

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P759/2021
PERMIT APPLICATION NO. 354/2011/11AP/M

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*; Nillumbik Planning Scheme; Low Density Residential Zone; Design and Development Overlay; Place of Worship; Amendment to Permit; Building Lighting; Car Park Lighting.

APPLICANT	SSH Constructions Pty Ltd
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
SUBJECT LAND	615-623 Yan Yean Rd Yarrambat VIC 3091
HEARING TYPE	Hearing
DATE OF HEARING	23 September 2021
DATE OF ORDER	13 October 2021
CITATION	SSH Constructions Pty Ltd v Nillumbik SC [2021] VCAT 1179

ORDER

Amended permit granted

- 1 In application P759/2021, the decision of the responsible authority is set aside.
- 2 In permit application 354/2011/11AP/M, an amended permit is granted and directed to be issued for the land at 615-623 Yan Yean Road, Yarrambat, in accordance with the endorsed plans and the amended conditions set out in Appendix A.

Margaret Baird
Senior Member

APPEARANCES

For applicant	Mr C Mackenzie, Planning Appeals Pty Ltd.
For responsible authority	Ms E Gabriel, Principal Statutory Planner.



INFORMATION

Description of proposal ¹	Retrospective approval for car park and building lighting.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant an amended permit.
Planning scheme	Nillumbik Planning Scheme [scheme].
Zone and overlays	Low Density Residential Zone [LDRZ]. Environmental Significance Overlay (Schedule 1 – Sites of Faunal and Habitat Significance) [ESO1]. Design and Development Overlay (Schedule 2 – Yarrambat and Yarrambat Extension Area) [DDO2]. Bushfire Management Overlay [BMO]. Specific Overlay Controls Schedule 13 – Yan Yean Road (Kurrak Road to Bridge Inn Road) (Stage 2) Upgrade Project Incorporated Document, May 2021 [SCO13]. Public Acquisition Overlay [PAO].
Permit requirements ²	Clause 32.03 for buildings and works associated with a section 2 use. Clause 42.01 to construct a building or construct or carry out works. Clause 43.02 for buildings and works. Clause 44.06 for buildings and works associated with a place of assembly.
Relevant scheme policies and provisions	Clauses 02.02, 02.03, 02.04, 11.01, 11.01-1L-01, 13.02-1L, 13.07-1S, 12.05-2L, 15.01-6S, 32.03, 42.01, 43.02, 44.06, 45.12, 52.06, 53.02, 65 and 71.
Land description	The 2.7 ha site contains a place of worship (St Macarius Coptic Orthodox Church). The building is setback approximately 32 metres from the eastern (front boundary) and 10 metres from the southern boundary. Car parking areas are situated to the north and west of the Church building. There is some boundary planting. Several outbuildings are on the land.
Tribunal inspection	Subsequent to the hearing, in the evening, unaccompanied.

¹ The Notice of Decision to Refuse a Permit refers to an outbuilding. This has been approved under secondary consent by the Council.

² Several overlays only apply to part of the site. The car park lighting poles and Church building do not appear to be located within the area covered by the PAO1 or SCO13.



REASONS³

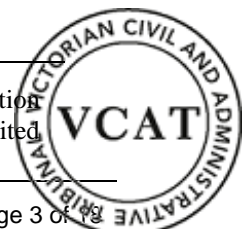
INTRODUCTION

- 1 The St Macarius Coptic Orthodox Church operates under planning permit 354/2011 [**permit**]. The use is regulated by the permit including the operating hours and number of people in attendance.
- 2 Plans endorsed under the permit include one metre high bollard lighting within the car park area. This has not, the applicant states, met the needs of the Church congregation with consequential safety concerns.
- 3 The permit holder installed car park lighting, comprising poles up to three metres in height. It also installed LED lighting on one of the two crosses on the building, one of which is large in size, and the other located above the building roof.
- 4 As a consequence of enforcement action, SSH Constructions Pty Ltd [**applicant**] applied for an amended planning permit to approve the installed lighting. The Nillumbik Shire Council [**Council**] refused to grant approval on four grounds. The applicant has subsequently applied to the Tribunal seeking review of that decision, challenging all grounds of refusal.

