

Ordinary Meeting of Council

to be held at the Civic Centre, Civic Drive, Greensborough
on Tuesday 22 November 2016 commencing at 7pm.

Agenda

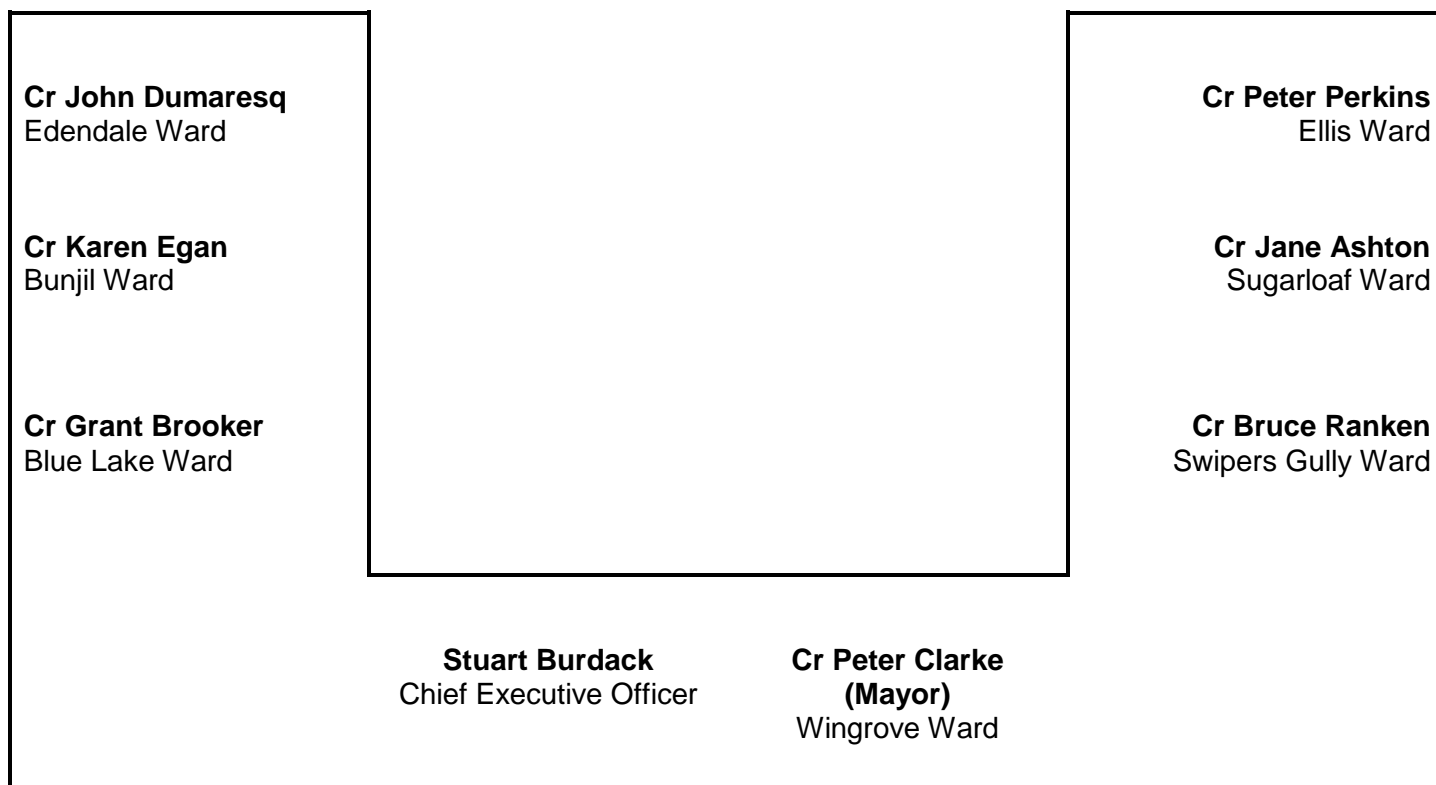
Stuart Burdack
Chief Executive Officer

Thursday 17 November 2016

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

Domin je ka

Ordinary Meeting of Council seating plan



Visitors in the gallery at Council meetings are:

- Welcome to copies of the reports which will be considered by the Council at the meeting. These are on the table in the foyer.
- Welcome to the tea, coffee and water provided in the foyer.
- 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.

Nillumbik Shire Council

Contents

Welcome by the Mayor	1
1. Reconciliation statement	1
2. Prayer	1
3. Good governance pledge	1
4. Apologies	1
5. Presentations	1
6. Confirmation of minutes	1
7. Disclosure of conflicts of interest	2
8. Petitions	2
9. Questions from the gallery	2
10. Reports of Advisory Committees	3
AC.010/16 Advisory Committee Report	3
11. Reports of Special Committees	4
12. Officers' reports	5
OCM.161/16 Diamond Valley Sports and Fitness Centre Masterplan - Strategic Advisory Group	5
OCM.162/16 Introduction of revised planning fees under the new planning and subdivision fee regulations	10
OCM.163/16 Diamond Creek Trail - construction at Hurstbridge	15
OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.	18
OCM.165/16 Restricted Breed Dog legislation amendments	25
OCM.166/16 Committee structures and Councillor delegates to external organisations	29
OCM.167/16 September Quarter Financial Report	36
OCM.168/16 Council Plan Quarterly Performance Report September 2016	39
OCM.169/16 Rehabilitation of the Diamond Street Bridge, Diamond Street Eltham - tender report	43
OCM.170/16 Beale Avenue, Strathewen - Road Sealing Works	44
OCM.171/16 Annual supply contract - Provision of fencing services - tender report	45
OCM.172/16 Assemblies of Councillors	46
OCM.173/16 Environment and Planning Monthly Activity Report	50
13. Notices of Motion	59

Ordinary Meeting of Council agenda

22 November 2016

- | | |
|--|-----------|
| 14. Delegates' reports | 59 |
| 15. Supplementary and urgent business | 59 |
| 16. Confidential reports | 59 |

Nillumbik Shire Council

Agenda of the Ordinary Meeting of Nillumbik Shire Council to be held Tuesday 22 November 2016 commencing at 7pm.

Welcome by the Mayor

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

1. Reconciliation statement

The reconciliation statement to be read by the Mayor

Nillumbik Shire Council acknowledges the Wurundjeri as the traditional custodians of the land now known as the Shire of Nillumbik and values the significance of the Wurundjeri people's history as essential to the unique character of the Shire.

2. Prayer

A prayer will be read by Father Michael McEntee of St Thomas the Apostle Parish, Diamond Creek.

3. Good governance pledge

As Councillors, we are mindful of our civic responsibilities and obligations. We pledge to take them seriously, and to carry them out with diligence and integrity.

We know the decisions we take will affect the people and environment of Nillumbik, now and in the future. We undertake, therefore, to make sound and principled decisions of lasting value, in a spirit of fairness and for the good of all.

We also pledge to serve the needs and wellbeing of the community and the environment, in an open and honest manner and to the best of our abilities.

4. Apologies

Motion

That the apologies be accepted.

5. Presentations

Teliah Farren-Price (Ellis Ward) receives \$200 as a contribution for her selection to represent Australia at the 2016 Women's Artistic Gymnastics International Tour in New Zealand.

Keeley Marx (Swipers Gully Ward) receives a \$150 contribution for her selection to represent Victoria at the 2016 School Sport Australia U13 Golf Championships in Adelaide.

6. Confirmation of minutes

Confirmation of minutes of the Council Meeting held on Tuesday 13 September 2016 and the Special Meeting held on Tuesday 8 November 2016.

Motion

That the minutes of the Council Meeting held on Tuesday 13 September 2016 and the Special Meeting held on Tuesday 8 November 2016 be confirmed.

7. Disclosure of conflicts of interest

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

8. Petitions

Nil

9. Questions from the gallery

10. Reports of Advisory Committees

AC.010/16 Advisory Committee Report

Distribution: Public

Manager: Andrew Port, General Manager Corporate Services

Author: Tracey Classon, Personal Assistant to General Manager Corporate Services

Council has a range of Advisory Committees which provide a formal mechanism for Council to consult with key stakeholders, seek specialist advice and enable community participation. Although they do not make any formal decisions, they provide valuable advice to Council.

In accordance with Advisory Committee Terms of Reference, the minutes of meetings are presented to Council. This month, the following minutes are attached for information:

- Arts Advisory Committee (Acquisition and Strategy) held 1 August 2016
- Eltham Activity Centre Forum held 1 August 2016
- Liveable Nillumbik Community Reference Group held 31 August 2016
- Memorials Advisory Committee held 2 September 2016
- Agricultural Advisory Committee held 8 September 2016.

Motion

That Council notes the following Advisory Committee minutes:

- 1. Arts Advisory Committee (Acquisition and Strategy) held 1 August 2016**
- 2. Eltham Activity Centre Forum minutes held 1 August 2016**
- 3. Liveable Nillumbik Community Reference Group held 31 August 2016**
- 4. Memorials Advisory Committee held 2 September 2016**
- 5. Agricultural Advisory Committee held 8 September 2016.**

Attachments

1. Arts Advisory Committee (Acquisition and Strategy) minutes 1 August 2016
2. Eltham Activity Centre Forum minutes 1 August 2016
3. Liveable Nillumbik Community Reference Group minutes 31 August 2016
4. Memorials Advisory Committee minutes 2 September 2016
5. Agricultural Advisory Committee minutes 8 September 2016

11. Reports of Special Committees

Nil

12. Officers' reports

OCM.161/16 Diamond Valley Sports and Fitness Centre Masterplan - Strategic Advisory Group

Distribution: Public

Manager: Pauline Gordon, General Manager Community and Leisure

Author: Naomi Paton, Manager Leisure and Social Infrastructure

Michelle DePasquale, Leisure Facilities Officer

Summary

Council is preparing a masterplan for the Diamond Valley Sports and Fitness Centre (DVSFC). The Masterplan was a recommendation in Council's Recreation Strategy 2011-2019. Its preparation is jointly funded by Council and State Government.

DVSFC consists of six indoor sports courts and multi-purpose hall, squash courts, gym and group exercise spaces, crèche, café, office areas and change rooms. The facility attracted over 445,000 visits in 2015-2016 making it one of Council's most patronised venues.

The venue is 40 years old, and whilst the facility has undergone a number of minor upgrades in the past 15 years, it requires substantial renovation to meet community needs and expectations, deliver enhanced access and inclusion outcomes, address compliance and respond to forecasted community demands.

It is proposed the preparation of the Masterplan will be overseen by a Strategic Advisory Group (SAG) which will be chaired by the Blue Lake Ward Councillor. The SAG will include a second Councillor, up to six community business representatives and Council's General Manager Community and Leisure.

The SAG will be governed a Terms of Reference, provided as an attachment to this report for Council's consideration.

Recommendation

That Council:

- 1. Endorses the Terms of Reference for the Diamond Valley Sports and Fitness Centre Masterplan Project.**
- 2. Appoints Councillors Grant Brooker and Bruce Ranken to the Diamond Valley Sports and Fitness Centre Masterplan Strategic Advisory Group and thProject Reference Group with Cr Brooker as Chair.**

Attachments

1. Diamond Valley Sports and Fitness Centre Masterplan Project - Draft Terms of Reference

12. Officers' reports

OCM.161/16 Diamond Valley Sports and Fitness Centre Masterplan - Strategic Advisory Group

Background

1. This report provides information to Council on the process to prepare a masterplan for the Diamond Valley Sports and Fitness Centre (DVSFC).
2. The Masterplan will identify the future use, development of funding of sport, recreation and community well-being uses of DVSFC to meet the current and future needs of the community. The preparation of the Masterplan is a recommended action in Council's Recreation Strategy 2011-2019.
3. The DVSFC opened in 1976 with four foundation sports; basketball, netball, badminton and squash. It is located in the Civic precinct on property bounded by the Greensborough Bypass and Civic Drive.
4. The DVSFC had 445,434 visitors in 2015-2016, and currently 621 members utilise the health and fitness facilities. Health and fitness facilities membership has declined in recent years reflecting the age of the facility and gym equipment, and the influx of alternative facilities in the local area providing flexible operating hours in a competitive private market.
5. The DVSFC is currently managed by Clublinks under a two year contract to June 2017, with three by one year extension options. Council structured the contract in this manner as development of the Masterplan could impact future long term contract management arrangements.
6. The DVSFC currently includes the following facilities:
 - A large stadium with six indoor sports courts
 - A multi-purpose hall for table tennis and modified court sports i.e. Netta, OzBall etc.
 - Three squash courts
 - Gym and functional training area
 - Group exercise room/crèche
 - Crèche playground
 - Spin cycle room
 - Multi-purpose room
 - Kitchen
 - Cafe and seating area
 - Offices and reception area
 - Plant and store rooms
 - Change rooms and toilet facilities

12. Officers' reports

OCM.161/16 Diamond Valley Sports and Fitness Centre Masterplan - Strategic Advisory Group

7. The building has undergone a number of minor upgrades in the last 10-15 years. Improvements have included upgraded court lighting, installation of air conditioning in the foyer, refurbishment of the change rooms and remodelling of the reception area. However the building requires substantial renovation to improve access to the courts, improve building accessibility, change rooms and bathrooms do not meet current building standards in relation to universal design, improved café and seating areas are required to meet current trends and demands, and expanded program/gym areas may increase operational capacity of the site and meet community needs and expectations.
8. Court dimensions and runoffs do not meet state sporting association guidelines, compromising the safety of players, officials and spectators. There is also limited courtside capacity for spectators.
9. User groups at the site indicate a need for additional court space at the peak times of 4-10pm on weekdays and 8am-5pm on Saturdays and this has been reflected in requests for additional court space. Occupancy rates of the sports courts at peak times is more than 95 per cent.
10. The Masterplan will investigate what the future looks like for DVSFC, its role as a regional sporting facility, and the facility's relevance in meeting the needs of the community.
11. Universal design to enhance participation opportunities for players and spectators and users of the health club and program rooms needs to be provided in any extension/new construction at the site. Multi use of spaces to enhance useability and viability of the Centre is also required. Providing physical activity opportunities for women and girls, people with a disability and our ageing population are priorities in Council's Recreation Strategy.
12. The stadium is home to the Diamond Valley Basketball Association (DVBA) which has some 5,500 members, one of the state's largest associations. The DVBA has periodically shown interest in the management of the venue and a willingness to contribute financially to facility improvements.

