Special Meeting of Policy and Services Committee
to be held at the Civic Centre, Civic Drive, Greensborough
on Wednesday 13 April 2016 commencing at 7pm.

Agenda

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Wednesday 6 April 2016

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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 Council deliberations quietly in order for Council meetings to run smoothly.
- Advised that an audio recording of this meeting will be made for the purpose of verifying the accuracy of the minutes.
Special Meeting of Policy and Services Committee agenda
13 April 2016
Nillumbik Shire Council

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1. Welcome and apologies

Welcome by the Chair

Members of the public are advised the meeting will be recorded for the purposes of verifying the accuracy of the minutes.

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

Nil.
Summary

This report considers submissions received in response to the public exhibition of Amendment C101 to the Nillumbik Planning Scheme, which proposes to amend the Environmental Significance Overlay to ensure it better identifies and protects the biodiversity values of the Shire.

The Environmental Significance Overlay is the principal planning provision in the Nillumbik Planning Scheme used to identify and protect environmental attributes in the Shire. The Overlay currently comprises four schedules, including:

- ESO1: Sites of Faunal and Habitat Significance
- ESO2: Yarra River Environs
- ESO3: Plenty River Environs
- ESO4: Waterways

The ESO1 is the most commonly applied schedule within the Shire. It affects approximately 61 per cent of land in the Shire and is applied to both urban and non-urban areas.

The amendment reflects the findings and recommendations of studies undertaken to review the ESOs by: updating mapping to reflect the current extent of vegetation coverage and observed biodiversity values, recognising and distinguishing between the different levels of biodiversity significance, by developing schedules, permit triggers and undertaking assessments that reflect the difference between ‘core areas’, ‘buffer areas’ and ‘urban areas’ and applying a more comprehensive approach to mapping significant waterways, to better protect water quality within the catchment.

Amendment C101 was publicly exhibited from 5 November 2015 to 21 January 2016. A total of 194 submissions were received, including 10 late submissions including:

- 24 submissions from landowners and community groups supporting the amendment.
- 130 submissions from landowners opposing the amendment.
- 39 submissions specifically seeking a review or changes to the ESO proposed to apply to their land.
- One submission neither stating support, or opposition to the amendment.

The report considers matters raised within submissions and queries made by the public during the exhibition period.

As not all the issues raised by submitters can be resolved to their satisfaction, it is
recommended that Council write to the Minister for Planning to request the appointment of an independent Panel, and that Council refer all submissions to that Panel.

The independent Panel presents an opportunity for Council to seek an expert, third party opinion on the current proposal.

**Recommendation**

That the Committee (acting under delegation from Council):

1. Receives and notes the issues raised by submitters.
2. Requests that the Minister for Planning appoints a Planning Panel to hear submissions relating to Amendment C101.
3. Provides a submission to the Panel which generally supports the amendment as exhibited, but considers variations to the Amendment documentation to:
   - Refine the mapping of the ESO boundaries in accordance with the recommendations within Attachment 2 and 3.
   - Refine the mapping of the ESO boundaries to address minor mapping anomalies identified within Attachment 4.
   - Make amendments to the ESO schedules in accordance with Attachments 5, 6, 7 and 8.
4. Receives a further report on the amendment, following the consideration of the Panel and the issuing of its recommendations.

**Attachments**

1. Summary of Submissions
2. ESO 1 and 2 reviewed sites
3. ESO 3 reviewed sites
4. List of sites requiring mapping variations
5. ESO1 Core Habitat - C101 proposed changes post exhibition
6. ESO2 Buffer Habitat - C101 proposed changes post exhibition
7. ESO3 Residential and Urban areas - C101 proposed changes post exhibition
8. ESO4 Waterways - C101 proposed changes post exhibition
Background

1. The Environmental Significant Overlay is the principle planning provision in the Nillumbik Planning Scheme used to identify and protect environmental attributes in the Shire. The Overlay comprises four schedules, including:
   - ESO1: Sites of Faunal and Habitat Significance
   - ESO2: Yarra River Environ
   - ESO3: Plenty River Environ
   - ESO4: Waterways (currently only applies to significant creeks)

2. The ESO1 is the most commonly applied schedule within the Shire. It affects approximately 61 per cent of land in the Shire and is applied to both urban and non-urban areas.