KEY ISSUES

- 5 The Council explains its key concerns with the proposal to increase the level of illumination in the car park and on the Church building as follows:
 - Compliance with Condition 13 of the permit – “*All external lighting must be designed, baffled and located so as to prevent adverse effect on adjoining land, to the satisfaction of the Responsible Authority*”.
 - The proposed level and extent of illumination across the site is contrary to the character and feel of the low density residential area.
 - The level of illumination proposed is not appropriate for the land due to its adverse impact on the amenity of the area by way of unreasonable illumination in the low density residential area.
- 6 The applicant explains that the approved bollard lighting is not sufficient and is positioned so that light is obscured by the height of parked cars. The proposed car park lighting will improve safety for vehicles and pedestrians during the approved night-time operating periods. The proposed building lighting provides modest additional decoration to highlight Coptic cross symbols so as to better identify the Church.
- 7 The applicant says the proposal will improve the functional and safe use of the site, will not cause unreasonable amenity impacts, is not contrary to the low density residential character, and is an acceptable planning outcome.
- 8 The key issues for determination are:

³ Submissions, supporting and statements of grounds have all been considered in the determination of the proceeding. In accordance with the Tribunal’s practice, not all of this material will be cited or referred to in these reasons.



- Does the proposal represent an acceptable outcome with respect to the character of the low density area, assessed under clause 32.03?
 - Does the proposal result in unacceptable off-site amenity impacts?
- 9 Clause 71.02-3 requires the decision-maker to endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development, for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.
- 10 I have considered the permit application based on its merits when assessed against the relevant provisions of the scheme, irrespective of the fact that the lighting has been installed. That works have occurred gives no party any advantage, nor places any party at a disadvantage, in my consideration of the merits of the permit application. My approach is consistent with principles referred to by the Supreme Court:⁴

The permit applicant should neither be punished nor rewarded for undertaking work before a permit was obtained.⁵

[Tribunal emphasis added]

SITE AND ITS CONTEXT

- 11 The parties have described the site and its context in detail. I do not repeat all of this material. The aerial image, below, extracted from the Council's submission, assists to highlight some elements of the setting.



Figure 3. Aerial of subject site and its surrounds (taken April 2021).

⁴ *Knox City Council v Tulcan Pty Ltd* [2004] VSC 375 at paragraph 13(b).

⁵ *Knox City Council v Tulcan Pty Ltd* [2004] VSC 375 citing *Van Egmond v City of Knox, Bassett & Ors* (1985) 3 PABR, [249] and [250].

- 12 The subject land abuts Yan Yean Road, which is proposed for upgrading and duplication. The land also abuts Ashley Road. This is a sealed road with vegetated roadsides that leads to dwellings on large lots. The image, below, from the Council's submission shows the eastern elevation of the Church with part of the car park to the north also evident.



- 13 Residential properties are to the north and west of the subject land. Some non-residential uses exist near the site. The property directly opposite the subject land to its south is an animal boarding facility (No. 605 Yan Yean Road) and opposite the subject site to its east is a childcare centre (No. 6 Youngs Road). There are several other properties on Ashley Road that have animal boarding facilities. The area is generally well vegetated.
- 14 More broadly, there are a range of community and recreational facilities in the environs that are in the LDRZ. Some have floodlighting (such as netball courts and football ground). Others have car park lighting, such as the animal boarding facility opposite the subject land. There are many private tennis courts, with floodlights, in the wider low density residential area.
- 15 The St Macarius Coptic Orthodox Church operates under the permit (354/2011). As described at the hearing, the current use includes a weekly daytime religious service with a full congregation; regular small Wednesday and Friday evening use (to 8pm) for Church-based meetings and bible study; and five special religious events with large congregational attendances. There is existing security lighting. Condition 8 allows:

Unless with the prior written consent of the Responsible Authority, the maximum number of patrons allowed in attendance for the use hereby permitted must not exceed the following, to the satisfaction of the Responsible Authority

- Between the hours of 12am and 4am, the maximum number of patrons must not exceed 50 persons.
- Between the hours of 4am and 7am, the maximum number of patrons must not exceed 50 persons;
- For all other hours the maximum number of patrons must not exceed 220 persons.

- On the following religious days observed by the St Macarius Coptic Orthodox Church, the number of patrons between the hours of 12am and 11:59pm must not exceed 220 persons:
 - New Year's Day;
 - Good Friday;
 - Easter Saturday;
 - Easter Sunday;
 - Christmas Day.