Policy context

13. This report directly supports the achievement of Council Plan 2013-2017 strategy:
 - We will invest in new or improved community facilities that are planned to meet identified community needs.

Budget implications

14. Preparation of the Masterplan will cost \$35,000, funded by Council (\$15,875) and State Government through a Community Sports Infrastructure Fund grant of \$19,125, administered by Sport and Recreation Victoria.
15. While there is no forward commitment in Council's five year capital works budget, Council has identified in the Major Projects Plan (2024-2025) \$5.5 million in funding. This indicative commitment was pending the outcome of the Masterplan.

12. Officers' reports

OCM.161/16 Diamond Valley Sports and Fitness Centre Masterplan - Strategic Advisory Group

Consultation/communication

16. Council officers regularly meet with the key stakeholders at DVSFC. These meetings have provided valuable information in relation to the challenges being faced by facility users and the ongoing demand for additional court space. Representatives from the user groups provide information from participants representing various age groups and demographics.
17. Bimonthly meetings are also held with DVBA. The DVBA and Council have, in the last 18 months, jointly funded the improvements to the facility for all facility sporting groups and patrons. Works include painting of the show court area, installation of stadium seating, lighting upgrades, minor structural changes to seating areas and painting of the show court surface. These works and the associated funding contribution by the DVBA have highlighted the commitment of the DVBA to this facility and its future direction.
18. Governance for the project will include a Strategic Advisory Group (SAG) to be chaired by the Ward Councillor and attended by one other nominated councillor. The role of the SAG is to provide specialist knowledge and advice to Council across health, business, education and broader community interests in respect to the development of the DVSFC Masterplan.
19. The engagement of the key stakeholders and the wider community to identify the challenges and future needs of the facility will be an essential component of the Masterplan's development. This will need to be carefully managed, in order to manage expectations. A detailed community engagement program will be developed in accordance with Council's Community Engagement Policy 2015 and with the appointed Councillors.
20. The SAG together with key stakeholders of DVSFC will provide advice to Council to guide future planning and development opportunities to meet the current and future needs of the community through the development of a Masterplan. Documentation outlining the draft Terms of Reference for the establishment of a SAG (attachment one) have been prepared for Council's consideration.
21. Extensive community consultation will be undertaken over coming months. This will result in mapping of DVSFC participants and ensure engagement of all relevant stakeholders such as Basketball Victoria, Netball Victoria, Sport and Recreation Victoria, HealthAbility, Melbourne Polytechnic, local schools and tenants of the facility.
22. The consultation process with the key stakeholders and SAG will also enable the needs analysis, benchmarking and identification of key issues to be undertaken. This will result in the preparation of an issues and options paper. The issues and options paper will be provided to Council, key stakeholders and the SAG for comment.
23. Subject to Council approval, officers will undertake further consultation on the issues and options paper to start testing options for future service delivery, facility development and funding options.

12. Officers' reports

OCM.161/16 Diamond Valley Sports and Fitness Centre Masterplan - Strategic Advisory Group

24. At the direction of Council, and following feedback on the issues and options paper a draft Masterplan will be prepared in consultation with key stakeholders and the SAG. Following Council consideration the draft Masterplan will be released to the community in late 2017 for broader consultation.

Issues/options

25. The various clubs and associations who use DVSFC have for a number of years been identifying concerns regarding the condition and accessibility of the facilities. The facility doesn't comply with current standards in relation to universal access. The courts do not have the recommended run off to meet State and National Association guidelines; this creates health and safety issues for participants, officials and spectators.
26. DVSFC is a regional facility servicing the needs of residents of the Shire and those in adjoining municipalities. Future provision of indoor sports courts across the region is currently being investigated through a jointly funded study with Banyule City and Darebin City councils due to be completed early in 2017. The outcome will help inform directions and recommendations emerging in the DVSFC Masterplan.
27. The project scope will include investigating whether the DVSFC should continue to operate and deliver the services it does now, what services should be delivered in the future and what level of provision should be made. Future use of DVSFC will also be informed by the provision of recreation and wellbeing programs and stadium use at Council's Diamond Creek Community Centre (one court), Community Bank Stadium (three courts) Eltham Leisure Centre (two courts) Hurstbridge Stadium (1 court) and other facilities on Department of Education Land.
28. The development and preparation of the final Masterplan for adoption by Council will reflect significant stakeholder analysis and results, community consultation outcomes, structural report, financial modelling and business case development, concept design, quantity surveyors report with estimated costings based on concept design.
29. There is an opportunity to seek funding via State Government grants such as the Growing Suburbs Fund (should the program continue into the future), Community Sports Infrastructure Fund and Better Indoor Stadium Funds and the Commonwealth Building Better Regions Fund to assist Council implement Masterplan recommendations

Conclusion

30. Development and adoption by Council of the Masterplan for the DVSFC is the first step in realising the future of this facility. This is a long term project for Council and significant community consultation and stakeholder support will be essential in the attraction of external funding.
31. DVSFC has the potential to be one of Nillumbik's significant regional facilities delivering key outcomes for the health and wellbeing of the community.

12. Officers' reports**OCM.162/16 Introduction of revised planning fees under the new planning and subdivision fee regulations**

Distribution: Public**Manager: Ransce Salan, General Manager Environment and Planning****Author: Jeremy Livingston, Manager Planning and Health Services****Summary**

The purpose of this report is to update Council on the new planning fees which were recently gazetted by the Minister for Planning and which took effect on 13 October 2016.

The revised statutory fees apply to planning applications, subdivisions and planning scheme amendments, and have been introduced by the State Government following a regulatory impact statement process undertaken by the State Government. For many years, councils (and their communities) have been bearing a disproportionate cost burden for the delivery of planning services due to low and non-indexed planning fees set by State Government. The new fees will go some way in addressing this.

Although it is not yet possible to know what increased income generation the proposed fees will bring to the planning services in Nillumbik (without sufficient sample data and due to the complicated nature of the fee structures based on application type overlaid with both volume and cost of proposed development), the proposed fees will assist Council in receiving greater cost recovery for its provision of mandatory planning services to the community. The annual indexing of planning fees to Consumer Price Index (CPI) will also support this outcome.

Recommendation**That Council:**

- 1. Notes the gazetted planning and subdivision fees as outlined in the Planning and Environment (Fees) Regulations 2016 and Subdivision (Fees) Regulations 2016 respectively.**
- 2. Monitors the fee income resulting from the new planning and subdivision fees and receives an update on this at the conclusion of the current financial year.**

Attachments

1. June 2016 Ordinary Meeting of Council report concerning the Regulatory Impact Assessment on planning fees
2. Fee changes summary

12. Officers' reports**OCM.162/16 Introduction of revised planning fees under the new planning and subdivision fee regulations**

Background

1. The Department of Environment, Land, Water and Planning (DELWP) set planning fees for all councils. DELWP has recently reviewed planning and subdivision fees through a regulatory impact statement process. The intent was to ensure that the costs that councils have to meet in fulfilling their mandatory planning and subdivision functions are based on up-to-date costs.
2. The Planning and Environment (Fees) Regulations were set in 2000, and since that time there has been eight years in which fees have not been indexed. This has resulted in a significant accumulated shortfall for councils. The lack of indexation has effectively created a transfer in the costs of planning services from permit applicants/proponents to the wider community.
3. A review of planning fees has long been called for by the Municipal Association of Victoria (MAV) and local councils. The issue was last raised by the sector at the MAV's State Council in October 2015. In addition, at the October 2015 Ordinary Meeting, Council resolved to write to the Minister for Planning requesting:
 - that his recent commitment to reviewing planning application fees set by the Planning and Environment Fee Regulations 2015 be commenced and completed urgently, to reduce the level of community/ratepayer subsidisation for Council to perform its duties as the responsible authority under the *Planning and Environment Act 1987*.
 - that any new planning fees introduced as a result of the review be subject to annual indexed increases (which is currently not the case).
4. In June 2016, the State Government released the Regulatory Impact Statement (RIS) concerning the setting of new statutory fees for matters administered under the *Planning and Environment Act 1987* and *Subdivision Act 1988*. The Minister for Planning sought comment from all stakeholders on the proposed new planning fees in the circulated RIS. At the June 2016 Ordinary Meeting, Council resolved to note the receipt of the released RIS, and broadly support the proposed fees. A copy of the report supporting this resolution is attached (Attachment 1).
5. On 13 October 2016, after reviewing submissions in response to the RIS, the new planning and subdivision fees were gazetted by the Minister for Planning which took effect on that date. A summary of the new fees (and their corresponding increases) are outlined in Attachment 2. Importantly, the new fees will be converted to fee units and be subject to annual indexation according to the value of fee units set by the Treasurer under the *Monetary Units Act 2004*. The proposed fees will expire in 2026, at which time there will be new Fee Regulations prepared.

Policy context

6. This report directly supports the achievement of Council Plan 2013-2017 strategy:
 - We will advocate about issues affecting the Nillumbik Shire, supported by informed and clearly articulated policy positions.

12. Officers' reports

OCM.162/16 Introduction of revised planning fees under the new planning and subdivision fee regulations

Budget implications

7. The adoption of the proposed planning fees as set out in the circulated RIS will have a more favourable budget outcome particularly for the Statutory Planning Team in terms of income, resulting in greater cost recovery for the delivery of this statutory service. Historically, Nillumbik has recovered less than 20 per cent of its service cost due to low planning fees set by the State Government. As the planning fees have not benefited from CPI increases since 2009, this figure dropped to 16.5 per cent for the 2015-2016 financial year. The lack of indexation has exacerbated a transfer in the costs of planning services from applicants/proponents to ratepayers.

Consultation/communication

8. Council has supported the Municipal Association of Victoria's (MAV) sector advocacy to the State Government for a widespread review of planning fees in order to achieve better cost recovery for the mandatory planning services that Council is required to provide under the *Planning and Environment Act 1987* and *Subdivision Act 1988*. The issue was last raised by the sector at the MAV's State Council in October 2015.
9. As part of the RIS process, the State Government (DELWP) sought submissions from all interested parties to the review of the fees, and these submissions have been considered by the Minister for Planning prior to the gazettal of the new fees.

Assessment of the new fees and their implications

10. The RIS identified the following guiding principles to inform the setting of the new planning fees:
- Costs of planning services be recovered from those who directly benefit from the service (permit/proponent rather than general ratepayer)
 - Fees charged should support Victoria's planning objectives
 - Fees should be set to encourage the optimal use of the planning and subdivision functions of councils
 - Fees should not over-recover costs and should be based on efficient costs
 - Fees should be equitable
 - Fees should be simple to understand and administer.
11. The MAV believes that it is critical that fees are set appropriately so that:
- An efficient and effective planning service can be provided. This includes the provision of appropriate resources, systems and improvement activities. Fee income has become even more important to councils in a rate-capped environment.
 - Those that directly benefit from a planning decision pay the full costs of that decision.
 - There is an incentive to submit high quality planning permit applications or amendment proposals that are well resolved that reduce the need for rework during the process.

12. Officers' reports**OCM.162/16 Introduction of revised planning fees under the new planning and subdivision fee regulations**

12. It is State Government policy that costs of planning services should be recovered from those who directly benefit from the services. Although the State Government has identified that in most cases the actual cost to councils for providing planning services was significantly higher than the previous long-standing fees, it has also been recognised that it is difficult to aggregate fees across all councils and across different types of fees. This is because each municipality has different types and volumes of planning requests, as well as fees being dependent on the cost of development proposed. As such, Council will need to monitor the revenue activity associated with these fee increases for the first nine to 12 months that they are in operation to fully understand the cost recovery derived from these new fees.
13. As outlined earlier in this report, the RIS stated that it is estimated that current planning fees only recover about 20-30 per cent of the actual costs to councils. Historically, Nillumbik has recovered less than 20 per cent of its service cost due largely to lower cost of proposed development (relative to other metropolitan Melbourne municipalities) commensurate with the number of planning applications processed. As the planning fees have not benefited from CPI increases since 2009, this figure dropped to 16.5 per cent for the 2015-2016 financial year. Although it is recognised that the new fees will still not fully recover the cost of Council providing its mandatory planning services, the State Government are committed to undertaking a mid-term review of the new fee regulations.
14. The proposed new fees are aimed at recovering a greater percentage of costs from those making planning requests. The proposed changes to the prescribed fees will therefore directly affect any person making an application for a planning permit or an application for other planning or subdivision matters, and not the broader ratepayer. The increases are significant in some scenarios, however the State Government considers they remain reasonable in relation to the benefit ultimately obtained by the person making the application.
15. Whilst the gazetted fees have not addressed all of the issues raised by Council in response to the RIS (particularly in terms of making the fee structure easy to use and comprehend for 'mum and dad' applicants), the new fees are nonetheless workable in terms of administering, and are considered fair and reasonable compared to the previous long-standing fees measured against the guiding principles set by the State Government.
16. The two most notable changes under the new fees compared to the fees proposed in the RIS process relate to subdivision certification and amendments to existing permits. In relation to the former, the gazetted fees continue the previous practice of consolidating the statement of compliance fee into the certification fee for subdivisions. The suggestion to separate these in the RIS proposal would have created administrative burden, and did not recognise that both processes are required to be undertaken in order to progress a subdivision. With respect to fees for amending existing permits, a simpler calculation has also been applied to reduce administrative burden.

