

6VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P719/2021
PERMIT NO. 391/2003/11AP/A

CATCHWORDS

Section 82 *Planning and Environment Act 1987* – art and craft centre – retrospective approval of buildings and works – amenity impacts – noise from machinery used on the land – reduction in car parking – tree removal – hours of operation – landscaping

APPLICANTS	Fred Bauer & Jan Bauer
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
RESPONDENT	Aldo Bilotta
SUBJECT LAND	1 Nyora Road ELTHAM VIC 3095
HEARING TYPE	Hearing
DATE OF HEARING	7 & 8 December 2021
DATE OF ORDER	2 March 2022
CITATION	Bauer v Nillumbik SC [2022] VCAT 227

ORDER

PERMIT AMENDED

- 1 In application P719/2021 the decision of the responsible authority is varied.
- 2 Planning permit 391/2003/11AP/A is amended, and an amended permit is directed to be issued for the land at 1 Nyora Road, Eltham in accordance with the endorsed plans and the conditions set out in Appendix A. The amended permit allows:
 - Use of the land for an art and craft centre, buildings and works for an art and craft centre and associated paving and a reduction in car parking.

Jeanette G Rickards
Senior Member



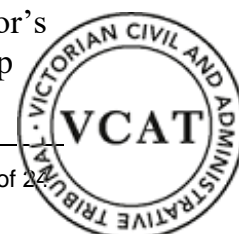
APPEARANCES

For applicants	Mr S McArdle, Counsel, instructed by Rigby Cooke
For respondent	Mr C Harrison QC, Counsel, instructed by Gadens Lawyers He called as a witness: <ul style="list-style-type: none">• Mr S Henderson, Audiometric & Acoustic Services
For responsible authority	Ms E Gabriele, Principal Statutory Planner, Nillumbik Shire Council



INFORMATION

Description of proposal	Amendment to existing Permit 391/2003/01P for use of land for an art and craft centre, buildings and works for associated paving and outbuilding, and a reduction in the required number of car spaces.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Nillumbik
Zone and overlays	Rural Conservation Zone – Schedule 3 – Conservation values (clause 35.06-1) Environmental Significance Overlay – Schedule 1 – Sites of Faunal and Habitat Significance (clause 42.01) Bushfire Management Overlay (clause 44.06-2)
Permit requirements	Clause 35.06-1 – use land for an art and craft centre (Section 2 use). Clause 35.06-5 – construct or carry out buildings or works associated with a use in Section 2. Clause 42.01-2 – construct or carry out buildings or works; excavation within 5 metres of a native tree; and the installation of paving to the west side of the centre.
Relevant scheme policies and provisions	Clauses 02.02, 02.03, 02.04, 11.01-1R, 12.01-1S, 12.05-1S, 12.05-2L, 13.02-1S, 13.02-1L, 13.05-1S, 13.07-1S, 15.01-6S, 17.02-1L, 17.04-1L, 51.02, 52.12, 52.01, and 65.
Land description	The site is rectangular in shape, has a frontage length of 125 metres to Nyora Road, a frontage length of 87.4 metres to Eucalyptus Road and an approximate total area of 11,670 m ² . The land is currently used and developed with a dwelling located adjacent to the north boundary setback approximately 2 metres from Nyora Road and approximately 25 metres from Eucalyptus Road. The property immediately east of the subject site (no.13 Nyora Road, the appellant/objector's property) features a long driveway leading up



to an existing dwelling. The dwelling is setback from Nyora Road boundary by 61 metres and its west boundary (with the subject site) by 28 metres.

Tribunal inspection

Accompanied site inspection 10 February 2022

REASONS¹

- 1 Existing Permit 391/2003/11AP was issued on 30 January 2004. The permit allows for the use of the land at 1 Nyora Road, Eltham for an art and craft centre and buildings and works for associated paving, in accordance with endorsed plans.
- 2 The application seeks review of the decision of Nillumbik Shire Council (the Council) to amend the existing permit. The current amendment to the permit arises following a complaint in January 2019 regarding 'loud banging noises' from the art and craft studio on the subject land and issues of noncompliance with the existing permit.
- 3 The applicants submit prohibited uses are occurring on the land such as an 'education centre' being the classes or workshops undertaken and 'panel beating or motor repairs'.
- 4 The endorsed plans under the existing permit show the proposed art and craft centre to be in an existing 8.6 metres by 13.5 metres building marked 'A' and an existing outbuilding 9.8 metres by 11.4 metres marked 'B'. Connected to Shed 'B' is an existing concrete sealed slab. Eight car spaces are shown in the area south of Shed 'B'.
- 5 The application to amend the permit proposes to:
 - a Amend the preamble description to:

Use of land for an art and craft centre, buildings and works for an art and craft centre and associated paving and reduction in car parking.
 - b Buildings and works:

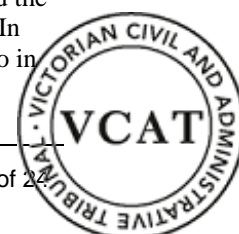
The retrospective approval of a collection of sheds and workshop constructed on the land.