3. The purpose of the Environment Significance Overlay (ESO) is to protect areas with significant environmental values where development of the land must be compatible with protecting these values. In order to achieve this goal, the ESO requires a planning permit to subdivide land, construct a building and/or carry out works or to remove, destroy or lop vegetation.

4. The mapping of ESO1 is determined by the findings of the report Sites of Faunal and Habitat Significance in North East Melbourne (NEROC Report) (Beardsell 1997) that was prepared over many years and involved detailed on site observations and assessments. The NEROC Report has been well regarded and has had a major influence on planning decisions over the past decade.

5. As with any study of a changing environment, a periodic review is essential. This is particularly relevant to the NEROC Report because:
   - Data is over 20 years old.
   - The study included areas where there has since been loss of habitat to residential growth.
   - Some anomalies in site boundaries have been identified. There have been improved technologies developed since the original study (such as GPS and GIS) which can enable more accurate mapping.
   - State and regional planning policy has undergone significant change since the study was completed.

6. Given the extensive amount of land covered by the NEROC Report (and associated ESO coverage), it has been necessary to undertake a review in three stages over several years:
   - Stage One of the review involved a desktop assessment to identify sites clearly disturbed by development and to enhance the configuration of this overlay for much of the land within the former Residential 1 Zone. The recommendations of
Stage One were implemented through Amendment C26 to the Nillumbik Planning Scheme which was gazetted on 16 December 2004.

- Stage Two aimed to enhance the configuration of the ESO1 on land included in the Township Zone, Low Density Residential Zone and selected sites within the former Residential 1 Zone. On 22 April 2008, Council received and noted the reports produced for Stage Two by consultants Ecology Australia and endorsed the preparation of a further report on the implementation of the Stage Two ESO1 Review.

- Stage Three of the ESO Review involved a review of the ESO1 in rural parts of the Shire including areas not covered in the previous Stage One and Two studies.

7. The Ecology Australia reports underpinning Stage Two of the review focused on reviewing the application of ESO1 in the urban parts of the Shire. The key findings of the reviews included:

- That the ESO should be extended to cover an additional 256 hectares of land not currently affected by this overlay. The greatest concentration of such land is in North Warrandyte and typically comprises clusters of vegetated low-density residential blocks in proximity of the Yarra River. There are also smaller concentrations of land recommended for inclusion in an ESO in Diamond Creek and Eltham.

- Approximately 184 ha of land should be removed from ESO1. This generally comprises land in residential zones on which biodiversity values are degraded (by land use and development pressures) to the extent that the land is no longer suitable for inclusion in the ESO1.

- That the application of environmental planning controls be more tailored to particular environmental contexts (e.g. consideration of an overlay for urban environs, waterways and for the Eltham Copper Butterfly).

- That a review of the balance of the ESO1 within the Shire be undertaken.

8. The Abzeco report underpinning Stage Three of the review focused on reviewing the application of ESO1 in the rural parts of the Shire, within the Green Wedge Zone, Rural Conservation Zone and Special Use Zones (Environmental Living- Bend of Islands), targeting areas not covered in the previous Ecology Australia studies.

9. The key findings of the review included:

- The identification of 51 Sites of Significance.

- The identification of 19,257 hectares of ‘Core Habitat’ land and 9,142 hectares of land as ‘Low-moderate (Buffer) Habitat’.
4. Policy and Services reports

PS.013/16 Amendment C101 - Review of the Environmental Significance Overlay

- An additional 6,610 hectares of land recommended for inclusion in the ESO1. These areas support significant ecological values not previously included in the existing coverage of the ESO1.

- A total of 2,308 hectares of existing ESO1 land recommended for removal from ESO1 as it does not meet the inclusion guidelines contained in the Stage Three Review report.

10. The findings and recommendations of Stage Three of the ESO Review were reported to Council on 23 September 2014. Council resolved to adopt the Nillumbik Sites of Significance Review Rural Areas, Abzeco June 2014 (known as the Stage Three Review).

11. Officers have subsequently translated the recommendations of the Ecology Australia and Abzeco reports into proposed planning scheme provisions. In particular, Amendment C101 improves the current ESOs by addressing the following:

- Updated to reflect the findings of the strategic studies and reviews undertaken over the past few years, including new information on ‘sites of significance’.