12. Officers' reports

OCM.162/16 Introduction of revised planning fees under the new planning and subdivision fee regulations

Conclusion

17. Although it is not yet possible to forecast (without sufficient sample data) what increased income generation the proposed fees will bring to supporting Council's mandatory planning services (due to the complicated nature of the fee structures based on application volume on type as well as the cost of development proposed), the newly gazetted fees will certainly assist Council in receiving greater cost recovery for its planning service provision. It will also in part stem the trend where a lack of indexation has created an increasing imbalance in transferring the costs of planning services from permit applicants to broader ratepayers.
18. The newly gazetted fees appear reasonable in relation to the benefit ultimately obtained by the person making the application, and an annual indexing of planning fees to CPI is supported and is responsive to the newly rate capped environment of councils.

12. Officers' reports**OCM.163/16 Diamond Creek Trail - construction at Hurstbridge**

Distribution: Public**Manager: Conal Creedon, General Manager Infrastructure Services****Author: Conal Creedon, General Manager Infrastructure Services****Summary**

The Diamond Creek Trail is one of four regional trails in the Nillumbik Trails Strategy. The extension of the trail from Diamond Creek to Hurstbridge is a priority project in this strategy and Council has considered options for the provision of this trail extension over a number of years leading to the endorsement of a preferred alignment along the Diamond Creek. This alignment requires the acquisition of private land in order to provide the trail. This potential acquisition is the subject of a planning scheme amendment which is shortly due to be considered by an independent planning panel.

Council owns land at Graysharps Road in Hurstbridge which will be the end point of the trail extension. In 2014-2015 Council constructed a section of the trail in Graysharps Road which also serves as pedestrian access to the newly constructed Hurstbridge Hub.

In February 2016 Council resolved to continue this trail around the former Hurstbridge High School oval to connect with existing paths at the Hurstbridge wetlands Attachment 1. This would create a circuit in this precinct as well as ultimately connecting to the Diamond Creek Trail extension, should it proceed along the creek as planned. Council is also separately conducting a precinct planning exercise in conjunction with consideration of the future use of Lot 1 Graysharps Road.

Construction had commenced on the extension of the trail as resolved by Council, however some members of the community are concerned that this was happening independently of the precinct planning process. It is proposed to defer construction of the trail and consider the alignment in conjunction with the precinct planning project for Graysharps Road.

Recommendation

That Council defers construction of the extension of the Diamond Creek Trail at Graysharps Road, Hurstbridge until such time as the alignment is assessed in conjunction with the draft precinct plan development for the Graysharps Road area.

Attachments

1. Proposed trail alignment at Hurstbridge oval

Background

1. The Diamond Creek Trail is one of four regional trails identified in the Nillumbik Trails Strategy 2011. It currently runs from the Yarra River in Eltham to Luscombe Drive in Diamond Creek and is the most heavily used of Council's four regional trails.

12. Officers' reports

OCM.163/16 Diamond Creek Trail - construction at Hurstbridge

2. The extension of the trail from Diamond Creek to Hurstbridge is a priority project in the strategy and Council has been considering and developing options for the provision of a trail extension over a number of years.
3. Council already owns land in Graysharps Road, Hurstbridge which will be the end point for the trail extension.
4. In February 2016 Council resolved to extend this trail around the former high school oval to connect with existing paths at the Hurstbridge wetlands. This would complete a path and trail loop in this open space, as well as providing for the future connection to the extension of the trail along the creek. Work has commenced on this extension. The alignment is shown in Attachment 1.

Policy context

5. This report directly supports the achievement of Council Plan 2013-2017 strategy:
 - We will provide a safe and accessible network of local roads, footpaths and trails.

Budget implications

6. Council made an allocation of \$500,000 in its 2015-2016 Capital Works Budget for the Diamond Creek Trail; approximately \$100,000 of this has been allocated to the works to extend the trail at Hurstbridge.
7. A contract has been let for the installation of this section of trail and works commenced. Council will need to pay for any costs incurred by the contractor to date as well as any costs of additional works to recommence and complete the trail following the precinct plan consideration.

Consultation/communication

8. There has been extensive consultation on the proposal for the extension of the Diamond Creek Trail over a number of years. Community consultation on the development of the precinct plan is ongoing.

Issues/options

9. In 2014-2015 Council constructed a section of the trail along Graysharps Road. This currently provides access to community facilities in Graysharps Road, including the recently completed Hurstbridge Hub.
10. In April 2016 Council resolved to commence planning scheme amendment to reserve land for the provision of the trail along the Diamond Creek.
11. Council resolved in February 2016 to construct a further section of the trail at Graysharps Road. A contract has been awarded for the construction of this extension and works commenced.
12. Council is also conducting a precinct planning exercise in conjunction with the consideration of the future use of Lot 1 Graysharps Road.

12. Officers' reports

OCM.163/16 Diamond Creek Trail - construction at Hurstbridge

13. Some members of the Hurstbridge community expressed concern that the trail was being extended prior to the completion of the precinct planning. Having considered the concerns raised and the current progress with the draft precinct plan, it is proposed that construction of the extension to the trail be deferred and the alignment considered in the development of the precinct plan.

Conclusion

14. Council is continuing to develop plans for the extension of the Diamond Creek Trail to Hurstbridge and at the same time plan for the development of the Graysharps Road precinct. While Council had resolved to construct an additional section of trail at Hurstbridge, there is some concern that this has not been considered in the context of the precinct planning project. It is proposed that the trail construction be deferred until such time as the trail alignment is considered and incorporated into the draft precinct plan for Graysharps Road.

12. Officers' reports

OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.

Distribution: Public

Manager: Stuart Burdack, Chief Executive Officer

Author: Ransce Salan, General Manager Environment and Planning

Summary

This report provides a status update on Amendment C101 and Amendment C81. These amendments are intended to respond to Council's obligations under State and Federal government legislation to protect important landscape character (C81) and sites of environmental significance (C101). Both amendments have been controversial within the community. In response to this community concern, the newly elected Council has indicated its intention to implement alternative local planning policy to the proposed C81 and C101 amendments.

Amendment C81 has been through the statutory process required under the *Planning and Environment Act 1987*. It has been adopted by the former Council and is with the Minister for Planning for his determination to be made. Whilst Council does not have further avenues through the statutory process of the *Planning and Environment Act 1987* to influence the Minister's decision, Council has the opportunity to indicate to the Minister that it does not believe that C81 is the appropriate local policy for Nillumbik. This report discusses and recommends that Council request the Minister to defer a decision on Amendment C81 whilst Council reviews the strategic policy setting for this amendment.

C101 was part way through the statutory process for planning scheme amendments under the *Planning and Environment Act 1987*. The former Council had referred the amendment to an independent planning panel for review. Subsequent to this decision of the former Council, an appeal on the process and procedure undertaken by Council to refer this amendment to panel was lodged at VCAT by a resident. Last week, VCAT handed down its decision and ruled in favour of the resident. This decision has effectively abandoned Amendment C101.

Whilst there is no urgent need for Council to take further action on Amendment C101 (it is abandoned), the environmental significance overlay currently exists over 61 per cent of the municipality. It is more than 16 years old and requires updating under State Planning Policy requirements. This report discusses the future implications and options for Council in respect to its environmental significance overlay.

Recommendation

That Council:

- 1. Notes that Amendment C101 to the Nillumbik Planning Scheme has been abandoned, and that the Minister for Planning has been notified accordingly.**
- 2. Notes that under the *Planning and Environment Act 1987*, Council's powers and functions have been spent in adopting Amendment C81 to the Nillumbik Planning Scheme, and that this earlier decision cannot be rescinded.**

12. Officers' reports

OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.

- 3. Notes that Amendment C81 is currently before the Minister for Planning, awaiting approval.**
- 4. Resolves to commence a review by an independent consultancy of the strategic policy underpinning Amendment C81, and consider the findings of that review at a future meeting of Council.**
- 5. Notifies the Minister for Planning of its intention to commence the above review.**

Attachments

Nil

Background

Amendment C81

1. Amendment C81 implements the findings of the Shire of Nillumbik Landscape Character Assessment, 2009 and the Green Wedge Management Plan 2010-2025. It sets out detailed guidance for responsive design, siting and style of development. Specifically it introduces six schedules to the Significant Landscape Overlay and makes consequential minor administrative changes.
2. Amendment C81 was placed on public exhibition from 10 April to 29 May 2015. A total of 172 submissions were received. Approximately half of the submissions were supportive or made suggestions about matters of detail. The other half of submissions opposed the amendment. A quarter of the submissions were not supportive towards the planning system or Council.
3. A planning panel considered Amendment C81 and all submissions in February 2016 and was supportive of the Amendment. In its report, the Panel recommended that the Amendment be adopted as exhibited, subject to changes, which were reflected in the drafting of the Panel's preferred version of each Schedule as presented in Appendix D of the Panel's report.
4. The Policy and Services Committee of Council considered the Panel recommendations and public submissions on the Panel report at its meeting on 10 May 2016. At the Ordinary Council Meeting held on 24 May 2016, Council resolved to adopt Amendment C81.
5. On 30 May 2016, the relevant documents pertaining to Amendment C81 were forwarded to the Minister for Planning in accordance with the Council resolution on 24 May 2016.
6. The amendment has been with the Department of Environment, Land, Water and Planning and the Minister for Planning since that date awaiting approval.

12. Officers' reports

OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.

Amendment C101

7. The Environmental Significance Overlay (ESO) is the principle 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 (currently only applies to significant creeks)
8. The ESOs have been part of the Nillumbik Planning Scheme since its introduction in June 2000. 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.
9. The purpose of the Environmental Significance Overlay 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.
10. 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.
11. As with any study of a changing environment, periodic review is essential. A review of the current ESO commenced in 2004 with strategic studies undertaken from 2008 to 2015.

Exhibited Amendment

12. Amendment C101 proposed to:
 - Replace the existing ESO1 'Sites of Faunal and Habitat Significance' with a new schedule: ESO1 'Core Habitat' and apply the new schedule to identified sites.
 - Include two new schedules to the Environmental Significance Overlay in the Planning Scheme and apply the new schedules to identified sites:
 - ESO2 'Buffer Habitat'.
 - ESO3 'Environmentally Significant Habitat in Township and Residential Areas'.
 - Apply ESO2 or ESO3 to areas formerly included in ESO1.
 - Delete the existing ESO1 completely or partially from some identified sites.

12. Officers' reports

OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.

- Consolidate the current waterways overlays: ESO2 Yarra River Environs, ESO3 Plenty River Environs and ESO4 Waterways into one schedule – ESO 'Waterways' and apply the new schedule to identified streams and smaller tributaries not previously covered.
- Amend the schedule to Clause 81.01 to include an updated Environmental Weeds List in the planning scheme.

Exhibition

13. Amendment C101 was publicly exhibited from 5 November 2015 to 21 January 2016 in accordance with the requirements of the *Planning and Environment Act 1987*.

Submissions

14. A total of 194 submissions were received during the formal exhibition period, including 10 late submissions comprising:
- Support: 24
 - Opposing: 130
 - Neither support or object but seeking a review 39
 - Neither stating support, or opposition to the amendment: one
15. Submissions were considered at a Special Meeting of the Policy and Services Committee of Council on 13 April 2016. After hearing from submitters, the Committee resolved to abandon the amendment.
16. Legal advice was sought from Council's lawyers who advised that the power to abandon an amendment under the *Act*, like the power to adopt an amendment, cannot be delegated. Accordingly, the legal advice recommended that the decision of the Committee should be treated as a recommendation for referral to the Ordinary Meeting of Council, where the Council, acting as the Planning Authority would have the statutory authority to enact the earlier recommendation.
17. At the Ordinary Meeting of Council on 26 April 2016, Council declined to ratify the Policy and Services Committee recommendation, and instead determined to continue with the amendment and refer submissions to an independent Planning Panel for consideration.
18. The resolution of Council also allowed a period of three months, ending on 31 July 2016 during which any submitter to Amendment C101 could request an accompanied site visit from Council's ecologist and/or ABZECO expert ecologist to review the significance of the site.
19. After the 26 April 2016 Ordinary Meeting of Council a rescission motion was subsequently lodged and considered at the following Ordinary Meeting of Council in 24 May 2016. The rescission motion was not carried, and the decision of 26 April 2016 was enacted. Council wrote to the Minister for Planning to formally request the appointment of a Panel.

12. Officers' reports

OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.

20. A three member Panel was appointed and a directions hearing of Thursday 4 August 2016 set, with a hearing tentatively set to commence on 5 September 2016.
21. During the period from 26 April to 31 July 2016, Council continued to accept and process submissions to the amendment, in effect allowing residents a period of nine months in total to make a submission. Including late submissions the total number of submissions received on the amendment is 409, comprising:
 - Support: 109
 - Opposing: 253
 - Neither support or object but seeking a review: 43
 - One neither stating support or objection or any content: one
 - Duplicate submissions: two
 - Withdrawn submissions: one
 - Two hundred and fourteen late submissions in total.