The existing machinery Shed B has been extended south by 4.2 metres into the previously approved parking area and to the east by 21 metres to incorporate the proposed art and craft workshop, which includes a proposed studio.

The Proposed 'Art and Craft Workshop C' and 'Proposed Studio' are located directly adjacent to the 'Existing Machinery Shed B'. The studio has a total floor area of 37 square metres and the total floor area of the Art and Craft Workshop (including the Studio) is approximately 300 square metres.

Building C is constructed from a collection of timber, corrugated iron wall cladding with a pitched roof to a maximum height of 4.1 metres.

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



- c A new screen storage area of 100 square metres is located to the south of the workshop and east of the car parking area.
 - d Amend condition 5 of the existing permit to allow for the operation of the use as follows:
 - i Monday to Friday – Not before 7am or after 8pm.
 - ii Public Holidays and weekends – Not before 9am or after 8pm.
 - e Reduction of the required car parking spaces. The existing permit allowed for 8 car spaces the requirement for additional floor area is 12 car spaces resulting in a total of 20 car spaces. A sixteen space car park is proposed approximately 5 metres from the southernmost wall of the art and craft workshop with a loading area between the storage area and the car parking accessway. This is a reduction of 4 car spaces.
 - f Trees have been removed however they are exempt from requiring a planning permit.
- 6 It is submitted the use of the art and craft centre has been unlawfully occurring in the Existing Machinery Shed B as well as the Proposed Art and Craft Workshop C.
- 7 The art manufactured on the land is generally large, bulky sculptures. The owner also restores antique wooden car bodies.
- 8 A Plenishing Hammer and dust extractor are utilized to fabricate the sculptures and artwork. The Plenishing Hammer, Buzz Cutter, Lathe, Belt Sander, Planner and Vacuum and other various machinery are in the existing machinery shed and arts and craft workshop.
- 9 The source of the noise complaint related to the Plenishing Hammer. This machine is used to form curved surfaces on metal. It emits an intermittent noise. It operates only for short bursts of approximately 30 seconds for no more than 10 minutes.
- 10 It is acknowledged that there has been an extension to the art and craft centre to include a larger workshop and a consequential removal of native vegetation without planning approval.

Existing permit

- 11 The permitted use of the land as an art and craft centre was lawfully approved under the existing permit 391/2003/01P dated 30 January 2004.
- 12 The Delegates Report at the time of approval of this permit described the use as follows:

The applicants are practising artists who will be displaying approximately 8 to 10 pieces of work per year and the nature of work that will be displayed is Fine Art.



The art and craft centre proposes to utilise an existing large shed on the site. The owners and occupiers of the subject land are artists and will manufacture a limited number of pieces a year to be displayed and sold in the existing large shed. The shed was erected when the subject land was used as an orchard over 50 years ago and provides for a[n] unique location to conduct such a use.

- 13 The land is located within the Rural Conservation Zone Schedule 3 (RCZ3) under the Nillumbik Planning Scheme. Use of the land for an art and craft centre within the RCZ3 is a section 2 permit required use.
- 14 The use of the land for the creation of art work has evolved over a period of at least 17 years from the granting of the original permit. With this evolution there has been increased amenity impacts with issues having arisen between the owners of the subject land and nearby neighbours.
- 15 It is noted several nearby residents have by way of statements and affidavits supported the operation of the art and craft centre and proposed amendments.