16 Condition 9 is:

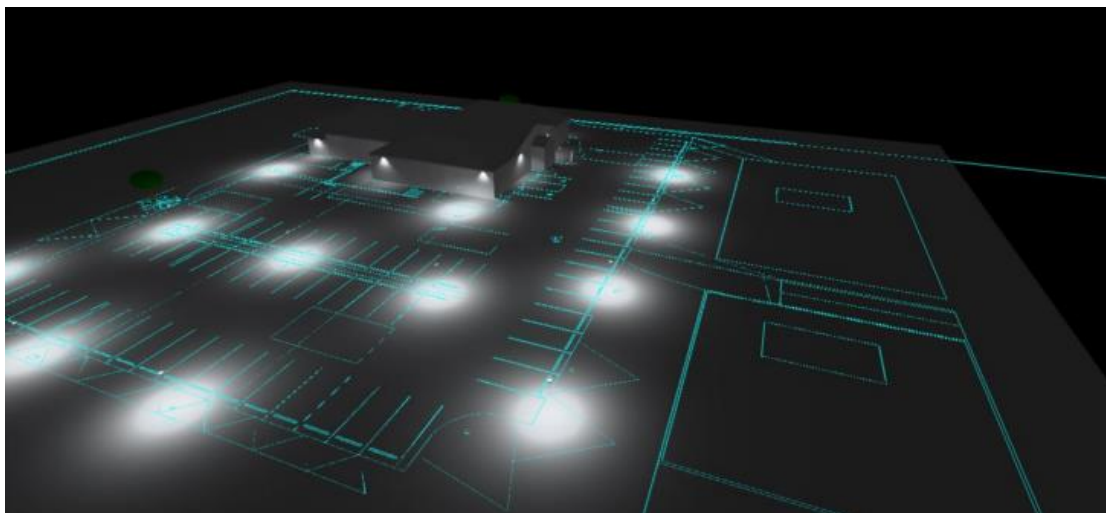
Unless with the prior written consent of the Responsible Authority, during the hours of 12am and 4am the use must not operate more than 4 times per week, to the satisfaction of the Responsible Authority.

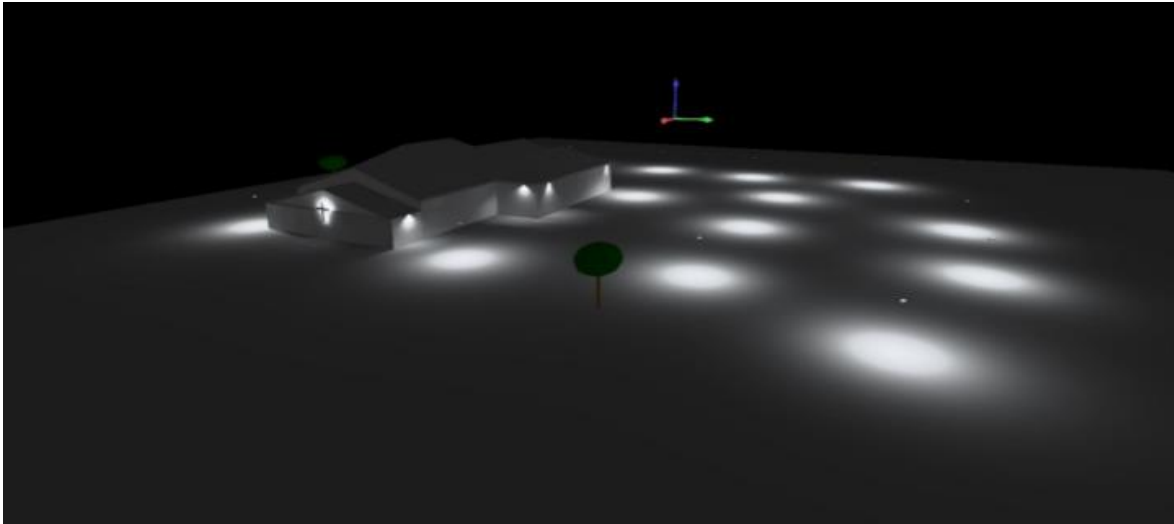
PROPOSAL

17 The applicant proposes to amend the permit to allow pole-mounted flood lighting in the car park and LED lighting to the Church building:

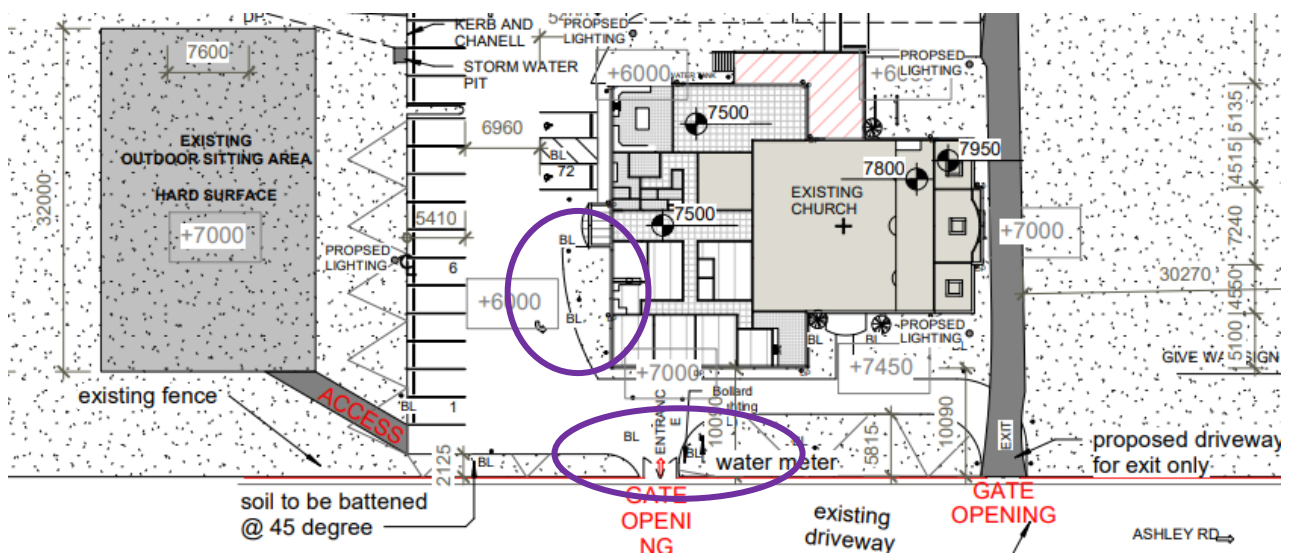
- Car park:
 - Construction of 13 flood lights mounted on 3 metre high poles in height in various locations throughout the car park.
 - All flood lights are proposed to be 200W, 24 000 lumen fittings, mounted at a 5 degree tilt angle.
- LED lighting to the Church:
 - behind the cross fix to the east elevation building and associated with the cross adjacent to the west elevation of the building.
 - under the eaves of the building.
 - illuminated cross on the south elevation above the roof line (maximum height of roof line is 8.5 metres).

18 The images, below, from a lighting report provided by the applicant indicate car park lighting and some lighting of the Church building.





- 19 Bollard lighting is not shown in the lighting assessment report that the applicant relies upon.
- 20 The Council has assumed and accepted that bollard lighting would remain.
- 21 At the hearing, in response to my question about this, Mr Mackenzie has stated bollard lighting is to be decommissioned or removed other than lighting near the entry and rear of the Church that I have marked (purple) on the plan extract below.



- 22 During the hearing, I enquired with the parties about the extent to which the proposal is a 'package'. Mr Mackenzie refers to the car park lighting for the five religious services cited in Condition 8⁶ as "critical" while the lighting is desirable for the weekday evening activities. Car park lighting is not necessary for the weekly daytime service. Lighting of the Church is sought for decoration and identification, rather than safety. Mr Mackenzie agrees that the proposal lighting could be limited to only being used in association with services.

⁶ New Year's Day, Good Friday, Easter Saturday, Easter Sunday, and Christmas Day.

- 23 Mr Mackenzie refers to the opportunity for additional planting on the site, noting that the eastern portion of the land fronting Yan Yean Road is now likely to be acquired in association with the road upgrade.
- 24 With this clarification during the course of the hearing, at the end of the hearing Ms Gabriel indicated that the Council may consider car park lighting (only during services) for the five religious occasions as set out in Condition 8, as well as the cross on the east elevation of the Church and a cross adjacent to the west side of the Church. The Council would not support the balance of the lighting proposed on the building.

CHARACTER OF THE AREA AND LDRZ

- 25 The Council's submission refers to the role of the non-urban area with its landscape and environmental values.⁷ The scheme encourages buildings and works to maintain or enhance the landscape character and ensure development respects valued areas of rural character.⁸
- 26 In the Council's submission, protection of the rural character of the Nillumbik low density residential areas is paramount. It submits the planning controls and policy framework have a clear intent to minimise the impact of development upon the local landscape, in favour of protecting the rural character, residential amenity and vegetation.
- 27 Strategic directions within the Municipal Planning Strategy with respect to the built environment include (among others):

The integrity of streetscapes and natural landscapes can be threatened by development that does not respond to the local characteristics of the area or incorporate design outcomes that enhance the functionality and visual amenity of the area. Additionally, the Shire endeavours to ensure that all people, including those with a disability or impairment, have safe and efficient access to places and buildings...