VCAT Hearing and Panel Directions Hearing

22. A resident representing community interests and concerns with the amendment lodged an application with the Victorian Civil and Administrative Tribunal (VCAT), seeking a declaration under section 39 of the *Planning and Environment Act 1987* that Council had effectively abandoned the amendment pursuant to section 23(1)(c) of the *Act* when the Policy & Services Committee resolved to abandon the amendment at its 13 April 2016 meeting.
23. The VCAT hearing took place on 18 October 2016 with cases made by Barrister Adrian Finanzio SC, acting on behalf of Council and Jeremy Gobbo QC, on behalf of Mr Parsons.
24. VCAT handed down its decision on 11 November 2016 making the following direction:

“Pursuant to s 39(4)(a) of the Planning and Environment Act 1987 (Vic), the Tribunal makes the following declarations:

 - On 13 April 2016, Nillumbik Shire Council, in its capacity as the planning authority for Amendment C101 to the Nillumbik Planning Scheme, abandoned Amendment C101 pursuant to s 23(1)(c) of the Planning and Environment Act 1987 (Vic).
 - Nillumbik Shire Council, in its capacity as the planning authority for Amendment C101 to the Nillumbik Planning Scheme, has failed to comply with s 28 of the Planning and Environment Act 1987 (Vic), in that it has failed to tell the Minister for Planning in writing of its decision to abandon Amendment C101.
 - Nillumbik Shire Council is obliged by s 28 of the Planning and Environment Act 1987 (Vic) to tell the Minister for Planning in writing of its decision to abandon Amendment C101.”

12. Officers' reports

OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.

25. The Minister was formally notified of the abandonment of Amendment C101 on 11 November 2016.

Budget implications

26. The planning scheme amendment was funded through Strategic and Economic Planning's amendment budget.

Amendment C81

27. Following the decision to adopt the amendment on 24 May at the Ordinary Council Meeting, the question of whether this decision could be rescinded was raised.
28. Council has been advised that in commencing Amendment C81, Council was operating in its capacity as Planning Authority under the Act, and that it has acted in accordance with its powers and functions under that Act. Further, that having adopted the amendment, Council's powers and functions are now exhausted – *functus officio*. It has been confirmed that Council cannot consider a motion to rescind the Council resolution to adopt Amendment C81 and that if it were to do so; it could not be validly carried by Council.
29. On 30 May 2016, the relevant documents pertaining to Amendment C81 were forwarded to the Minister for Planning in accordance with the Council resolution on 24 May 2016. The amendment is currently before the Minister for Planning for his consideration on whether to approve the amendment.
30. Council has received advice that under the Act, once an amendment is before the Minister for Planning for a decision, there is no further ability to make submissions or representations to the Minister in relation to that amendment.
31. The newly elected Council has a desire to implement a different policy direction to that used in C101 and C81. For Amendment C81, it is recommended that Council undertake a review of the strategic policy underpinning the amendment to identify a material change of circumstances which may lead Council to now conclude a different policy position. Should this course of action be pursued, Council could then write to the Minister to advise him of its intention to commence such a review, but this would not prevent the Minister from approving Amendment C81 if he so decides.

Amendment C101

32. As Amendment C101 has been abandoned the existing ESO 1, 2, 3 and 4 will remain in the Nillumbik Planning Scheme.
33. Whilst there is no immediate need to review the ESO, the consequences of not updating the current ESOs in the long term include:
- Weakened protection for areas with identified biodiversity values: On the basis of the strategic studies undertaken, there are many properties that should be within the ESO that currently aren't. Depending on their size and circumstance, some of these properties have vegetation protection through State Planning controls.

12. Officers' reports

OCM.164/16 Status update on Amendment C81 'Significant Landscape Overlays' and Amendment C101: 'Review of the Environmental Significance Overlay'.

- Inclusion of areas with no identified biodiversity: There are a number of properties that are currently within the ESO which no longer have environmental values that warrant their ongoing inclusion in the overlay. Should these remain within an ESO a planning permit will continue to be triggered under the ESO which isn't justified.
 - There will be no recognition of the different levels of environmental significance in the Shire. Amendment C101 proposed to recognise the difference between high, moderate and urban environmental values. The current ESO1 will continue to treat all land as having 'high significance'.
34. Council also has an obligation to comply with its statutory requirements under State and Federal Acts of Parliament to protect sites of environmental and landscape significance. Other future consequences could include Council decisions not being upheld at VCAT due to outdated provisions; extinction and incremental loss of national; State and locally significant species and communities, and; heavier reliance upon the State Government's native vegetation provisions to provide adequate protection to species listed as rare or threatened.
35. Council may consider commencing a new review of the ESOs in the planning scheme and the preparation of a new planning scheme amendment.
36. When Council decides that it is appropriate to review the ESO, it is recommended that an engagement process be first commenced to:
- Define and better understand the issue with the existing ESO with Council and the community.
 - Co-design an engagement process for addressing the identified issues with the community, and identify potential solutions.
 - On the basis of the above, recommend a range of options back to Council on how to update the ESO.

Conclusion

37. In relation to Amendment C81, Council has received advice that under the Act, Council's powers and functions have been spent in adopting Amendment C81. It cannot validly consider a notice of rescission.
38. There is no legal impediment to Council resolving to undertake a review of the strategic policy underpinning Amendment C81 to identify a 'material change of circumstance' which may lead Council to conclude a different policy position. Council could then write to the Minister to advise him of its intention to commence such a review, but this would not prevent the Minister from approving Amendment C81 if he so decides.
39. In relation to Amendment C101, Council should note the abandonment of the amendment and the options for a future amendment to review the Environmental Significance Overlays in the planning scheme.

12. Officers' reports**OCM.165/16 Restricted Breed Dog legislation amendments**

Distribution: Public**Manager: Ransce Salan, General Manager Environment and Planning****Author: Phil Lovelace, Manager Regulatory Services****Summary**

Restricted Breed Dog legislation was initially introduced into Victoria by the State Government in 2001 to regulate the ownership of Pit Bull Terriers. In 2007, the legislation was further amended to prevent councils from registering them. In 2011, following the tragic death of four-year-old Ayen Chol, additional penalties were added for anyone who allowed a restricted-breed dog to kill or place a person in danger of death. A new standard was introduced for identifying Pit Bulls and a temporary amnesty allowing people to register restricted-breed dogs not previously registered was cut short. In 2014, further changes were introduced, including penalties for breeding from a restricted-breed dog, the power to disqualify people from owning dogs under certain circumstances and changes to the burden of proof about breed.

Unfortunately the standards were difficult to apply to Pit Bulls which lead to expensive legal challenges by dog owners against councils who were applying State Government legislation. Between 2011 and 2015 there were 39 cases appealed to Victorian Civil and Administrative Tribunal (VCAT). In total, ten declarations were affirmed and 29 were overturned. Nillumbik Shire Council had one which was affirmed.

Due to the complexities of administering and enforcing the legislation and costs associated with defending council decisions, the State Government ordered a Parliamentary Inquiry into restricted breed dog legislation in 2015.

The Department of Economic Development, Jobs, Transport and Resources (DEDJTR), specifically the Economy and Infrastructure Committee, undertook a detailed investigation into the management of different breeds of dog and dog attacks; their causes and prevention strategies. As a result, the State Government made a series of amendments to the primary legislation, the *Domestic Animals Act 1994*.

It is important to note that there is a clear distinction between Restricted Breed Dogs and Dangerous Dogs. A Restricted Breed Dog is breed specific and based on physical characteristics, opposed to a Dangerous Dog which has been declared by Council as a Dangerous Dog due to behaviour which includes attacking and causing serious injury to another animal or person.

There are no Restricted Breed Dogs currently registered with Nillumbik Council however there are six registered Dangerous Dogs.

Recommendation**That Council:**

- 1. Notes the amendments to the State Government's *Domestic Animals Act 1994* relating to Restricted Breed Dogs.**
- 2. Continues to enforce the Dangerous Dog provisions of the *Domestic Animals Act 1994*.**

12. Officers' reports**OCM.165/16 Restricted Breed Dog legislation amendments**

Attachments

Nil

Background

1. The Parliamentary Inquiry into restricted breed dog legislation was established in 2015. The Department of Economic Development, Jobs, Transport and Resources (DEDJTR), specifically the Economy and Infrastructure Committee, undertook a detailed investigation into the management of different breeds of dog and dog attacks; their causes and prevention strategies.
2. The Parliamentary Inquiry received 502 written submissions and heard from 16 organisations and individuals at public hearings. The Inquiry's report was published in March 2016 containing 31 recommendations.
3. The Government's response to the Inquiry's report has now been tabled in Parliament. It sets out the measures the Government proposes to introduce to support regulatory reform. The Government accepts the need to change Victoria's restricted breed dog legislation.
4. The Government's response recognises the need for balance between supporting the benefits of dog ownership and protecting the community from dangerous dogs and irresponsible dog owners.
5. The Government agrees, or agrees in principle, with 25 of the Inquiry's recommendations, including its recommendation that the *Domestic Animals Act 1994* (The Act) be amended to allow the registration of restricted breed dogs, while retaining all other restrictions related to restricted breed dogs.
6. Restricted breed dogs are defined as dogs that fit the Approved Standard for Restricted Breed Dogs in Victoria. These include pure or cross bred American Pit Bull Terriers (or Pit Bull Terriers), Perro de Presa Canarios (or Presa Canario), Dogo Argentinos, Japanese Tosas, or Fila Brasileiros.
7. When Restricted Breed Dog legislation was introduced in Victoria in 2001, the restrictions applying to the restricted breeds included:
 - limiting the number of restricted breed dogs that could be owned without a permit (to two)
 - defining containment requirements
 - requiring specific warning signage on premises where the dog is kept
 - requiring muzzling and leashing when the dog is off the premises
 - requiring permanent identification (such as microchipping)
 - prohibiting minors from owning a restricted breed dog or having charge of one outside the owner's premises.
8. The Minister for Agriculture at the time also requested that animal pounds and shelters no longer rehome dogs that met the Pit Bull type.

12. Officers' reports

OCM.165/16 Restricted Breed Dog legislation amendments

9. Currently, the only restricted breed dogs that can be kept are those that were in Victoria before 1 September 2010 and were registered (as any breed) with the local council before 30 September 2011.

Policy context

10. This report directly supports the achievement of Council Plan 2013-2017 strategy:
- We will promote responsible pet ownership to protect our residents and the environment.

Budget implications

11. There are no budget implications as there are no restricted breed dogs registered within the municipality.

Issues/options

12. Councils across Victoria can seize unregistered restricted breed dogs. Where dogs are deemed by the council to meet the breed standard, they can be declared as a restricted breed.
13. Owners of restricted breed dogs must comply with a range of requirements, relating to housing, microchipping, desexing, and identifying their dogs. Restricted breed dogs must also be muzzled and leashed when being exercised off the property.
14. The proposed amendment to the Act to allow the registration of restricted breed dogs will not change any of the strict controls applying to restricted breed dogs currently in place. Restricted breed dogs will still be required to:
- be de-sexed
 - kept on a leash and muzzled at all times when in public
 - securely confined to their owners back yard
 - wear a red and yellow striped collar at all times.
15. Properties containing a restricted breed dog must display a specific turquoise warning sign at the entrance to the property indicating that a restricted breed dog is housed on the premises.
16. Bans on breeding, adopting or transferring the ownership of restricted breed dogs will also remain in place.
17. The government will amend the Act in 2017 to allow the registration of restricted breed dogs in Victoria. The current moratorium on the requirement to euthanase restricted breed dogs will remain in place until the required legislative amendment is made.
18. As well as considering legislative requirements for restricted breed dogs, the Inquiry made a number of recommendations about responsible pet ownership, dangerous dogs and greyhounds.
19. The recommendations on greyhounds will be considered as part of the separate greyhound welfare reform work that is currently underway. The government will work towards implementing accepted recommendations as soon as possible. However, some of them will take time.

12. Officers' reports

OCM.165/16 Restricted Breed Dog legislation amendments

Conclusion

20. The amendments to the legislation relating to Restricted Breed Dogs has been widely supported by Council Officers as it has been extremely difficult in the past to identify Pit Bull Terriers due to the breed not having a distinctive set of characteristics. This is supported by the fact that VCAT has regularly overturned local council officer's identification of dogs as Pit Bulls.

12. Officers' reports**OCM.166/16 Committee structures and Councillor delegates to external organisations**

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

This report considers several matters regarding Council's Committee structures, the appointment of Councillors to Committees, and the appointment of Councillors as Council's delegates to various external organisations.

Following the recent general election, the newly-elected Mayor and Councillors have reviewed the arrangements for Special Committees and Advisory Committees. As detailed in this report, it is proposed to introduce portfolio responsibilities, with one Councillor assigned to each portfolio.

It is proposed that there will be a single Special Committee, and that the portfolio Councillor will chair the Special Committee meeting for items related to that portfolio. All Councillors will be members of the Special Committee. Prior to this change being implemented, a revised Terms of Reference and Instrument of Delegation will need to be prepared and formally approved by Council.

The arrangements for Advisory Committees have also been reviewed. It is proposed to reduce the number of Advisory Committees from seventeen to ten. It is further proposed to appoint Councillors to the remaining Advisory Committees, to update the Terms of Reference for those Advisory Committees which are affected by the changes, and to then review community membership on those Advisory Committees to reflect the new Terms of Reference.

Finally, it is proposed to appoint Councillors as Council delegates to various external organisations as detailed in the report.