Prohibited uses

- 16 Art and craft centre is defined within the planning scheme at clause 73.03 as:

Land used to manufacture, display, and sell, works of art or craft, such as handicrafts, paintings, and sculptures.
- 17 Whilst the use of an art and craft centre is not listed within the table of uses under the RCZ3 it falls within section 2 as a permit required innominate use.
- 18 The existing permit allows for this use which has been carried out on the subject land since the approval of the existing permit in 2004 which is 17 years.
- 19 Whilst the applicants have called into question the use of the art and craft centre as being an ‘education centre’ which is prohibited within the RCZ3 there has been no declaration sought with regard to this allegation.
- 20 It is understood that the art and craft centre on occasions has had students from the high school attend workshops carried out in the art and craft centre. The art and craft centre also promotes a learning and teaching space. Given that this use has been occurring for the past 17 years and has not been called into question suggests to me that the learning and teaching aspect has existing use rights as well as being ancillary to the overall use of the art and craft centre for the creation of works of art in the form of large sculptures.
- 21 The second issued raise by the applicants is that ‘panel beating’ and ‘motor repairs’ are being undertaken on the land. Such uses being prohibited under the RCZ3. Both these terms are defined within clause 73.03:



Motor repairs – Land used to repair or service motor vehicles and includes the fitting of accessories.

Panel beating – Land used to repair or replace damaged motor vehicle bodies and panels and carry out any associated mechanical work or spray painting.

- 22 The respondent as part of his art work restores the bodies of vintage cars. The material used in the restoration work is timber. The vehicles do not have motors and no mechanical work is undertaken in relation to the vehicles on the land.
- 23 The craft of restoring the bodies of vintage cars in my view does not fall within either the definition of ‘motor repairs’ or ‘panel beating’. Two vintage cars in the process of restoration were observed on my site inspection. It is noted that the landowner and artist is considered to be a highly skilled restorer of wooden car bodies and some of the artist’s work has been displayed at the National Gallery.
- 24 The Council has considered it necessary to place a condition on the amended permit to read:
22. No mechanically functional motor vehicle must be serviced, or vehicles and their parts must not be modified to become mechanically functional for financial gain on the premises, to the satisfaction of the Responsible Authority.
- 25 As I do not consider what is occurring on the land falls within either ‘motor repairs’ or ‘panel beating’ I do not consider that this condition is warranted. I will therefore delete it.

Buildings and works

- 26 The proposal includes the retrospective approval of what is described as a collection of sheds and workshop constructed on the land.
- 27 An existing shed ‘A’ was approved to be used as the art and craft centre in the original permit. The endorsed plans of this permit also show an existing Shed to the south and an area of concrete extending to the east. Over a period, this existing shed has been increased in area and extended over the concrete area. The overall appearance of the Shed could be described as ‘rustic’. Materials used to construct this expanded shed are corrugated iron and timber. Gaps are evident between the walls and the roof. Doors open to the west from the existing shed and the extended section towards Eucalyptus Road. With a door opening to the east.
- 28 The various pieces of equipment used in the workshop are located generally within the existing shed and the extended part of this shed towards the south. This includes the Planishing Hammer. There is a section walled off internally indicated as a studio and an area to the east which appears to be used as a garage for the dwelling and not part of the workshop, although these areas are all interconnected.



- 29 Given the slope of the land from the south eastern corner downwards to Nyora Road the buildings at 4.1 metres in height do not dominate the landscape and are considerably lower than the applicants' dwelling to the east.
- 30 Whilst the applicants have raised issues of the uses they have not raised any issues about the look of the buildings which are located a considerable distance from their dwelling. The buildings are additions to an existing building. Due to the slope of the land the buildings are low styled and appear to nestle into the slope reducing any visual impact. It is not considered that the buildings are inappropriate within the RCZ3 'to ensure land use changes do not have an adverse impact on the landscape or strategic environmental values of the Land.'. The buildings however raise an issue in relation to their construction with gaps evident in their external walls allowing for the sound of the mechanical equipment used within the buildings to escape. This issue if further discussed below.

Storage

- 31 An external area to the east of the sheds is to be used for storage, as well as an area for loading. The storage area is a maximum of 100m² and is proposed to be screened. The Council has proposed conditions requiring the amended plans show the storage area and the requirement of additional screening in the form of landscaping.
6. Unless with the prior written consent of the Responsible Authority, within 90 days of plans being endorsed as per Condition 1 of this permit, the screened outdoor storage area must be constructed and completed, to the satisfaction of the Responsible Authority.
 7. Within 30 days of the screened outdoor storage area being completed, any materials located outside of any buildings related to the art and craft use hereby permitted, must be relocated to the storage within the workshop, outbuilding or screened storage area, to the satisfaction of the Responsible Authority.
- 32 I consider these conditions to be appropriate given the size and types of materials used in the art and craft centre. Such conditions will ensure that the outdoor storage area is confined and screened from neighbouring properties and the public realm.