- Improved mapping to reflect the current extent of vegetation coverage and observed biodiversity values.

- Recognising and distinguishing between the different levels of biodiversity significance, and developing schedules, permit triggers and undertaking assessments that reflect the difference between ‘core areas’, ‘buffer areas’ and ‘urban areas’.

- Applying a more comprehensive approach to mapping significant waterways, to better protect water quality within the catchment.

- Moving away from the ‘catch-all’ permit triggers of the current ESO1.

- Developing permit triggers and decision guidelines which distinguish between different classes of application, such as Subdivision; Buildings and works; Fencing and Vegetation removal.

- Having a stronger connection between schedules and the reference documents, such as acknowledging the ‘sites of significance’ identified in the reference studies.

- Expanding the number of decision guidelines, based on similar, successful provisions at other municipalities.

- Standardising some measures and exemptions with other provisions within the planning scheme (BMO, 52.17, SLOs), with a particular focus on the interaction within the bushfire clearance provisions.

12. Council resolved at its Policy and Services meeting on 13 October 2015 to commence Amendment C101 and seek authorisation from the Minister for Planning to commence the amendment.
13. Authorisation to commence public exhibition of the amendment was granted by the Minister for Planning on 15 October 2015.

Policy context

14. This report directly supports the achievement of Council Plan 2013-2017 strategy:
   - We will work to protect the Shire’s biodiversity and ensure that ecosystems are healthy, resilient, productive and connected across the landscape.

15. In addition, the report supports Council’s obligation as the Planning Authority for the Nillumbik Planning Scheme to ensure the planning scheme is up to date.

Budget implications

16. The planning scheme amendment will be funded through Strategic and Economic Planning’s amendment budget.

Consultation/communication

17. Amendment C101 was placed on public exhibition from 5 November 2015 to 21 January 2016. Public exhibition was in accordance with the requirements of the Planning and Environment Act 1987 and comprised:
   - Notification to all affected property owners and occupiers and prescribed Ministers and government authorities.
   - Notice in the Diamond Valley Leader and Government Gazette.

18. In addition to the above, the following additional consultation was undertaken:
   - Extended notification over a three month period rather than the statutory four weeks.
   - Notification on Council’s website with an ability to make an on-line submission.
   - Distribution of an information brochure “Review of the Environmental Significance Overlay” further explaining the details of the amendment to all affected land owners and occupiers.
   - Display of the amendment documents for inspection during office hours at the Council offices, at the two Council libraries and at the Hurstbridge Community Hub.
   - Extended opening hours for interested parties to view the amendment on 12 November, 16 November, 19 November, 3 December 2015 and 14 January 2016.
   - Council staff responded to telephone and counter enquiries solidly for the three month period. It is estimated that 500 people made enquiries and had their detailed questions answered, including being shown GIS mapping of the overlays proposed to apply to their properties.
   - Council’s Environmental Advisory Committee has also been regularly informed of progress on the review of ESO1 and the proposed planning scheme.
amendment. The CFA and Melbourne Water also reviewed the draft schedules prior to exhibition for their comments and input.

**Issues/options**

**Exhibited Amendment**

19. The amendment proposes to amend the Nillumbik Planning Scheme by:

- Replacing the existing ESO1 – ‘Sites of Faunal and Habitat Significance’ with a new schedule: ESO1 – ‘Core Habitat’ and apply the new schedule to identified sites. This schedule is proposed to apply to core habitat areas which have a high cover and diversity of relatively intact remnant indigenous vegetation.

- Include two new schedules to the Environmental Significance Overlay in the Planning Scheme and apply the new schedules to identified sites:
  
  - ESO2 – ‘Buffer Habitat’. This schedule is proposed to apply to buffer habitat areas which are characterised by scattered trees or stands of trees without native understorey and that form important habitat for local species or communities. These areas have connectivity with adjacent remnant habitat and play an important role in protecting and contributing to the conservation and health of the Core Habitat areas.
  
  - ESO3 – ‘Environmentally Significant Habitat in Township and Residential Areas’. This schedule is proposed to apply to significant remnant vegetation existing within township and residential areas of the Shire. These areas contain significant habitat that includes adjoining remnant vegetation, clearly identifiable habitat links and areas which provide habitat for flora and fauna species recognised as threatened at municipal, state or federal levels.