Recommendation**That Council:**

- 1. Establishes portfolio responsibilities for Councillors, and assigns a Councillor to each portfolio as follows:**
 - a) Community Services portfolio – Cr Ashton**
 - b) Economic Development and Marketing portfolio – Cr Egan**
 - c) Environment and Sustainability portfolio – Cr Brooker**
 - d) Finance and Governance portfolio – Cr Clarke**
 - e) Infrastructure portfolio – Cr Dumaresq**
 - f) Social Infrastructure portfolio – Cr Ranken**
 - g) Planning portfolio – Cr Perkins**

12. Officers' reports

OCM.166/16 Committee structures and Councillor delegates to external organisations

2. Initiates a process to change the existing Special Committee arrangements in order to establish a single Special Committee, with the relevant portfolio Councillor to chair the meeting for items within their portfolio, and that a revised Special Committee Terms of Reference and Instrument of Delegation be prepared and reported back to Council for approval in December.
3. Makes the following changes to Council’s Advisory Committees:
 - a) Expand the role of the Economic Development Advisory Committee to include those matters which were previously the responsibility of the Agricultural Advisory Committee, the Eltham Activity Centre Forum, and the Artisan Hills Marketing Committee.
 - b) Expand the role of the Environment Advisory Committee to include those matters which were previously the responsibility of the Green Wedge Management Plan Implementation Advisory Committee.
 - c) Reduce the number of community members on the Arts Advisory Committee from twelve to six.
4. Instructs officers to prepare updated Terms of Reference for the Economic Development Advisory Committee, the Environment Advisory Committee, and the Arts Advisory Committee to reflect the changes listed in Clause 3, and report these to Council for approval.
5. Abolishes the Agricultural Advisory Committee, the Eltham Activity Centre Forum, the Artisan Hills Advisory Committee, the Green Wedge Management Plan Implementation Advisory Committee, the Edendale Advisory Committee, the Liveable Nillumbik Community Reference Group, and the Memorials Advisory Committee, and writes to existing community members of those Advisory Committees to thank them for their service.
6. Appoints Councillors to Council’s Advisory Committees as listed below, for a term of one year or until Council resolves otherwise, and makes any consequential changes to the Terms of Reference to reflect changes in the number of Councillors appointed to those Advisory Committees.

Advisory Committee	Councillor(s) appointed
Arts Advisory Committee	Cr Egan (Chair)
Audit Committee	Cr Clarke, Cr Ranken
CEO Employment Matters Committee	All Councillors
Inclusion Advisory Committee	Cr Ashton (Chair)
Economic Development Advisory Committee	Cr Egan (Chair), Cr Ashton, Cr Dumaresq

12. Officers' reports

OCM.166/16 Committee structures and Councillor delegates to external organisations

Environment Advisory Committee	Cr Brooker (Chair), Cr Ashton
Living and Learning Advisory Committee	Cr Ashton
Municipal Emergency Management Planning Advisory Committee	Cr Perkins (Chair), Cr Brooker
Panton Hill Bushland Reserves System Advisory Committee	Cr Brooker (Chair), Cr Ashton
Recreational Trails Advisory Committee	Cr Dumaresq (Chair), Cr Egan, Cr Perkins

7. Appoints Councillors as Council's delegates to external organisations as listed below, for a term of one year or until Council resolves otherwise.

External Organisation	Councillor(s)
Municipal Association of Victoria	Cr Perkins (Cr Ashton alternate)
Interface Councils group	Cr Clarke (Cr Egan alternate)
Northern Metro Region Councils group	Cr Clarke (Cr Egan alternate)
Yarra Plenty Regional Library Board	Cr Clarke (Cr Egan alternate)
Metropolitan Waste Management Group	Cr Perkins (Cr Dumaresq alternate)
Metropolitan Transport Forum	Cr Dumaresq
Northern Alliance for Greenhouse Action	Cr Brooker
Nillumbik Tourism Association	Cr Egan and Cr Ranken
Diamond Creek Traders' Association	Cr Perkins
Eltham Chamber of Commerce and Industry	Cr Clarke, Cr Dumaresq, Cr Ranken
Hurstbridge Traders' Association	Cr Egan

Attachments

Nil

12. Officers' reports

OCM.166/16 Committee structures and Councillor delegates to external organisations

Background

1. Following the recent general election, it is timely for Council to review its arrangements for Special Committees, Advisory Committees and delegates to external organisations.
2. Matters requiring review include the number of committees, their roles and terms of reference, delegations of powers to Special Committees, the appointment of Councillors and community members to committees, and the appointment of Councillors as Council's delegates to external organisations.
3. The existing arrangements have been reviewed by the newly-elected Mayor and Councillors, and several changes are proposed as outlined in this report.
4. In order to implement these changes, it will be necessary to prepare updated Terms of Reference for those committees affected by the changes, as well as an updated Special Committee Instrument of Delegation.

Policy context

5. This report directly supports the achievement of Council Plan 2013-2017 strategies:
 - We will involve the community in our decision-making through public participation and representation and we will keep them informed through frequent and effective communication.

Budget implications

6. There are no direct budget implications arising from the appointment of Councillors to Advisory Committees or external organisations. Updating of the Special Committee Instrument of Delegation will incur some minor legal costs which can be met from existing operating budgets.

Consultation/communication

7. Council's committee arrangements provide opportunities for consultation and engagement with the community.
8. Special Committee meetings provide an opportunity for members of the community to address the committee about matters on the agenda. In some instances, this is a statutory right provided by legislation.
9. Advisory Committees provide an opportunity for Council to consult and communicate with the community through participation by Councillors and other community members on those committees.
10. External organisations, in which Council participates either through formal membership or other partnership arrangements, also provide the opportunity for engagement with stakeholders from the local community, the region or the local government sector, for the purposes of advocacy or collaboration which serves the interest of the Nillumbik community.

12. Officers' reports

OCM.166/16 Committee structures and Councillor delegates to external organisations

Issues/options

11. Following the recent general election, it is timely for Council to review its arrangements for Special Committees and Advisory Committees, and to also review the appointment of Councillors to various external organisations.

Special Committees and Councillor Portfolios

12. Council currently has two Special Committees – the Policy and Services Committee, and the Planning Committee. These Special Committees are established under Section 86 of the Local Government Act, and have delegated powers to make certain decisions on behalf of Council.
13. Following a review of these arrangements by the Mayor and Councillors, it is proposed to establish a single Special Committee, rather than the existing two Special Committees.
14. It is also proposed to assign a portfolio responsibility to each Councillor. The relevant portfolio Councillor will then be the Chairperson of the Special Committee in respect of those items of business which are within their portfolio.
15. Implementation of this change will require Council to prepare and formally approve a new Terms of Reference and Instrument of Delegation for that Special Committee. It is anticipated that this can be completed by December, with the new arrangements to take effect from the beginning of 2017.
16. Any consequential changes to Council's Meeting Procedure Local Law would require a statutory public consultation process.

Advisory Committees

17. Council currently has 17 Advisory Committees. Membership of Advisory Committees generally comprises Councillors along with other community members. Advisory Committees provide a forum for consultation and make recommendations to Council, however they do not have any delegated powers.
18. Following a review of the Advisory Committee arrangements, it is recommended that the number of Advisory Committees be reduced to ten. Proposed changes are detailed below.
19. It is proposed that the following existing Advisory Committees be maintained:
- a) Arts Advisory Committee
 - b) Audit Committee
 - c) CEO Employment Matters Committee
 - d) Inclusion Advisory Committee
 - e) Living and Learning Advisory Committee
 - f) Municipal Emergency Management Planning Advisory Committee
 - g) Pantom Hill Bushlands Reserve System Advisory Committee
 - h) Recreation Trails Advisory Committee

12. Officers' reports

OCM.166/16 Committee structures and Councillor delegates to external organisations

20. It is proposed that the Economic Development Advisory Committee be maintained, but that its role is broadened to include those matters which were previously the responsibilities of the Agricultural Advisory Committee, the Eltham Activity Centre Forum and the Artisan Hills Marketing Committee. Consequentially, it is proposed that these three committees be abolished.
21. It is proposed that the Environment Advisory Committee be maintained, but that its role is broadened to include those matters which were previously the responsibility of the Green Wedge Management Plan Implementation Advisory Committee, which will then be abolished.
22. It is also proposed to abolish the Edendale Advisory Committee, the Liveable Nillumbik Community Reference Group, and the Memorials Advisory Committee.
23. It is recommended that Council write to each community member of those committees which are abolished, to advise them of Council's decision and to thank them for their service on those committees.
24. It will also be necessary to review and update the Terms of Reference for the Economic Development Advisory Committee and the Environment Advisory Committee, to reflect their new broadened role. These Terms of Reference will be prepared and submitted to Council for approval. If these changes to the Terms of Reference involve any changes to the number or role of community members, then Council may need to invite nominations for community membership.
25. Council also needs to appoint Councillors to those Advisory Committees which are continuing. These appointments are generally reviewed on an annual basis, and this can be done in late 2017. Proposed appointments are listed in the recommendation.

External organisations

26. Council is a member or participant in a range of external organisations at a local, regional or sector level.
27. Councillors are appointed to represent Council as delegates to those organisations. In some cases, an alternate is also appointed who can attend if the primary Councillor is not available.
28. Proposed appointments of delegates to external organisations are listed in the recommendation.

Conclusion

29. It is proposed to establish portfolio responsibilities for Councillors, and to introduce changes to the structure of Council's Special Committees to reflect the portfolio arrangements.
30. This requires the preparation of new Special Committee Terms of Reference and a new Instrument of Delegation for formal approval by Council.
31. It is also proposed to make changes to Council's Advisory Committees. This involves some consolidation of existing committee responsibilities, and the abolition of some committees. New Terms of Reference will be required for some of the Advisory Committees to reflect these changes.

12. Officers' reports

OCM.166/16 Committee structures and Councillor delegates to external organisations

32. Finally, it is recommended that Council appoint Councillors to the Advisory Committees, and as Council's delegates to various external organisations.
33. Once the appointments of Councillors are confirmed by Council, the relevant external organisations will be advised accordingly, and Councillors will be advised of meeting schedules for Advisory Committees.

12. Officers' reports

OCM.167/16 September Quarter Financial Report

Distribution: Public

Manager: Andrew Port, General Manager Corporate Services

Author: Vince Lombardi, Manager Finance

Robert Malignaggi, Management Accountant

Summary

This report outlines Council's financial performance and financial position for the period ending 30 September 2016.

The Income Statement shows an overall favourable Year to Date (YTD) variance of \$998,935, representing 2.18 per cent of YTD Budget. This reflects the combined result of higher-than-budgeted operating income of \$673,314 along with lower-than-budgeted operating expenses of \$325,621.

A significant part of the additional revenue is due to the receipt of funding for specific purposes grants, which will result in higher expenditure over coming months as those grants are expended for the required purposes.

Council's overall financial position at the end of this quarter is sound, and continues to be actively monitored to ensure achievement of budget targets.

The mid-year financial review will be presented to Council in December and will address any variations identified year-to-date.

Recommendation

That Council receives and notes the Financial Report for the period ended 30 September 2016.

Attachments

1. Financial Report 30 September 2016

Background

1. In June 2016, Council adopted the 2016-2017 Budget, which projected an operating budget surplus of \$10,606,000.
2. This budgeted surplus reflects the amount by which operating revenue exceeds operating expenses, in accordance with relevant accounting standards.
3. Operating expenditure excludes non-operating transactions such as capital works investment, which are separately detailed in the report.
4. The report compares actual performance to budgeted targets at this stage of the financial year. It should be read in conjunction with the Quarterly Performance Report which is also being considered at this Council meeting.

12. Officers' reports

OCM.167/16 September Quarter Financial Report

Policy context

5. This report directly supports the achievement of Council Plan 2013-2017 strategy:
- We will undertake long-term financial planning to ensure our budget decisions are responsible and sustainable.

Budget implications

6. This is a standard reporting item to Council, the associated costs for which are included in the current budget.

Consultation/communication

7. The Budget was subject to public exhibition prior to its final adoption by Council.

Issues/options

8. The detailed Financial Report for the period ended 30 September 2016 is provided at Attachment 1. This report is an analysis of Council's financial performance and financial position as of 30 September 2016. The report also includes an analysis of budget variances.

Income statement

9. Council closed the period ending 30 September 2016 with a favourable year to date (YTD) variance of \$998,935 based on actual operating revenue, costs and commitments. This represents 2.18 per cent of the YTD Budget.
10. The overall variance is made up of the following:
- Income – \$673,314 (0.99 per cent) favourable variance. This is driven largely by new/additional grant funding of \$474,561 along with \$140,974 received from the State Revenue Office relating to the sale of valuations data.
 - Expenditure – \$325,621 (1.48 per cent) favourable, arising from year-to-date savings across the organisation on salary costs of \$212,520 along with savings on the Home and Community Care contract of \$107,386.
 - Additional details on variances are located on pages 7 and 8 in Attachment 1.
11. Council's overall financial operating performance as at 30 September 2016 continues to track in line with budgeted expectations with the exception of a number of YTD variances as outlined in the attached report.

Balance sheet

12. The Balance Sheet reflects Council's financial position at 30 September 2016, and is prepared in compliance with the Australian Accounting Standards.
13. Council's Balance sheet (page 4, Attachment 1) continues to show a strong net position. This is represented by \$851 million of assets which is largely made up of Council's Property, Plant and Equipment. Council's total liabilities are \$44 million which results in net assets of \$807 million.

12. Officers' reports**OCM.167/16 September Quarter Financial Report**

Statement of cash flows

14. The statement of cash flows captures Council's actual cash transactions for the period.
15. Council is showing a cash position of \$35 million after all cash transactions for the period to date.
16. The \$35 million includes \$31 million held in investments as detailed on page 12 of Attachment 1.