Council seeks to:

- Protect and enhance urban streetscapes, townships and landscapes.
 - Design places and development to maximise access for all users, including pedestrians and cyclists, and cater for the mobility needs of people of all abilities.
- 28 Clause 02.03-9 addresses community infrastructure and reiterates the strategic direction for accessibility to facilities.
- 29 There is, therefore, consideration of the area's character and landscape values as well as the safety and functional needs of the approved place of worship.
- 30 In my view, it is important to ensure the safe and functional use of the subject land. Improved lighting for safety is not in contention.

⁷ Clauses 02.02, 02.02-1, 02.03-2.

⁸ Clauses 12.05-2L and 15.01-6S. The Council's submission also refers to DDO2 and the Yarrambat Structure Plan with respect to design responses in the landscape and non-urban settings.



- 31 The issue that this proposal raises, however, is the extent of proposed illumination when considering both the car park and building.
- 32 The Council submits the proposed level of illumination draws attention to the Church and its car park area, rather than blending in with the natural surrounds. The extent of existing landscaping/planting within and across the site, which is currently lacking in upkeep and maintenance, does not resolve concerns the Council has with respect to rationalising the extent of illumination proposed.
- 33 This position is challenged by the applicant who emphasises non-residential land uses as well as the extent to which lighting is part of the existing character. This is a consequence of residential use, community facilities, nearby businesses, street lighting and tennis courts.
- 34 I accept the applicant's submission there are sites with pole lighting associated with, for example, car parking facilities at community recreation sites and tennis courts. Further, the major road upgrade will likely change the physical context.
- 35 However, I agree with the Council that the area has an identifiable low density character. The Council's submission refers to the large and low density lot sizes that create a sense of spaciousness and openness, as well as a level of darkness in the evening that is far greater than in typical suburban contexts. I find the character of this low density area is one of low illumination, even though it abuts a main road.
- 36 The scheme is clear about the values attributed to this area and seeks to maintain and protect these values. The amount and style of existing lighting in the public and private realms does not persuade me that the extent of proposed lighting is, on balance, an acceptable outcome.
- 37 I accept there will not be light spill beyond the site boundaries, based on the lighting report. However, the nature and extent of lighting associated with the use that may have substantial evening and night-time hours (based on current permit conditions) is significant in this setting. It does not appear to be characteristic of residential and non-residential land uses or development outcomes expected when considering the scheme's strategic directions. Although there is perimeter planting on the subject land, and required by an existing landscape plan, it is evident that the planting does not have a major mitigating effect. New planting will take time to grow and may be influenced by the acquisition of land in association with the road upgrade.
- 38 Linking the proposed lighting with Church services is reasonable in the current circumstances, particularly those services with large congregations where the car park will be heavily used and where use occurs beyond daylight hours.
- 39 I am not persuaded that the full extent of lighting is required for the much smaller weekday evening attendance. I will only allow this with the Council's written consent; that will enable information to be provided to the Council to explain how the lighting may be managed to only the level required for the smaller number of persons on-site.



- 40 As noted, the lighting assessment does not include bollard lights plus the pole lights. As also noted, the applicant has advised that the bollards in the car park will be removed:⁹

We also confirm [as per discussions in the hearing] that the intention is to remove the bollard lighting from the main carpark area and only keep bollards at the site entry and adjacent to the church building entry, if the overhead carpark lighting is approved.

- 41 I will require the bollard lighting to not be used (decommissioned or removed), except at the locations shown earlier.
- 42 I am less persuaded about the acceptability of all of the lighting proposed to the Church structure, which is focused on its better identification and enhanced appearance. There is no indication in the material before me that there are issues with identification of the building and site. Illuminating two crosses provides respectful identification associated with Church services. One of these is the larger cross facing Yan Yean Road, while the other is associated with the cross at the western end of the building
- 43 The applicant accepts additional landscaping, and conditions requiring and amended landscape plan and its implementation. I will include these on the amended permit.

AMENITY

- 44 The applicant submits direct amenity impacts are a secondary matter. It submits the design and specification of the car park lights do not cause unreasonable amenity impacts. The assessed lighting outcomes are generally similar to a moonless sky up to a full moon sky at the boundary. The illumination levels at actual buildings / dwellings further beyond the boundary will be even lower and there is the additional mitigation by plantings. Night-time Church operation is approved by its planning permit.
- 45 The Council acknowledges that it is unlikely the illumination proposed will impact on bedrooms of adjacent dwellings given the setback distances. The dwelling opposite is setback some 78 metres and the dwelling to the north-west is setback some 44 metres from the car park. Lighting will be visible from these properties, but it is unlikely to directly shine into these adjacent dwellings and specific windows.
- 46 Notwithstanding, the Council submits the amenity of the surrounding residential area will be unreasonably affected by the extent of illumination that changes the outlook and experience from these properties. It says whether the lighting is baffled and does not actually spill onto adjacent properties does not take away from the fact the illumination is contrary to the prevailing semi-rural character, that it will change the character of the site and area, and that it will readily be visible from adjacent and surrounding residential properties.