- Applying ESO2 or ESO3 to areas formerly included in ESO1.

- Deleting the existing ESO1 completely or partially from some identified sites and not replace it with one of the new schedules due to a complete lack of environmental significance.

- Consolidating the current waterways overlays: ESO2 – Yarra River Environs, ESO3 – Plenty River Environs and ESO4 – ‘Waterways into one schedule ESO4 – ‘Waterways’ and applying the new schedule to identified land including application to streams and smaller tributaries not previously covered.

- Amending the schedule to Clause 81.01 to include an updated Environmental Weeds List in the planning scheme.

**Response to Public Exhibition**

20. Council received one hundred and ninety three (194) submissions to the amendment, including ten late submissions from:

- Twenty-four landowners and community groups supporting the amendment, including supporting submissions from:
  
  - Banyule, Manningham and Yarra Ranges Councils.
4. Policy and Services reports

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- Parks Victoria and the Department of Land, Environment, Water and Planning (DELWP) expressing support for the amendment and seeking minor changes to the schedules.
- The CFA expressing support for the amendment and seeking changes to the schedules.
- Friends of Nillumbik
- Green Wedge Protection Group
- Eltham Gateway Action Group
- Friends of Diamond Creek
- Wattle Glen Resident Association
- Nillumbik Landcare Network
- Yarra River Keepers Association
- One hundred and thirty from landowners or groups opposing the amendment. Including opposing submissions from:
  - Nillumbik Ratepayers Association
  - Diamond Creek Progress Association
- Thirty nine specifically seeking a review of the ESO proposed to apply to their land or raising questions.
- One submission stating neither, support, or objection to the amendment.

21. Of the submissions received:

- Five objecting submissions did not provide an address.
- Seven objections related to Council owned land at Lot 1 (44 Graysharps Road), Hurstbridge.
- The majority of objections were from Kangaroo Ground (35) and Panton Hill (22).

Matters Raised in Submissions

22. A summary of all matters raised in submissions with an officer response is provided within Attachment 1. Amendment C101 affects approximately 6500 properties within Nillumbik. 178 submissions from individual property owners (excluding submissions from government departments and groups) represents 2.7 per cent of the number of properties affected by the amendment.

23. The key matters raised in submissions are as follows:

- Support for the amendment and its application to areas not previously covered by an ESO.
- Requesting a review of the applicable ESO (1, 2, 3 or 4) that is proposed to apply.
• Supporting or questioning the strategic basis of the amendment.
• Ability to continue to clear vegetation in accordance with bushfire clearance provisions.
• Ability to continue to keep horses, graze animals and farm land.
• Permit requirement for Burgan removal.
• Removal of ESO1 from Lot 1 Graysharps Road, Hurstbridge.
• Imposition of planning scheme overlays on private land.
• Effect on property values.
• Use of Council rates.
• Timeframe/period to make a submission.

Support for the amendment

24. Issue: A number of individual submitters and groups including the Green Wedge Protection Group, Friends of Nillumbik, Eltham Gateway Action Group, Wattle Glen Residents Association, Nillumbik Landcare Network and the Yarra River Keepers Association have expressed strong support for the Amendment, and in particular the application of the overlay to land not previously included in ESO1, and the application of ESO4 to smaller waterways and tributaries in the Shire. These individual submitters and groups consider the amendment will further protect environmental values within the Shire’s green wedge.

25. Consideration: The support for the amendment is noted.

26. Suggested response/action: The submitters support and comments are noted.

Requests for a review of the proposed ESO schedule or extent of application

27. Issue: A number of submitters have requested that the overlay proposed to be applied to their property be reviewed for reasons including: the wrong schedule has been applied, the extent of the mapped area is incorrect, the property does not contain the flora or fauna identified in the background studies, the waterway is in the wrong position.

28. Consideration: Seventy five sites requiring a review of ESO1 and ESO2 were referred to Abzeco for further investigation. Ten sites requiring a review of ESO3 were reviewed by Council’s Biodiversity Officer.