Capital works

17. The year-to-date expenditure relating to capital works is reported on pages 6 and 9 of the report in Attachment 1.
18. This shows an unfavourable variance of \$5.4 million relative to YTD budget. This is largely attributable to timing matters for the Eltham Leisure Centre re-development, which is showing a \$4.5 million unfavourable variance.
19. This is due to the fact that construction of this project is being funded over three financial years (2015-2016, 2016-2017 and 2017-2018). Council has entered into a contract for the full price of construction, which now shows as a commitment for the total contract price. While the total contract price (\$16.87 million) is within the total three-year funding for the project (\$19.35 million), it exceeds the share which is allocated in the 2016-17 Budget (\$11.95 million). Therefore it currently shows as an unfavourable variance.
20. A specific reconciliation for the Eltham Leisure Centre project is provided on page 10 of Attachment 1.
21. The balance of the variance for Capital Works is detailed on page 9 of attachment 1.

Other information

22. New Initiatives are reported on page 11 of the Attachment 1. Expenditure on New Initiatives currently shows an unfavourable variance of \$125,691 which is primarily due to timing issues. It is expected that full year expenditure on New Initiatives will be within budget.
23. Investment activities are consistent with Council's Adopted Investment Policy and in accordance with section 143 of the *Victorian Local Government Act 1989*. A summary of investments and loans is provided on page 12 of Attachment 1.
24. A summary of significant grant funding received (grants over \$50,000) for the period 1 July to 30 September 2016 is provided in the attached report.

Conclusion

25. Council's overall financial position at the end of September 2016 is considered sound and continues to be closely monitored to ensure budgeted outcomes are achieved.

12. Officers' reports**OCM.168/16 Council Plan Quarterly Performance Report September 2016**

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

This report presents the Council Plan Quarterly Performance Report to Council for consideration, documenting progress of key actions for 2016-2017 that demonstrate how Council is delivering the objectives of the Council Plan 2013-2017 for the Nillumbik community.

The attached Council Plan Quarterly Performance Report provides the first update on the progress of the Annual Plan actions for the 2016-2017 financial year.

Of the 58 actions identified in the Annual Plan, at the close of the quarter (30 September 2016) all were on target with a green light status.

Recommendation

That Council receives the Council Plan Quarterly Performance Report for the period ending 30 September 2016.

Attachments

1. Council Plan Quarterly Performance Report September 2016

Background

1. The Council Plan was developed following the general council election in October 2012 and adopted by Council on 25 June 2013. It has been reviewed annually as required by the *Local Government Act 1989*. The most recent reviews were considered by Council in May 2015 and May 2016.
2. This is the final year of the Council Plan 2013-2017. Following the recent council elections, a new Council Plan will be prepared and approved by 30 June 2017, as required by section 125(1) of the *Local Government Act 1989*.
3. In conjunction with the May 2016 Council Plan review and development of the Budget 2016-2017, Council developed and formally adopted in May 2016 an Annual Plan of actions, a list of 58 specific activities Council would be undertaking during 2016-2017 to achieve the strategic objectives in the Council Plan. These actions reflect Council priorities, major projects, capital works, major initiatives and service improvements.
4. The Annual Plan was also developed to ensure Council will meet its legislated performance reporting requirements under the Planning and Reporting Regulations (Local Government Performance Reporting Framework).

12. Officers' reports

OCM.168/16 Council Plan Quarterly Performance Report September 2016

5. The Framework became law in April 2014 and imposed an additional performance reporting requirement on Council from 1 July 2014. Under the regulations, Council has a legislative requirement to report annually on 49 service performance measures, 13 financial performance measures, six sustainable capacity measures and 24 governance and management measures.
6. Council also has a legislative requirement as part of the Framework's Governance and Management Checklist to provide six-monthly reports on Council Plan strategic indicators and Performance Statement indicators.
7. To ensure Council meets this legislative requirement, these indicators and measures are included in the Annual Plan and reported as part of the Quarterly Performance Report (Attachment 1). Additional reports will be considered in January, April and July 2017.

Policy context

8. The Council Plan 2013-2017 is a key strategic plan for Council. It sets out Council's strategic objectives for the four-year life of the plan and the strategies Council will undertake for achieving those objectives.
9. The Quarterly Performance Report directly supports the achievement of Council Plan 2013-2017 strategies:
 - We will meet our legal responsibilities and manage our risks.
 - We will involve the community in our decision-making through public participation and representation and we will keep them informed through frequent and effective communication.
10. This report also fulfils Council's statutory requirement to report six-monthly on Council Plan strategic indicators and Performance Statement indicators.

Budget implications

11. This report is part of Council's monitoring of the Council Plan and Budget. The resources for this monitoring and the preparation of this report are accommodated within existing operational budgets.

Consultation/communication

12. The Council Plan 2013-2017 was developed following a comprehensive program of workshops and briefings with Councillors following the general election in October 2012.
13. Its development was informed by:
 - Councillor priorities
 - The *Picture Nillumbik* community visioning process
 - The 2013 Annual Community Survey
 - Council plans, policies and strategies
 - Government legislation and policies.

12. Officers' reports

OCM.168/16 Council Plan Quarterly Performance Report September 2016

14. The draft Council Plan 2013-2017 was placed on public exhibition for 28 days and community comment was invited through a number of communication channels including Council's website, newspaper advertisements, social media and at the Civic Centre and library branches.
15. Public submissions on the draft Council Plan were presented to the Policy and Services Committee meeting on Tuesday 11 June 2013 and the Council Plan was adopted by Council on 25 June 2013.
16. Reviews of the Council Plan are conducted as part of Council's annual planning workshops and in light of recent legislative changes and the Annual Community Satisfaction Survey. In 2015, community survey respondents were asked to rate the importance to themselves and members of their households of each of the Council Plan's five strategic objectives. Respondents rated each of the objectives as very important with scores well over eight out of 10.
17. As a result of the 2015 Council Plan review, six changes to the strategic indicators were proposed and placed on public exhibition for 28 days. An advertisement appeared in the *Diamond Valley Leader* on Wednesday 1 April 2015. Copies of the proposed changes were made available at the Civic Centre and on Council's website. Council adopted the changes at the May 2015 Ordinary Council Meeting.

Progress during the quarter

18. The Quarterly Performance Report contains 58 high level actions Council will undertake during the 2016-2017 financial year to deliver the Council Plan strategies.
19. At the close of the first quarter (30 September 2016) all actions were considered on target and had a green light (at least 90 per cent of action target achieved).
20. Some of the progress made on actions during the quarter include:
 - Two green waste drop-off days have been organised and scheduled for 27 November 2016 and 5 February 2017. (1.1.2.1)
 - The community bus program and medical transport program provided 383 trips during the quarter. (1.1.5.1)
 - The concept and cost plan for the Eltham North Reserve Pavilion works were finalised and realised for public consultation. (1.1.6.9)
 - Concept and cost plans were developed for Research Park Pavilion works. (1.1.6.10)
 - 480,488 visits were recorded at Council's non-aquatic facilities for the quarter. (1.1.6.13)
 - Edendale's Education for Sustainability programs were attended by 2,202 participants. (1.1.7.3)
 - Enrolments in Living and Learning Nillumbik activities and courses for the quarter were 755. (1.1.7.4)
 - There were 15,777 participants in Arts and Cultural Development programs. (1.1.7.5)

12. Officers' reports

OCM.168/16 Council Plan Quarterly Performance Report September 2016

- Just over 11 per cent of the Nillumbik population were active library users during the quarter. (1.1.7.6)
- Rainwater tanks with a capacity of 10,600 litres were installed at Eltham Community and Reception as part of the renovations. (2.1.5.5)
- Almost 71 per cent of kerbside waste collected was diverted from landfill. (2.1.6.2)
- Construction of the new path connecting Diamond Creek Trail to the new footbridge was completed. (3.1.6.4)
- Initial design work began on signage and landscaping at the western approach to the Windy Mile. (3.1.6.5)
- Demolition of the Eltham Leisure Centre aquatic facilities began. (3.1.7.20)
- The Animal Precinct Project was completed at Edendale with construction of new animal accommodation, a hay shed, storage facilities and associated fencing and infrastructure. (3.1.8.2)
- Seventy-five per cent of planning decisions were determined by Council within the 60 statutory days. (4.1.7.1)
- Forty per cent of planning decisions determined by VCAT upheld Council's decision. (4.1.7.2)

Conclusion

21. The Council Plan Quarterly Performance Report outlines Council's progress on delivering key strategic activities during the first quarter of 2016-2017. At 30 September 2016, all 58 actions contained in the Annual Plan are on target.
22. The overall position suggests that in the first quarter, Council made a successful start towards achieving the 2016-2017 actions and delivering significant outcomes for the community.

12. Officers' reports

OCM.169/16 Rehabilitation of the Diamond Street Bridge, Diamond Street Eltham - tender report

Distribution: Public

Manager: Conal Creedon, General Manager Infrastructure Services

Author: Mathew Deayton, Manager Infrastructure Development

Summary

An audit of all Council bridges and culverts in 2015 identified that the Diamond Street Bridge, Eltham was in poor condition and needed to be repaired urgently or else it would need to be closed.

A temporary repair was undertaken late last year, however this needed to be followed up with a permanent repair within 18 months.

This report considers the awarding of the contract for the rehabilitation of the Diamond Street Bridge, Diamond Street Eltham. These works will include the repair and replacement of existing piers, decking, guardrail and other miscellaneous items.

The Tender Evaluation panel has assessed all submissions and a separate confidential report outlines their evaluation in recommending the awarding of the contract for the rehabilitation of the Diamond Street Bridge, Diamond Street Eltham.

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

Recommendation

That Council:

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

Attachments

Nil

12. Officers' reports

OCM.170/16 Beale Avenue, Strathewen - Road Sealing Works

Distribution: Public

Manager: Conal Creedon, General Manager Infrastructure Services

Author: Steven Blight, Coordinator Construction

Summary

This report considers the awarding of the contract for the construction of Beale Avenue, Strathewen. The works will involve the spray sealing of Beale Avenue, Strathewen, between the road bridge at O'Deas Road and 50 metres beyond the driveway to No.400 Beale Avenue, approximately 100 metres west of the Kinglake National Park boundary.

Works are for the upgrade of the road pavement, pavement sealing, upgrade of existing culverts, construction of culvert end walls, some asphalt table drains and other associated works.

The Quotation Evaluation panel has assessed all submissions and a separate confidential report outlines their evaluation in recommending the awarding of the contract for the construction of Beale Avenue, Strathewen.

The value of this contract is within current delegations however the total project cost is close to the delegation limit and the contract is being reported to Council both to inform Council of the intended works and as a precaution against any contingencies which could take the total cost above the delegated limit.

Recommendation

That Council:

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

Attachments

Nil

12. Officers' reports

OCM.171/16 Annual supply contract - Provision of fencing services - tender report

Distribution: Public

Manager: Conal Creedon, General Manager Infrastructure Services

Author: Steven Blight, Coordinator Construction

Summary

This report considers the tenders received for the Annual supply contract - provision of fencing services for a period of two years, commencing on 1 December 2016 (Contract 1516-29)

The provision of fencing services involves the supply and installation of safety fencing, residential boundary fencing, sports field fencing, rural style farm fencing, safety bollards and other associated works.

The Tender Evaluation panel has assessed all submissions and a separate confidential report outlines their evaluation in recommending the awarding of the contract for the Annual supply contract - Provision of fencing services.

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

Recommendation

That Council:

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

Attachments

Nil

12. Officers' reports

OCM.172/16 Assemblies of Councillors

Distribution: Public

Manager: Andrew Port, General Manager Corporate Services

Author: Naomi Ellis, Corporate Planner

Summary

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

This report lists assemblies of Councillors forms that have been submitted since the matter was last reported to Council on 13 September 2016.