⁹ As confirmed in writing by the applicant, when commenting on conditions circulated with my leave after the end of the hearing.



47 Limiting the use of the proposed car park and building lighting, as referred to above, will reduce the extent to which lighting will be perceived from nearby properties. It is a balanced outcome that has regard to safety and function, as well as character and amenity considerations. The lighting will have limited use, to the five special religious events and, with Council approval, a lesser amount of lighting for the small weekday evening meetings.

OTHER MATTERS

48 The Council does not oppose the amended permit on the basis of considerations under ESO1 or the BMO. Its submission includes, in part, that:

- No vegetation removal is proposed, and the lighting proposed is associated with an already disturbed/developed section of the land. Any faunal habitat crossings, which would be primarily kangaroos and possums in this location are unlikely to be impacted by the proposed extent of illumination.
- The works do not increase the size of the building, the capacity of seating, the operating hours, or the general operation of the land use.
- The proposal is unlikely to impact on the bushfire risk, and the current bushfire management control measures may continue to apply.

49 I accept these submissions.

CONCLUSION

50 For the above reasons, the decision of the responsible authority is set aside. An amended permit is granted for some of the proposed lighting associated with the use of the car park and Church, when associated with religious services on the land. This will be allowed by amended permit conditions that are included in Appendix A.

Margaret Baird
Senior Member

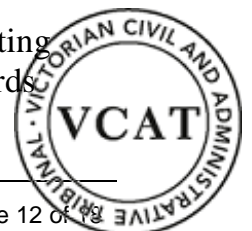


APPENDIX A – PERMIT 354/2011/11AP/M

The following conditions apply to the permit:

- 1 Prior to the commence of development of the outbuilding or an increase to the hours of the approved use approved by this amendment, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and form part of this permit. The plans must be generally in accordance with the plans received on 30th July 2018, prepared by *Design & Construction*, but modified to show:
 - (a) Notation specifying the specific materials and colours of the external cladding of the outbuilding. Materials and colours must be muted in tone and non-reflective;
 - (b) A Bushfire Management Plan in accordance with condition 26 of this permit.

- 2 Before the development commences, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans received on 13 July 2011 and prepared by *Eliana Construction Group*, but modified to show:
 - (a) The provision of an additional crossover to be installed for exiting traffic at approximately 30 metres from the south-east corner of site. The crossover shall avoid the removal of significant trees within the road reserve. The other crossover must be used for entering traffic only.
 - (b) The width of the accessway immediately north of the entry driveway and to a point 5 metres west of the driveway to be widened to 7 metres to ensure that sufficient turning area is provided for vehicles. This will require the building to be relocated approximately 1 metre north and will allow for the accessway between the entry driveway and the exit driveway to be narrowed to 3 metres.
 - (c) The dimensions of all car parking spaces and aisles.
 - (d) The crossovers and car parking area to be constructed in asphalt, or similar material in a muted colour.
 - (e) The upgrading of the intersection with Yan Yean Road and Ashley Road to provide for left and right-hand turning lanes. This will require the widening of Ashley Road with a sealed width of 5.5 metres between Yan Yean Road and the new exit driveway (approximately 30 metres in length from the road intersection).
 - (f) Location of bollard lighting throughout the car parking area. Lighting bollards should be no greater than 1 metre in height and face towards the ground.



- (g) A schedule of proposed colours and selected materials of the church building.
 - (h) Location of security gates.
 - (i) A bicycle rail provided to accommodate a minimum of 2 bicycles.
 - (j) A landscape plan as required by condition 2 of this permit.
- 3 Before the development commences, three copies of a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The plan must show:
- (a) A survey of all existing vegetation and natural features.
 - (b) The area or areas set aside for landscaping with an emphasis on re-vegetating the site with indigenous species to enhance the environmental qualities of the area.
 - (c) Screening planting, to be located along the Ashley Road and Yan Yean Road boundary.
 - (d) A schedule of all proposed trees, shrubs/small trees and ground cover. This schedule shall include plants selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing.
 - (e) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material.
 - (f) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill.
 - (g) Appropriate irrigation systems.
- 4 The use and development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
- 5 Prior to the commencement of any buildings or works on the site a Construction Management Plan must be prepared and approved, to the satisfaction of the Responsible Authority. The plan must include the following:
- (a) Details of vehicle and machinery access to the site, including the prohibition of any access to the site from Yan Yean Road, and techniques to be implemented for construction of driveway and access areas, and locations for the storage of machinery and equipment on the site. Details must be provided as to how the management of contaminated material will be stored and disposed of if any were to be found during any excavations associated with the development.
 - (b) These works and the operation/storage of machinery and equipment may only occur within the nominated areas on the site which must be away from the north, east and west interfaces with the adjacent



residential properties. These areas are to be clearly identified on the plan.