29. Suggested Response/Action: An assessment of each property has been undertaken by Abzeco and Council’s Biodiversity Officer. An assessment table for each site that includes the method of review and recommendation is provided at Attachment 2 and 3.

30. All ESO4 mapping queries were reviewed by Council’s Biodiversity Officer. A recommendation has been included within the summary of submissions and a list of properties where changes are recommended is included within Attachment 4.
Ability to continue to clear vegetation in accordance with bushfire clearance provisions

31. Issue: A number of submitters consider that the proposed ESO requirements increase bushfire risk, or reduce their ability to clear vegetation in accordance with the current bushfire regulations.

32. Consideration: Under the Nillumbik Planning Scheme a range of exemptions from the need for a planning permit currently exist for the purpose of clearing vegetation for bushfire protection measures (Clause 52.48). These will not be altered as a result of Amendment C101 and residents will still be able, and encouraged to manage fuel loads on their properties in accordance with the existing provisions of the scheme.

33. Suggested response/action: The schedules to the ESOs will not vary the existing bushfire risk management provisions. Within all planning schemes across Victoria, as-of-right vegetation clearance distances are specified which allow residents to remove vegetation for bushfire risk management.

34. Under the ESO, residents would continue to be able to undertake works for fire protection specified at Clause 52.17-7 without the need for a planning permit.

35. Similarly, Clause 52.48 ‘Bushfire Protection: Exemptions’, sets out exemptions to create defendable space around buildings used for accommodation constructed prior to September 2009. In particular the clause sets out that any requirement of a planning permit, including any condition, which has the effect of prohibiting the removal, destruction or lopping of vegetation, or any requirement of this planning scheme to obtain a planning permit, or any provision of this planning scheme that prohibits the removal, destruction or lopping of vegetation or requires the removal, destruction or lopping of vegetation to be carried out in a particular manner, does not apply to:

   a) The removal, destruction or lopping of any vegetation within 10 metres of an existing building used for accommodation that was:
      i) constructed before 10 September 2009; or
      ii) approved by a permit issued under this scheme before 10 September 2009; or
      iii) approved by a building permit issued under the Building Act 1993 before 10 September 2009; or
      iv) constructed to replace a dwelling or dependent persons unit that was damaged, or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.

   b) The removal, destruction or lopping of any vegetation, except trees, within 30 metres of an existing building used for accommodation

   c) The removal, destruction or lopping of any vegetation, except trees, within 50 metres of an existing building used for accommodation where land is within the Bushfire Management Overlay.
d) The removal, destruction or lopping of any vegetation for a combined maximum width of four metres either side of an existing fence on a boundary between properties in different ownership.'

36. In addition to the above, the planning scheme is clear in its objective to strengthen community resilience to bushfire, by ‘prioritising the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire’ (Clause 13.05-1).

37. The CFA has made a submission generally supporting the amendment and suggesting further minor wording changes to the objectives and decision guidelines within Schedules 1, 2 and 3. Suggestions for additional wording provided by the CFA prior to exhibition were incorporated into the schedules.

38. In response to additional wording requested by the CFA it is considered:
   a) A reference to Clause 13.05 under How does the amendment support or implement the State Planning Policy Framework will be included in the Explanatory Report.
   b) The suggested objective for ecological processes is considered to be more of an action, rather than an objective, and is already included within Council’s Biodiversity Strategy which is a reference document in the planning scheme.
   c) It is not necessary to repeat or reference the fire protection exemptions contained within Clause 52.17-7 that are also contained in the ESO header clause within the schedules, or repeat SPPF policy objectives relating to bushfire risk. Clause 52.48 also provides for a range of exemptions from the need for a planning permit to be obtained for the purpose of clearing vegetation for bushfire protection measures.

39. The submitters’ concerns are noted. It is considered no changes are required to the amendment to address bushfire clearance concerns as the State Planning Policy Framework already addresses these points. Some of the wording changes suggested by the CFA have been made to the ESO schedules and explanatory report.

Ability to continue to keep horses, graze animals and farm land

40. Issue: A number of submitters have expressed concern that the amendment will restrict their ability to keep horses, graze animals or continue farming their land.

41. Consideration: The ESO provisions do not require a permit to be obtained to graze animals. Similarly, the ESO provisions do not alter peoples ability to continue to farm their land.