Recommendation

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

1	Date of assembly	1 August 2016	
	Matters considered	Eltham Activity Centre Forum	
	Councillors present	Cr Michael Young	Cr Bronnie Hattam
	Staff present	Chad Griffiths	Paul Fyffe
	Conflict of interest	None declared	

2	Date of assembly	8 September 2016	
	Matters considered	Agricultural Advisory Committee	
	Councillors present	Cr Ken King	Cr Anika Van Hulsen
	Staff present	Tim O'Donnell	Pat Vaughan
	Conflict of interest	None declared	

3	Date of assembly	13 September 2016	
	Matters considered	Pre-meeting for Ordinary Council Meeting	
	Councillors present	Cr Bronnie Hattam Cr Michael Young Cr Anika Van Hulsen Cr Ken King	Cr Meralyn Klein Cr Peter Perkins Cr Helen Coleman
	Staff present	Stuart Burdack Andrew Port Conal Creedon Ransce Salan Pauline Gordon	Nichole Johnson Corrienne Nichols Wayne Trull Naomi Ellis Adrian Cully

12. Officers' reports

OCM.172/16 Assemblies of Councillors

		Jon Miller Mathew Deayton Naomi Paton	Corinne Mays Jeremy Livingston
	Conflict of interest	None declared	

4	Date of assembly	19 September 2016	
	Matters considered	Eltham Activity Centre Forum	
	Councillors present	Cr Michael Young	Cr Helen Coleman
	Staff present	Paul Fyffe	Chad Griffiths
	Conflict of interest	None declared	

5	Date of assembly	3 November 2016	
	Matters considered	Councillor Induction Session <ul style="list-style-type: none"> • Transition Program • Council Plan and Budget process • Diamond Creek Trail • Key reports for November and December • Special Council meeting arrangements • Councillors' legal responsibilities 	
	Councillors present	Cr Peter Clarke Cr John Dumaresq Cr Bruce Ranken Cr Peter Perkins	Cr Grant Brooker Cr Jane Ashton Cr Karen Egan
	Staff present	Stuart Burdack Andrew Port Conal Creedon	Pauline Gordon Ransce Salan Allison Watt
	Conflict of interest	None declared	

6	Date of assembly	9 November 2016	
	Matters considered	Councillor Transition Workshop <ul style="list-style-type: none"> • Good governance • Governance Code and Meeting Procedure • Advisory committees and external organisations 	
	Councillors present	Cr Peter Clarke Cr John Dumaresq Cr Bruce Ranken Cr Peter Perkins	Cr Grant Brooker Cr Jane Ashton Cr Karen Egan
	Staff present	Stuart Burdack Andrew Port	Pauline Gordon Ransce Salan

12. Officers' reports

OCM.172/16 Assemblies of Councillors

		Conal Creedon	
	Conflict of interest	None declared	
7	Date of assembly	15 November 2016	
	Matters considered	Officer Briefings of Councillors and Councillor Transition Workshop <ul style="list-style-type: none"> • Liveable Nillumbik Lot 1 Hurstbridge • Special Committees/Advisory Committees • Amendment C81 and C101 • Council Plan 2017-2021 • Diamond Valley Sports and Fitness Centre • Councillor Transition Workshop 	
	Councillors present	Cr Peter Clarke Cr John Dumaresq Cr Bruce Ranken Cr Peter Perkins	Cr Grant Brooker Cr Jane Ashton Cr Karen Egan
	Staff present	Stuart Burdack Andrew Port Conal Creedon Pauline Gordon Ransce Salan Chad Griffiths Nichole Johnson	Adrian Cully Corrienne Nichols Vince Lombardi Allison Watt Joanne Hammond Alison Fowler
	Conflict of interest	None declared	

Attachments

Nil

Background

1. Amendments to the *Local Government Act 1989* (the Act) in October 2010 require records of assemblies of Councillors to be reported to an Ordinary Meeting of Council and recorded in the minutes of that meeting.

Policy context

2. This report directly supports the achievement of Council Plan 2013-2017 strategy 'we will meet our legal responsibilities and manage our risks'.

Budget implications

3. This is a routine reporting item, the resources for which are contained in Council's current operating budget.

Consultation/communication

4. None required.

12. Officers' reports

OCM.172/16 Assemblies of Councillors

Issues/options

5. An assembly of Councillors is defined in section 76AA of the Act. It is a meeting at which matters are considered that are intended or likely to be the subject of a Council decision or the exercise of delegated authority and which is either of the following:
 - A planned or scheduled meeting that includes at least half the Councillors and at least one Council Officer. These assemblies do not include meetings of Councillors and Council staff that are not planned or scheduled.
 - A meeting of an advisory committee where at least one Councillor is present. An advisory committee is any committee established by the Council, other than a special committee, that provides advice to the Council or to a special committee or to a member of Council staff who has been delegated a power or duty or function of the Council.
6. A record must be kept of an assembly of Councillors and include the names of all Councillors and Council staff attending, the matters considered, disclosures of conflict of interest and whether a Councillor left the meeting after making a disclosure.
7. In accordance with section 80A(2) of the Act, Council is required to report as soon as practicable to an Ordinary Meeting of Council a record of any assemblies of Councillors held.
8. The recommendation contains the list of assemblies of Councillor forms that have been submitted since the matter was last reported to Council on 13 September 2016.

Conclusion

9. It is recommended that Council receives the records of recent assemblies of Councillors as contained in this report, fulfilling section 80A(2) of the *Local Government Act 1989*.

12. Officers' reports

OCM.173/16 Environment and Planning Monthly Activity Report

Distribution: Public

Manager: Ransce Salan, General Manager Environment and Planning

Author: Chad Griffiths, Manager Strategic and Economic Planning
Jeremy Livingston, Manager Planning and Health Services
Phil Lovelace, Manager Regulatory Services
Pat Vaughan, Sustainability and Environment Executive Officer

Summary

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

Recommendation

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

1. **Seventy one per cent of planning applications were determined within 60 statutory days.**
2. **Three VCAT decisions were handed down.**

Attachments

1. Information on statutory planning matters and subdivisions
2. Information on approved building dispensations
3. Information on Planning Scheme Amendments

Background

1. Council's Environment and Planning Department consists of the Planning and Health Services Unit; Regulatory Services Unit; Strategic and Economic Planning Unit; and Sustainability and Environment Unit. The following report consolidates and documents the key activities for each of these service units for the month of October 2016. A summary of the key activities within each of these service units follows.

Policy context

2. This report directly supports the achievement of Council Plan 2013-2017 strategy:
 - We will protect Nillumbik's Green Wedge from expansion of the Urban Growth Boundary (UGB).

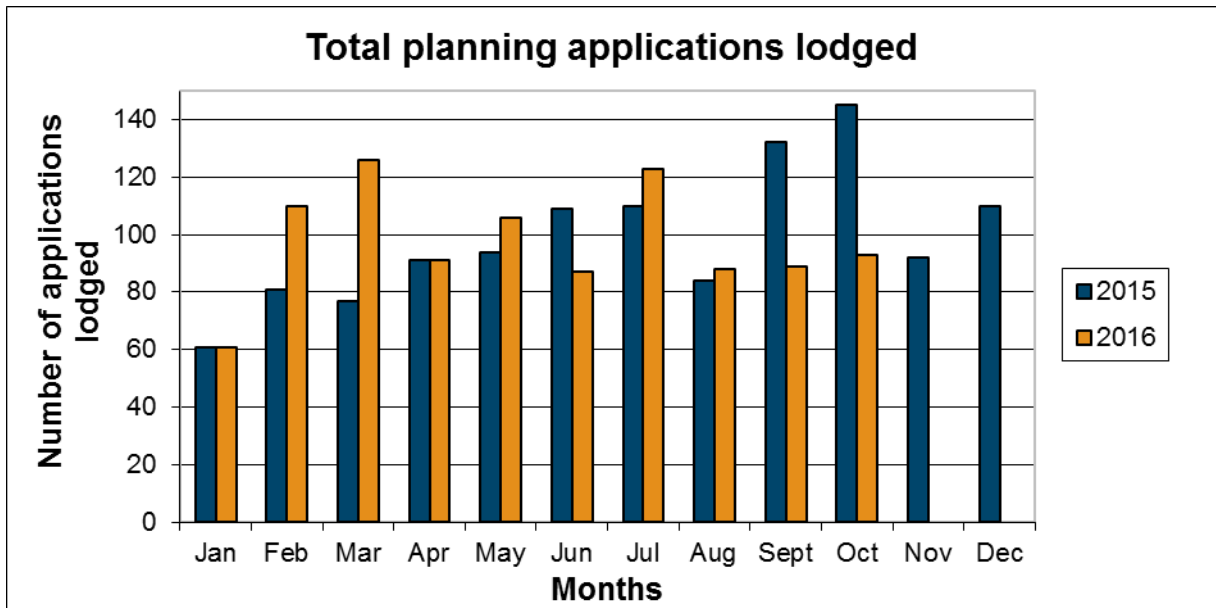
12. Officers' reports

OCM.173/16 Environment and Planning Monthly Activity Report

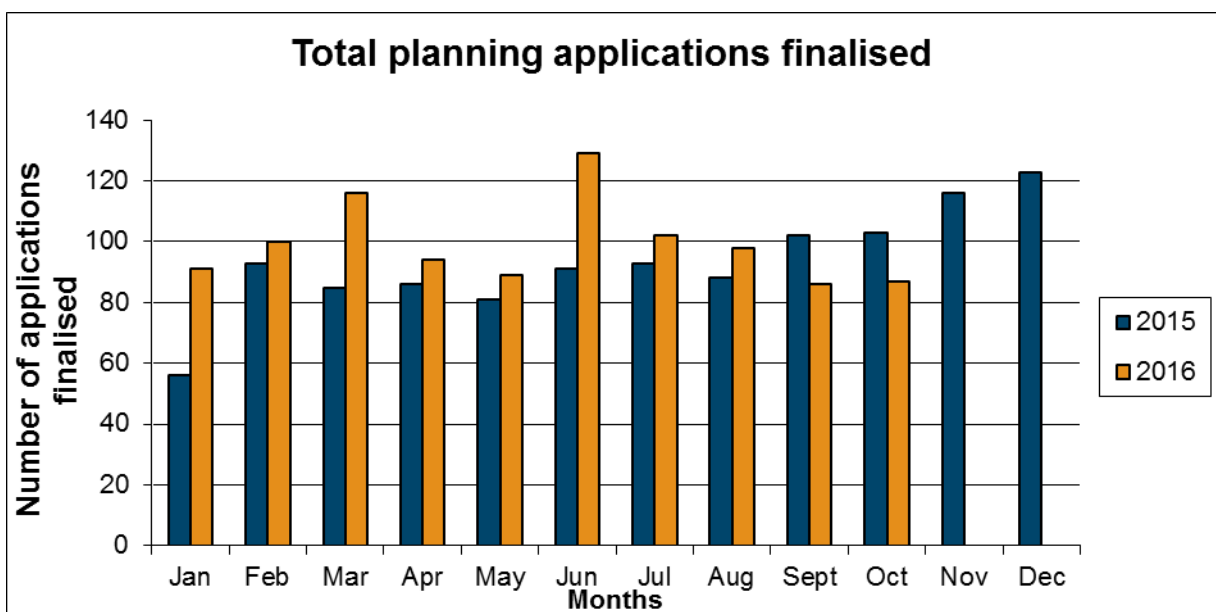
Planning and Health Services Unit

Planning applications lodged and finalised

- 3. Applications lodged include new planning applications; requests for amendments; plans required by permit conditions and miscellaneous consents (under Section 173 Agreements). A total of 93 new applications were lodged in October 2016.



- 4. The applications finalised total includes those applications that have been both withdrawn and those for which no permit were required. A total of 87 applications were finalised in October 2016.



12. Officers' reports

OCM.173/16 Environment and Planning Monthly Activity Report

5. A breakdown of the determined planning applications is as follows:

Application type:	Percentage determined
Residential development (new dwellings or additions)	50%
Subdivision	12%
Miscellaneous consent under Section 173 Agreement	8%
Vegetation removal	8%
Non-residential building and works	7%
S173 Agreement amend/end	5%
Multi-dwelling development	3%
VicSmart	3%
Use	3%

6. Council has received 14 planning applications year-to-date than for the same period in 2015:

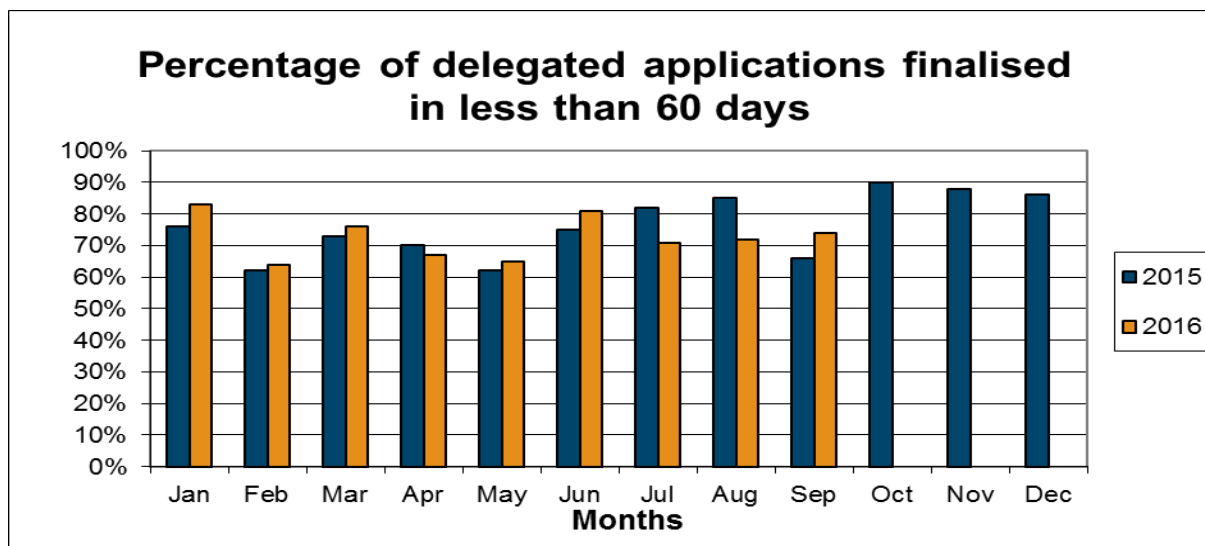
Year	31 October 2015	31 October 2016
Year to date	994	980

7. At the end of October, 332 planning applications remain outstanding, 54 fewer than for the same period last year:

Year	31 October 2015	31 October 2016
Outstanding applications	386	332

Planning applications decision timelines

8. The following graph outlines the statutory timelines for all planning decisions, with the exception of 'VicSmart' planning applications. In October, 71 per cent of planning applications were decided within 60 statutory days.