- (c) Details of on-site management of construction including measures to control noise and dust emissions, proposed access arrangements, times of construction and contact details for the designated site manager.

6 *Condition deleted*

7 All parking associated with the use hereby permitted must be contained within the subject site, to the satisfaction of the Responsible Authority.

8 Unless with the prior written consent of the Responsible Authority, the maximum number of patrons allowed in attendance for the use hereby permitted must not exceed the following, to the satisfaction of the Responsible Authority:

- Between the hours of 12am and 4am, the maximum number of patrons must not exceed 50 persons.
- Between the hours of 4am and 7am, the maximum number of patrons must not exceed 50 persons;
- For all other hours the maximum number of patrons must not exceed 220 persons.
- On the following religious days observed by the St Macarius Coptic Orthodox Church, the number of patrons between the hours of 12am and 11:59pm must not exceed 220 persons:
 - New Year's Day;
 - Good Friday;
 - Easter Saturday;
 - Easter Sunday;
 - Christmas Day. +

9 Unless with the prior written consent of the Responsible Authority, during the hours of 12am and 4am the use must not operate more than 4 times per week, to the satisfaction of the Responsible Authority.

10 The building hereby permitted must not be used or hired for non-religious functions, recreation and or entertainment, without the prior written consent of the Responsible Authority.

11 Air-conditioning and other plant and equipment installed on the approved building must be positioned and baffled so that noise disturbance is minimised, to the satisfaction of the Responsible Authority.

12 No external sound amplification equipment or loud speakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the Responsible Authority.

13 All external lighting must be designed, baffled and located so as to prevent adverse effect on adjoining land, to the satisfaction of the Responsible Authority.



- 14 Unless the prior written consent of the Responsible Authority, the bollard lights, flood lighting within the carpark and premises and the lighting on the building must only be illuminated during the hours of operating services hereby approved, with the exception of security lighting, to the satisfaction of the Responsible Authority.
- 15 The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type, to the satisfaction of the Responsible Authority.
- 16 The use hereby permitted must be managed so that the amenity of the area is not detrimentally affected, through the:
 - (a) Transport of materials, good or commodities to or from the land;
 - (b) Appearance of any building, works or materials;
 - (c) Emissions of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
- 17 Unless with the prior written consent of the Responsible Authority, prior to the commencement of the use hereby permitted and at no cost to the Responsible Authority, the required upgrade and improvements to Ashley Road (in accordance with the endorsed plans to this permit) must be constructed and completed to the satisfaction of the Responsible Authority.
- 18 Unless with the prior written consent of the Responsible Authority, within 6 months of the completion of the development, the landscaping works shown on the endorsed plans must be carried out, completed and maintained to the satisfaction of the Responsible Authority.
- 19 Vehicular access and egress to the development site from the roadway must be by way of vehicle crossings constructed to the requirements of the Nillumbik Shire Council, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and replaced with kerb and channel and nature strip to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under a Minor Works within the Municipal Road Reserves permit.
- 20 The development hereby permitted must not cause any nuisance or loss of amenity in any adjacent or nearby land by reason of the discharge of stormwater.
- 21 Stormwater runoff from the development site, including existing buildings must be managed in accordance with the principles adopted under the Shire of Nillumbik's 'Yarrambat Local Structure Plan' and the 'Stormwater Management in the Yarrambat and Plenty Rural Residential Areas' document. The combined discharge from the dwelling and any outbuildings must not exceed 4.5 litres per second. All works are to be carried out to the satisfaction of the Responsible Authority.
- 22 The vehicular driveway must be properly formed and constructed to such levels to ensure that it can be utilised at all times. The driveway must be



drained, constructed in concrete, asphalt or similar surface and maintained in a continuously useable condition. All works are to be carried out to the satisfaction of the Responsible Authority.