42. Council seeks to encourage responsible land management which balances the ability to farm and graze animals with the need to protect environmental areas. For this reason, Council encourages people to fence off areas of significant vegetation to prevent them being degraded or destroyed.

43. Suggested response/action: The submitters’ concerns are noted. It is considered no changes are required to the amendment as there is no proposal, or ability to restrict grazing through the ESO.
Policy and Services reports

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Permit requirement for Burgan Removal

44. Issue: A small number of submitters have raised concern that a permit exemption for the removal of Kunzea ericoides (Burgan) is not contained in the ESO schedules.

45. Consideration: An amendment to the Nillumbik Planning Scheme in 2011 gave effect to the removal of Burgan without a planning permit. The exemption was applied to the whole Shire. Prior to this, there was no State provision for an exemption for Burgan.

46. Since inclusion of the exemption in the planning scheme more specific State wide bushfire clearance exemptions have been included at Clause 52.48. As mentioned above, this includes an as-of-right ability to remove all ground fuel, regardless of species, within 30 metres of a dwelling (50 metres in BMO areas). This more expansive and enabling exemption allows property owners to better manage their fire risks.

47. In Victoria, the scientific name Kunzea ericoides has been misapplied as this name refers to a species that occurs in New Zealand and not in Australia. The recent revision of this species has resulted in Kunzea being separated into about 5 different species. Two distinct species occur in Nillumbik: Kunzea leptospermoides (Yarra Burgan) and Kunzea sp. (Upright form) Forest Burgan. Kunzea leptospermoides is listed as Poorly Known on the Victorian Advisory List of Rare and Threatened Plants. Technically, the planning scheme only gives an exemption to the removal of the New Zealand species Kunzea ericoides (which doesn’t exist here in Victoria) resulting in people being in breach of the Planning Scheme as they are clearing one of the two indigenous species. In addition, the distinction between the two native species is difficult and without some expertise in plant identification they can be easily confused.

48. Whilst Burgan is widely considered to be a problematic native species, it also plays an important role as an establishment species following natural disturbance such as fire and flood and may also play a role in soil stabilisation following human disturbance. Burgan is also known to provide shelter and foraging resources for a range of native mammals and birds and refuge for fauna.

49. A number of issues with the current Burgan exemptions include:
   - Mechanical removal of Burgan can cause damage to other types of native vegetation and fauna habitats.
   - Clearing on steep slopes can cause excessive soil disturbance and concerns for sedimentation of waterways.
   - Removal of Burgan amongst other native vegetation may create uncertainty when issuing planning permits or investigating contraventions.
   - Burgan is best removed or managed within a given property as part of an integrated Land Management Plan.

50. Suggested response/action: With the inclusion of a range of extensive bushfire exemptions now included within the planning scheme, it is considered there are now adequate measures in place for bushfire mitigation including the management of Burgan and many other plant species that may pose a fire risk.
51. The requirement for a permit enables planning permit conditions to be put in place, typically through requiring a land management plan, to balance the objectives of pasture management, biodiversity, conservation and fire protection.

**Removal of ESO1 from Lot 1 Graysharps Road, Hurstbridge**

52. Issue: A small number of submitters have expressed concern that the proposed removal of ESO1 from the Council owned site at Lot, 44 Graysharps Road, Hurstbridge is as a result of Council’s plans to facilitate an intergenerational housing project on the land.

53. Consideration: Council purchased the former Hurstbridge high school site in 2014. The land known as Lot 1 has recently been rezoned through Amendment C85 to Township Zone, with the application of a Development Plan Overlay to the site to guide the future development of the land for inter-generational housing. The next stage of the project is to seek tenders for preparation of a Development Plan.

54. The Abzeco report identified that ESO1 be removed from the land as it does not meet the inclusion guidelines in the report that set the criteria for inclusion of land in an ESO. A small portion of the land will be included in ESO3, with creek land adjoining the site included in ESO4 with a 50 metre buffer.

55. The independent Panel that considered Amendment C85 considered the removal of ESO1 from the site and affirmed that as the ESO is proposed to be removed, matters of environmental significance had been investigated and confirmed as not of a major concern to this site.