12. Officers' reports**OCM.173/16 Environment and Planning Monthly Activity Report**

Victorian Civil and Administrative Tribunal (VCAT) decisions

9. A total of seventeen planning matters are currently before VCAT. Three VCAT decisions were handed down between August and October 2016.
10. **6 Amaroo Court, Diamond Creek** – Development of the land for 16 dwellings – Council refusal, VCAT approval
11. The application sought approval to construct 16 double storey dwellings on a vacant lot, previously occupied by a nursing home. The land size is 4,648 square metres and is zoned General Residential. A total of 21 written objections were received. Although officers recommended a modified approval for 14 dwellings (a reduction of two), Council's Planning Committee resolved to refuse the application on grounds relating to the proposal's response to neighbourhood character, lack of meaningful landscaping opportunities, energy efficiency and on-site car parking provision.
12. In relation to strategic policy, the Tribunal noted that '...we are satisfied that the construction of multiple dwellings on a large unconstrained site, in a convenient location, is entirely consistent with the objectives and purposes of the zone and the State and Local Planning policies. We think there is clear policy support to develop a unique, well located site more intensively than for single dwellings on medium sized lots in order to provide some greater housing choice than is presently available in Diamond Creek.'
13. With respect to neighbourhood character, the Tribunal commented that '...although there are 16 dwellings proposed on the site, only dwellings 1 to 4 will sit within the streetscape of Amaroo Court. We think the four dwellings facing nos. 12 to 15 Amaroo Court will mirror the four dwellings and their crossovers opposite, and, we think, provide a consistent streetscape...the setbacks of the four proposed dwellings range from 6.7 metres to 8.9 metres, consistent with the setbacks on the west side of the Court.'
14. The Tribunal was satisfied with the proposal's landscape response: '...we are satisfied the proposed dwellings would sit within a landscaping setting that is highly consistent with the character of the neighbourhood. The landscaping plan for the site includes the retention of a number of existing trees, the removal of 11 trees and the planting of 43 new trees. The significant trees on the site will be retained...site coverage (38.3 per cent) and permeability (45 per cent) are generous for this type of development and responsive to its context.'
15. The Tribunal set aside Council's decision and directed that a permit for 16 dwellings (with some modest modifications to fencing, car parking arrangements, and dwelling design) be issued.

12. Officers' reports

OCM.173/16 Environment and Planning Monthly Activity Report

-
16. **145 Overbank Road, Eltham** – Use and development of the land for a dwelling and native vegetation removal – Council refusal, VCAT refusal
 17. The application sought approval to construct a single storey dwelling on a vacant, 3.8 hectare bush block located on steeply sloping land north of the Yarra River. The land is zoned Rural Conservation (Schedule 3) and affected by Bushfire Management and Environmental Significance overlays. One written objection was received, and Council under delegation refused the proposal on grounds relating to strategic policy (including being an undersized allotment) and siting of the dwelling and associated bushfire and environmental impacts.
 18. In relation to strategic policy, the Tribunal noted that ‘...although I acknowledge that dwellings can be allowed on small lots in the Rural Conservation Zone and within non-urban green wedge areas of the municipality, I am not persuaded that a dwelling should be permitted on the review site... I consider that allowing a dwelling on this site would be contrary to the strongly and consistently expressed State and local policies discouraging residential development on small lots within the non-urban, green wedge areas of the municipality.’
 19. A critical issue in the Tribunal's review of the proposal was the extent of vegetation removal and disturbance as a result of the proposed dwelling construction and associated defensible space to protect that dwelling: ‘...although the native vegetation which is required to be cleared, much of it to create a domestic zone and a defensible space, can be offset in accordance with the requirements of the Department of Environment Land Water and Planning, that does not outweigh the impact of clearing or modifying 1.36 hectares of this currently uncleared site.’ The Tribunal added: ‘I am not persuaded that, on balance, the loss of vegetation and habitat can be supported on land which is affected by an Environmental Significance Overlay in recognition of it having high habitat and faunal significance and being part of a strategic habitat link.’
 20. Notwithstanding the above, the Tribunal also identified some practical challenges with the proposal: ‘...apart from the large area of vegetation that needs to partly cleared and continually managed [for bushfire management purposes], I am also concerned about the practicality of achieving that management on slopes of up to 18-19 degrees. There are very few relatively level areas anywhere on the site and it is steep and difficult terrain to walk over.’
 21. Finally, the Tribunal assessed bushfire risk: ‘...the conditional support provided by the CFA suggests that the proposal is close to the limit of what could be supported by the CFA. BAL-40 and BAL-FZ are the highest construction levels for a dwelling and garage respectively...although the CFA has undertaken its own assessment of the proposal, I am not persuaded that the measures proposed by the CFA conditions will overcome the difficulties of constructing a dwelling in an area which the CFA has assessed as being subject to significant risk on days of extreme bushfire weather.’ The Tribunal concluded that ‘...underpinning the revised bushfire provisions gazetted in July 2014 is the necessity to prioritise the protection of human life over other policy considerations and where appropriate, to apply the precautionary principle when assessing the risk to life, property and community infrastructure from bushfire.’
 22. Accordingly, the Tribunal upheld Council's decision and directed that no permit be issued.

12. Officers' reports**OCM.173/16 Environment and Planning Monthly Activity Report**

23. **8 Dunstan Drive, Hurstbridge** – Buildings and works to construct an outbuilding and associated retaining wall, access point and vegetation removal (Council approval, varied VCAT approval)
24. The application sought approval to construct a shed at the rear of the subject site, which is currently developed with a single dwelling. The application also sought approval to allow access to the shed (to house a boat, trailer and store other items) from the adjacent Anzac Avenue road reserve, which is currently unconstructed. No written objections were received. The issued permit included a condition requiring that the permit holder to construct a driveway within the Anzac Avenue road reserve between the proposed site access point and the road crossover in accordance with Council's engineering standards (however with a choice of two options). The permit holder sought a review of this particular permit condition (condition 3), in addition to requesting a minor change to the wording of a tree protection fencing condition (condition 1a).
25. Condition 1a was promptly resolved by way of consent by all parties, however condition 3 was contested by Council. Council did not consider that the condition of the existing informal track in the road reserve was suitable for private vehicle use (particularly with issues of slope) and there is no future intention by Council to upgrade the track to a standard suitable for private vehicle use. The existing track is currently maintained for occasional emergency access only. To address the concern, the applicant for review contended that an alternative permit condition instead be included to restrict the number of vehicle trips allowed each year, however the Tribunal identified that this suggested condition would be difficult to enforce.
26. The Tribunal understood that Council wanted to ensure that its standard requirements are met in light of the fact that the owner wishes to utilise the road reserve and that Council does not formally maintain the road (and it is not on the public road register), however the Tribunal was of the view that the driveway construction was a too onerous permit condition in the context of the scale of development proposed. Nevertheless, the Tribunal suggested that Council could resolve this issue by requiring the construction of a vehicle crossover under different jurisdiction, such as a local law. As such, the Tribunal varied Council's decision and directed that condition 3 be deleted from the permit.

Food and Health premises inspections

27. Council is required to inspect all registered food premises under the Food Act and each prescribed health premises under the Public Health and Wellbeing Act each year. There are 425 registered premises that require inspecting.
28. A total of 115 inspections of registered Food and Health Premises were conducted during September and October. These included 91 mandatory Food Act inspections, which included 20 Follow Up inspections to re-assess issues identified in previous visits. The remaining were 24 Public Health and Wellbeing Act inspections.

12. Officers' reports

OCM.173/16 Environment and Planning Monthly Activity Report

29. The following definitions describe the types of inspection:

- **Mandatory Inspection**– Inspection of a food business that is registered with Council to sell food. This could include annual business inspections, a business registration transfer inspection, new premises inspections or other inspections undertaken as part of Councils risk management plan. These inspections could be for both commercial operations or community groups.
- **Public Health and Wellbeing Act Inspection**– Inspection of a business required to be registered with Council. This includes hairdressers, beauty therapy, prescribed accommodation and skin penetration (tattooing or other procedures that involve equipment penetrating skin).
- **Follow up** – A secondary inspection required as a result of identifying non-compliances with an initial Mandatory or Health and Wellbeing Act inspection.
- **Food Sampling** – Mandatory annual sampling to ensure foods sold and/or manufactured in Nillumbik are safe

Tobacco control

30. Tobacco Sales to Minors test purchasing (to verify retailers do not sell cigarettes to minors) and education visits are conducted to ensure requirements for retailers, eating establishments and licensed venues are followed. A total of 31 Tobacco Sales to Minors test purchase inspections were conducted during September resulting in 3 sales of cigarettes to minors. In addition 13 education visits were conducted at tobacco related premises.

Onsite domestic wastewater (septic tanks)

31. A total of 12 applications were received to install new septic tank systems in September and October, with 22 inspections undertaken of septic systems (9 site inspections and 13 final inspections). The following definitions describes the types of inspections:

- **Site inspection** – An initial inspection to ensure the installation of a septic tank system is appropriate for the site.
- **Final inspection** – An inspection during construction to verify the septic tank system is installed in accordance with permit conditions.

32. Council continues to implement the Domestic Wastewater Management Plan 2015-2018 and is actively pursuing year 2 actions.

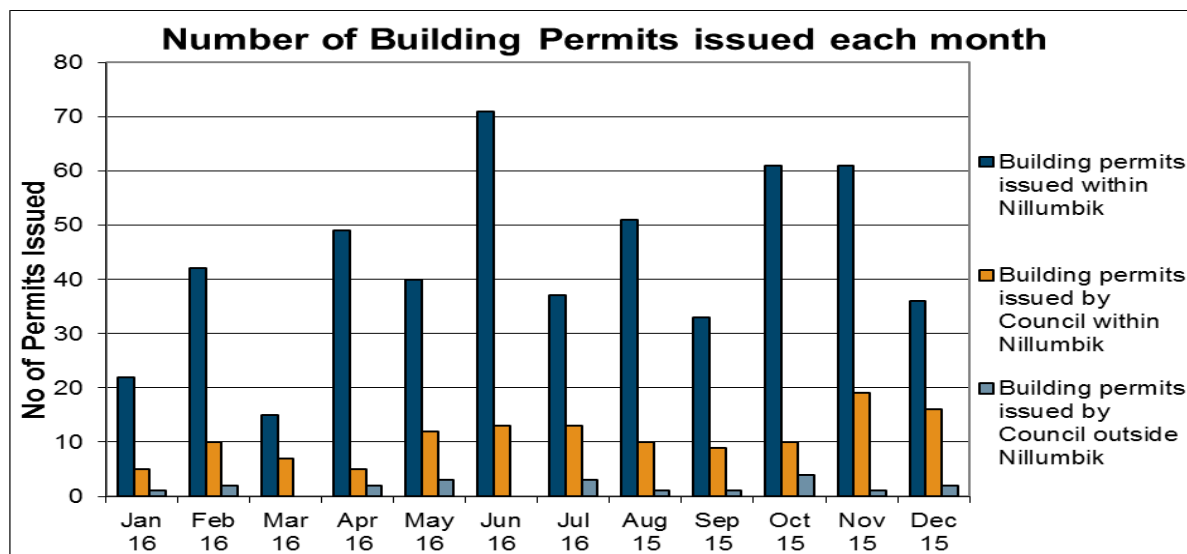
Regulatory Services Unit

Building permits issued

30. The following graph shows the total number of building permits issued within the Shire of Nillumbik and the number issued by Council's Building Team. The third component of the graph shows the number of building approvals Council's Building Team has issued outside the Shire of Nillumbik.

12. Officers' reports

OCM.173/16 Environment and Planning Monthly Activity Report



Strategic Planning Unit

31. An important decision was made when VCAT handed down its determination in respect to the Section 39 appeal regarding Amendment C101. The decision was in favour of the applicant, which effectively means that C101 was abandoned at the Policy and Services Committee Meeting on 13 April 2016. The Minister for Planning has been formally notified by Council of this VCAT determination.

Sustainability and Environment Team

32. Twenty seven environmental assessments of planning referrals were completed.

33. Two Community Volunteer Action Grants were awarded to Council by DELWP:

- Nillumbik Threatened Orchid Program \$21,190
- Habitat Improvement and Monitoring \$23,230

34. Under Council’s Over-the Counter Offsets program, three credit trades were made in September and October at a total of \$7,234, bringing the total for the year to \$13,302.

35. The Practically Green Sustainability Awards were presented during October. Amongst the winning entries was an Eltham North business with a product that has global potential to change how energy is used in homes and small businesses. Council officers will be following up to link this business with mentors and financial assistance through Victorian Government programs.

36. The Practically Green Festival was held at Edendale in October. The day was enjoyed by around 3,500 visitors and 70 different stalls/activities on offer to help the community make sustainable changes to their homes and life. A post festival report will be available following debrief meetings.

37. The large scale solar systems at the Civic Centre (124kW) and Community Bank Stadium (100kW) are awaiting pre-approval from Ausnet Services prior to installation commencing.

12. Officers' reports

OCM.173/16 Environment and Planning Monthly Activity Report

38. Submissions were made to three Victorian Government reviews:

- Invasive animals inquiry
- Statewide Assessment of Public Land Draft Discussion Paper and Draft Proposals Paper
- Parliamentary inquiry into community energy

Conclusion

39. It is recommended that Council receives and notes the Environment and Planning Department Activity Report for September and October 2016.

13. Notices of Motion

NOM.019/16

Cr Peter Perkins advised of his intention to move the following:

Motion

That Council abandons any plans to sell Lot 1 Graysharps Road, Hurstbridge to developers and that the process to rezone Lot 1 Graysharps Road, Hurstbridge to Public Park and Recreation Zone (PPRZ) immediately commence.

14. Delegates' reports

15. Supplementary and urgent business

16. Confidential reports

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

Motion

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

Report No.	Title	Reason for confidentiality
OCM.174/16	Rehabilitation of the Diamond Street Bridge, Diamond Street Eltham - tender report	(d) contractual matters
OCM.175/16	Beale Avenue, Strathewen - Road Sealing Works	(d) contractual matters
OCM.176/16	Annual Supply Contract - Provision of Fencing Services - tender report	(d) contractual matters