- 23 The building and car park area, including any new paved areas, must be drained so as to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land. The car park must be properly formed and constructed to such levels to ensure that it can be utilised at all times. The car park must be constructed in concrete, asphalt or similar surface and maintained in a continuously useable condition. All works are to be carried out to the satisfaction of the Responsible Authority.
- 24 All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Act 1970. All wastewater shall be disposed of within the curtilage of the land and sufficient area shall be kept available for the purpose of wastewater disposal to the satisfaction of the Responsible Authority. No wastewater shall drain directly or indirectly onto an adjoining property, street or any watercourse or drain to the satisfaction of the Responsible Authority.
- 25 Approval of wastewater disposal must be obtained from Council's Public Health Unit prior to a Building Permit being issued. This may require a written report from a licensed plumber in order to provide permission to the relevant Building surveyor.
- 26 The septic system must be upgraded in accordance with the requirements of the Environment Protection Act 1970 and Council's Public Health Unit.
- 27 The method of effluent disposal must be upgraded in accordance with the requirements of the Environment Protection Act 1970 and Council's Public Health Unit.
- 28 Secondary treatment of wastewater followed by sub-surface irrigation must be installed to the satisfaction of the Responsible Authority.
- 29 This permit will expire if one of the following circumstances applies:
 - (a) The development is not commenced within two years of the date of this permit.
 - (b) The development is not completed within four years of the date of this permit.
 - (c) The use is not commenced within two years of the completion of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

- 30 Before the development starts, a Bushfire Management Plan must be submitted to and endorsed by the Responsible Authority. The plan must show the following bushfire mitigation measures, unless otherwise agreed in writing by the CFA and the Responsible Authority:



(a) Defendable Space

Show an area of defendable space for a distance of 10 metres around the proposed building or to the property boundary where vegetation (and other flammable materials) will be modified and managed in accordance with the following requirements:

- Grass must be short cropped and maintained during the declared fire danger period.
- All leaves and vegetation debris must be removed at regular intervals during the declared fire danger period.
- Within 10 metres of a building, flammable objects must not be located close to the vulnerable parts of the building.
- Plants greater than 10 centimetres in height must not be placed within 3m of a window or glass feature of the building.
- Shrubs must not be located under the canopy of trees.
- Individual and clumps of shrubs must not exceed 5 sq. metres in area and must be separated by at least 5 metres.
- Trees must not overhang or touch any elements of the building.
- The canopy of trees must be separated by at least 2 metres.
- There must be a clearance of at least 2 metres between the lowest tree branches and ground level.

31 The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the responsible authority and the relevant fire authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

32 Car park pole lighting - 5 degree installation

The overhead carpark lighting hereby approved must be installed and maintained with light fixtures that are set to a 5 degree installation angle, to the satisfaction of the Responsible Authority.

33 Lighting in accordance with Lux Report

Unless with the prior written consent of the Responsible Authority, the external lighting hereby approved and their lighting specifications must be in accordance with the Lux-plot report prepared by DIALux dated 2/10/2020, to the satisfaction of the Responsible Authority.

34 Usage of carpark lighting

Unless with the prior written consent of the Responsible Authority, the overhead carpark lighting hereby permitted must only be illuminated in connection with and during service or function hours in accordance with



Condition 8 and Condition 9 of the permit, to the satisfaction of the Responsible Authority.

- 35 Unless with the prior written consent of the Responsible Authority, with the exception of security lighting, the bollard lighting to 1 metre in height located at the site entry and adjacent to the church building entry hereby approved must only be illuminated in connection with and during service or function hours in accordance with Condition 8 and Condition 9 of the permit, to the satisfaction of the Responsible Authority. No other bollard lighting may be used, to the satisfaction of the Responsible Authority.

36 Usage of building lighting

Unless with the prior written consent of the Responsible Authority, the external backlit illuminated cross affixed to the east facing wall of the building and illuminated cross located adjacent to the west facing wall of the building hereby approved, must only be illuminated in connection with and during service hours in accordance with Condition 8 and 9 of the permit, to the satisfaction of the Responsible Authority.

37 Landscaping

Within 60 days of the amended permit being issued, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The landscaping plan must be generally in accordance with the endorsed landscape plan dated 11 April 2017 prepared by *Rosemount Nursery Landscaping & Design*. The plan must show:

- (a) Additional shrub and small tree planting of native plant species which reach a height of 4 metres and width of between 3 – 4 metres located within the plant beds in the eastern, northern, western and southern edges of the carpark and the accessways.

- 38 Unless with the prior written consent of the Responsible Authority, the additional planting must be undertaken and carried out prior to the operation of all external lighting hereby approved, to the satisfaction of the Responsible Authority.

--End Conditions--