56. One submission suggested several rare or threatened species are occurring on the site.

57. Suggested response/action: The site was referred to Abzeco to undertake a further assessment. Following a site inspection, Abzeco and Council’s biodiversity officer have not identified any significant species on this highly disturbed former high school site.

**Strategic Justification for the Amendment**

58. Issue: A number of submitters strongly support the strategic basis of the amendment. Others consider that the proposed controls are not based on any evidence.

59. Consideration: The strategic basis of the amendment is outlined in detail in the background section of this report and in the explanatory report forming part of the amendment. As discussed a review of the existing Environmental Significance Overlay has been undertaken over a number of years, with Council considering and endorsing the findings of each Stage of the review as they have been completed. Stage One of the review has already been implemented into the planning scheme.

60. The preparation of the Ecology Australia reports involved extensive rounds of fieldwork affecting approximately 2,400 properties. A substantial community notification process was undertaken prior to each round of fieldwork occurring.

61. Abzeco undertook the majority of its review via a desktop assessment and any on-ground habitat assessments were undertaken from roadsides and public areas.
Where access to private land was required this was obtained by arrangement with the property owner(s). The report was also peer reviewed by consultants at Ecology Australia and biodiversity staff from the Department of Environment and Primary Industries.

62. These more recent investigations build upon the field observations and research undertaken in the NEROC report, and thus represent a span of 25 plus years of observed biodiversity significance.

63. The amendment is based on thorough technical investigations by biodiversity experts that have been translated into planning scheme controls. These controls have subsequently been refined by planning consultants Glossop Town Planning.

64. Suggested response/action: The submitters’ comments are noted. It is considered no changes are required to the amendment to address this matter.

**Imposition of Planning Scheme overlays on private land**

65. Issue: Some submitters consider that the proposed planning scheme requirements and the planning system infringes on personal freedom.

66. Consideration: The Planning and Environment Act 1987 establishes a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians. It requires that each municipal council prepare a planning scheme in a prescribed format and it directs when and how planning schemes must be reviewed.

67. The Act also sets out the objectives of planning in Victoria, that include “to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity”.

68. Section 12 of the Act requires that all planning authorities regularly review their planning schemes. Nillumbik Shire Council’s last review was conducted in 2009/10. The purpose of regular reviews is to ensure that the Nillumbik Planning Scheme remains relevant, current and continues to respond to anticipated challenges and emerging trends. Planning schemes are required to continue to achieve the objectives for planning in Victoria and give effect to the objectives and vision of Council.

69. It is a requirement of the Planning and Environment Act 1987 that Council review its planning scheme on an ongoing basis to ensure that the scheme is effective and aligned with Council’s strategic objectives.

70. The current ESOs have been in the planning scheme for over 20 years and required review for the reasons discussed above. A large number of the properties affected by Amendment C101 already have one of the current ESOs.

71. Suggested response/action: The submitters’ concerns are noted. It is considered no changes are required to the amendment to address these matters.

**Effect on property values**

72. Issue: Some submitters are concerned that the proposed planning scheme control will devalue their property.
73. Consideration: Long standing planning case law establishes that increase or decrease in property value will not be entertained as a ground of objection to a planning scheme amendment. The Planning and Environment Act 1987 requires consideration of social and economic effects, however, this consideration relates to broader economic considerations, rather than private financial effects, such as property valuation. It should also be noted that most property owners affected by the amendment have already had the ESO on their properties for over 20 years.

74. Suggested response/action: The submitters' concerns are noted. It is considered no changes are required to the amendment to address these matters.

Use of Council Rates

75. Issue: Several submitters made comments about Council’s rates and budget.

76. Consideration: Rates are levied in accordance with the Local Government Act and the Valuation of Land Act is not a relevant planning issue in the consideration of Amendment C101.

77. Allocation of Council resources is managed through the annual budget process which involves community consultation. It is not a relevant matter in the consideration of Amendment C101.

78. Suggested response/action: The submitters’ concerns are noted. It is considered no changes are required to the amendment to address these matters.

Consultation Process

79. Issue: Some submitters are critical of the timeframe to make submissions, including part of the exhibition timeframe extending over the Christmas period and the opportunities to obtain information about the amendment.

