundary of the property. This section of the fence faces onto Yan Yean Road and will not be protecting any of the residential neighbours and as such it is not considered to be necessary and was not a recommendation of the acoustic engineer. On this basis it is recommended that it is a requirement of any permit issued that the fence along the western boundary of the property be deleted. It is noted that the deletion of this fence will benefit and respect the open streetscape character of the site when viewing the property from Yan Yean Road, even when this road is widened.
69. The overall content of the acoustic report submitted with the previous application was peer reviewed on behalf of Council by an independent acoustic consultant. Council's consultant found the submitted acoustic report to be acceptable in methodology (in determining noise impacts of the proposed use). Whilst the acoustic report has been updated for this application, the overall methodology used previously has again been used to assess the potential noise created by both the cars and children on the site. Overall, it is considered the submitted acoustic report has appropriately assessed the predicted noise that will likely be generated by the proposed use and has concluded that all noise generated from the site associated with the proposed use will be acceptable to adjoining residential uses.
70. In regards to the noise generated by vehicles entering and exiting the site, child-care centres generally have peak times for vehicle movements (in the morning drop-off and afternoon pick-up times) and these times generally coincide with traffic peak times along Yan Yean Road. This level of noise is considered reasonable and as the vehicles will be required to exit the site towards the Yan Yean Road intersection, it is considered noise generated by these vehicles will not be easily distinguished from the existing traffic travelling along Yan Yean Road.
71. In respect to the above mentioned amenity considerations, it is recommended a Business Management Plan is submitted and approved by Council to ensure that the appropriate management practices are implemented to reduce amenity impacts on the surrounding area. It is recommended that this is made a condition on any planning permit issued.

**Bushfire provisions**

72. When the application was initially lodged with Council the property was not in the Bushfire Management Overlay but was shown on future mapping to be located within the overlay. The application was initially referred to the CFA under section 52 of the *Planning and Environment Act 1987* for comment.

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73. CFA responded that it acknowledged that the site is shown in the proposed revised BMO mapping and that bushfire issues are required to be considered and addressed in a number of other planning policies contained within the Nillumbik Planning Scheme. As such the CFA recommended that Council request the applicant to prepare an application that addresses the requirements of Clause 52.47.
74. The applicant subsequently submitted a Bushfire Management Plan prepared by Abzeco received on 11 August 2017. This plan was referred to the CFA that advised no objection to the proposal subject to the submission of an amended Bushfire Management Plan. It is recommended that these conditions form part of any permit issued.

**Signage**

75. Two business identification signs have been proposed on the corner of Youngs and Yan Yean Road. Both signs are single sided and non-illuminated. One will face Youngs Road with the other facing Yan Yean Road. The signs themselves will be two square metres in area and will be mounted on posts making the signs between 2.3 and 2.4 metres in overall height. Whilst Council has a preference for only one business identification sign to each business, when the property is located on a corner lot, then it is considered appropriate for two signs to be considered. These signs must generally be smaller in size and be appropriate for a residential setting. It is considered that the small size of the signs (2 square metres in area each) and the fact that they are single sided and non-illuminated results in an appropriate advertising approach in a residential setting in accordance with Clause 22.09 – Signage Policy and Clause 52.05 (Advertising Signage).

**Response to objections not yet addressed in this report**

76. A number of objections were concerned that the use will set a commercial precedent within the area. Any application received for a non-residential use is subject to the relevant considerations of the planning scheme and requires assessment on its own planning merit.
77. In relation to the bushfire risk of the area, the application was referred to the CFA as part of the application process. The CFA have offered no objection to the application subject to conditions being placed on any permit issued.
78. The notion that property values will be affected as a result of the proposed use is not a relevant planning consideration under the planning scheme.
79. Lastly, concerns were raised that the facility should be purpose-built and not converted from a dwelling. There is no guidance within the planning scheme or otherwise that child care centres should be built this way, and this is not a relevant planning consideration. It is noted that separate to any issued planning permit the proposed use will need to comply with the physical and operational requirements of the Department of Health and Human Services and the Australian Building Standards.

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**Conclusion**

80. The application seeks to use and develop the land for the purpose of a child care centre. The application was advertised and 62 written objections and 54 letters of support were received. The key planning issues relate to the appropriateness of the use and strategic location, the capability of the land, car parking and traffic, amenity impacts, bushfire provisions and signage.
81. The proposed use will be located on a corner site which adjoins an arterial road (Yan Yean Road), and is located within close proximity to other non-residential uses. This location is also considered suitable for servicing residents from the surrounding postcodes, including growth areas to the north-west of Yarrambat.
82. The proposed use provides for 27 car spaces on-site which is in excess by 10 of what is required under the planning scheme. A child care centre requires 0.22 spaces per child, and with a maximum of 80 children proposed, only 17 car spaces are required under the planning scheme.
83. Council's Infrastructure Development Unit has assessed existing and predicted traffic conditions within the immediate area and has assessed that these conditions can adequately accommodate the predicted traffic demand generated by the proposed use. A traffic gap analysis was undertaken by Council officers that determined sufficient gaps in traffic were available in afternoon peak times for vehicle movements from Youngs Road out onto Yan Yean Road. Council's Infrastructure Development Unit has also requested a left-hand-turn only exit from the subject site to ensure all vehicles from the proposed use exit Youngs Road via Yan Yean Road to prevent increased vehicle movements along Eisemans and DeFredricks Roads to the east.
84. The submitted acoustic report has appropriately assessed the predicted noise that will be generated by the proposed use, and has concluded that all noise generated from the proposed use is acceptable to adjoining residential uses, in accordance with the SEPP N-1 Guidelines. This assessment has recommended some management restrictions, which is appropriate to ensure that the residential amenity of surrounding properties is acceptably maintained. The proposal can also adequately treat and retain wastewater on-site in accordance with the objectives of the zone.
85. The bushfire impacts have been assessed by the CFA and found to be acceptable subject to conditions being attached to any permit issued.
86. The Land Capability Assessment demonstrates that, with the anticipated hydraulic loading, the proposal can sufficiently treat and retain all wastewater on site under without detrimentally affecting any adjoining property or nearby waterway or drainage gully.
87. The development complies with the best practice guidelines for stormwater management and will not result in the discharge of polluted or sediment laden run-off and has implored a number of practices to significantly reduce stormwater runoff from the site.
88. The signage proposed is considered to be of an appropriate size and location to be acceptable in a residential setting.

**4. Officers' reports**

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89. Overall, following an on-balanced assessment of all of the relevant considerations of the planning scheme, the proposed use and development warrants support, as reflected in the officer recommendation.

**Future Nillumbik Committee agenda**

**12 December 2017**

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

Nil