80. Consideration: The process and timeframes of giving notice of a planning scheme amendment are set out in the Planning and Environment Act 1987. As detailed above, the statutory process has been followed. Exhibition of the amendment commenced at the beginning of November 2015, two months prior to the commencement of the Christmas period, with a total of three months provided for interested parties to make a submission. Exhibition of the amendment complies with and far exceeds the statutory requirements of the Act.

81. Council has gone to significant lengths to ensure affected people have access to information on the amendment, once again far exceeding the statutory requirements of the Act.

82. Suggested response/action: The submitters’ concerns are noted. It is considered no changes are required to the amendment to address these matters.

Other matters raised during exhibition

Minor variations to mapping in response to queries and submissions

83. During the exhibition period it was identified through submissions and answering customer enquiries that a small number of mapping anomalies have occurred on the exhibited planning scheme maps, including where a proposed overlay touches the boundary of a property, but in fact should not apply to that property. A list of these
properties is provided within Attachment 3. These mapping variations will have no impact on environmental significance.

Land Development in ESO3 areas

84. Since preparation of the Ecology Australia report that informed the review of the ESO in urban parts of the Shire, a number of residential subdivisions have been approved that have permitted vegetation clearance. These properties are being reviewed by Council’s Biodiversity Officer to determine if an ESO is still required to be applied. An assessment with a proposed recommendation will be provided as part of the report to the Policy and Services Meeting of Council.

Minor wording changes to the ESO schedules

85. A small number of submissions, including those from DELWP and the CFA suggested minor wording changes to the ESO schedules relating to public land management works, post and rail fencing, bushfire risk and other minor wording changes to the objectives and decision guidelines. The specific suggestions and an officer response is included within the summary of submissions.

86. Other amendments proposed to be made to the schedules include:

- Wording to clarify that a permit is only required to remove fallen dead vegetation with a trunk diameter of 40 cm and a length of 1.3 metres.
- Wording to enable the extension or alteration of an existing dwelling provided the gross floor area of the extension or alterations do not exceed 50 square metres without a building and works permit (as contained in the current ESO1).

87. An amended version of the ESO schedules showing proposed changes is at Attachments 5, 6, 7 and 8.

Summary of changes to respond to submissions

88. In response to submissions several changes will be put to the independent Panel for its consideration and recommendation back to Council, as follows:

- Amendment of the mapping of the ESO boundaries to address identified mapping errors.
- Amendment of the mapping of the ESO boundaries to identified properties in accordance with recommendations made by Applied Botany, Zoology and Ecological Consulting (Abzeco) and Council’s Biodiversity Officer.
- Amendment to the ESO schedules to address suggestions made by DELWP, CFA and submitters relating to public land management works, post and rail fencing, bushfire risk and other minor wording changes to the objectives and decision guidelines.
- Amendment to the ESO schedules to provide clarification around fallen dead vegetation and extension and alterations to existing dwellings.
Conclusion

89. In terms of the processing of Amendment C101 Council is required to consider each submission received, and then determine one of three courses of action:
   • Change the amendment as requested by each submitter; or
   • Refer the submission to an independent Planning Panel for consideration, or
   • Abandon the amendment.

90. Given the number of submissions, and the nature of the matters raised in each submission, it is extremely unlikely that Council can change the amendment to sufficiently satisfy all parties. Accordingly, it is suggested that Council write to the Minister for Planning to request the appointment of an independent Panel, and that Council refer all submissions to that Panel.

91. Amendment C101 has strong strategic justification. The need to review and update the existing Environmental Significance Overlay has been identified in previous Council Plans, the Nillumbik Planning Scheme Review 2009 and within the Green Wedge Management Plan. Given the significant investment in the amendment over the past 10 years, it would be prudent to have an independent Panel conduct full hearings and investigation and a present a thorough independent report to Council for its consideration before making a decision to adopt the amendment or abandon the amendment. The independent Panel presents an opportunity for Council to seek an expert, third party opinion on the current proposal.

92. Once the Panel has been conducted, the views and recommendations of the Panel would need to be considered by Council at a future Policy and Services Committee meeting. This would allow submitters another opportunity to address Councillors and respond to the Panel’s recommendations. Council will then be required to either adopt the amendment with or without changes, or abandon the amendment.
5. Supplementary and urgent business
6. Confidential reports
   Nil.