Amenity impacts

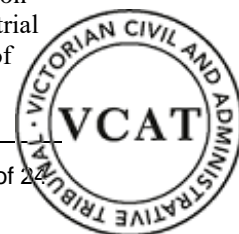
- 33 Noise from the creation of some of the works of art undertaken on the land is inevitable given the various pieces of machinery used to create and modify the art pieces and sculptures.
- 34 An existing dwelling is located close to the northern boundary on the subject land. The nearest dwellings are located opposite the land to the north across Nyora Road and are within an area zoned residential.



Dwellings opposite the land to the west across Eucalyptus Road are within a Low Density Residential Zone.

- 35 The applicants' property abuts the eastern boundary and is located within the RCZ3 as is the subject land. The applicants' dwelling is approximately 89.13 metres away from the workshop.
- 36 The Council advised the land 'slopes upwards from Nyora Road and Eucalyptus Road to the south eastern corner, with an overall rise of 15m across the 91m depth of the site'.
- 37 The policy at clause 13.05-1S seeks to assist the control of noise effects on sensitive land uses and to ensure community amenity and human health is not adversely impacted by noise emissions.
- 38 Following an inspection of the land by Council Officers a request was made prior to determining the amendment for an environmental noise assessment to be provided.
- 39 An Environmental Noise Assessment on behalf of the owners of the land was prepared and submitted by *JTA Health, Safety & Noise Specialists* dated November 2020. The conclusions reached was that 'all fixed plant and equipment with the workshop roller doors open are predicted to be complaint with SEPP N-1 Noise Limits during the day-time period with the exception of the Plenishing Hammer'. The assessment considered that if the workshop roller doors were closed during the operation of the Plenishing Hammer there would be compliance.
- 40 The characteristics of the noise of the Plenishing Hammer are impulsive and intermittent with a sound power level measured at 112dB(A).
- 41 Mr Scott Henderson of Audiometric & Acoustic Services provided expert evidence on behalf of the respondent based on the expert report provided by Audiometric & Acoustic Services dated 22 November 2021.
- 42 Mr Henderson noted that changes have occurred with regard to the Environment Protection Authority requirements in relation to noise. Mr Henderson's report dated 22 November 2021 provides an updated assessment against the updated Environmental Regulations as of July 2021² (the Noise Protocol) which supersede SEPP N-1 requirements.
- 43 Mr Henderson referred to Table 5 Definitions of Operating Times for Trade, Commerce, and Industry:

² The Environmental Protection Regulations (State of Victoria, 2021) Part 5.3 – Noise, requires the prediction, measurement, assessment and analysis to be in accordance with the EPA Publication 1826.4: 'Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues' otherwise known as the Noise Protocol (State of Victoria, 2021) to determine if a noise is unreasonable or aggravated.



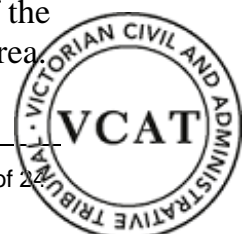
Period	Applicable Times
Day	Monday to Saturday (except public holidays), from 7 am to 6 pm
Evening	Monday to Saturday, from 6 pm. to 10 pm; and Sunday and public holidays, from 7 am to 10 pm;
Night	10 pm to 7 am the following day.

- 44 Due to COVID restrictions Mr Henderson was not able to access the workshop to carry out tests however he has relied in his report on unmanned noise logging and simulated scenarios of mechanical plant.
- 45 An unmanned noise logger was located at the common property boundary with the applicants' property. The requirement by both SEPP N-1 and the Noise Protocol require compliance at a noise sensitive area and not necessarily at the property boundary. The definition of 'noise sensitive area' is;

For the purposes of assessment of noise levels in relation to the 'Noise Protocol', a Noise Sensitive Area is defined as:

- (a) that part of the land within the boundary of a parcel of land that is—
 - (i) within 10 metres of the outside of the external walls of any of the following buildings—
 - (A) a dwelling (including a residential care facility but not including a caretaker's house);

- 46 Mr Henderson used the EPA's Noise Protocol Part 1 methodology which applies to Urban and Rural but applied the urban area methodology which shows noise limits of 50dB(a) for the day time period and 44dB(A) for the evening period. During cross-examination Mr Henderson indicated the noise limit for the day time period of 45dB(a) and for the evening period 38dB(A).
- 47 Mr Henderson concluded that background noise levels were for the day time period 42dB(A) and for the evening period 40dB(A).
- 48 It was submitted that since the JTA report was provided to the Council further mitigation measures have been undertaken including nylon bushings and rubber matting that it is understood have further reduced the noise of the Plenishing Hammer.
- 49 During my site inspection, I stood at the common boundary with the subject land, inside the applicants' property. This boundary is close to the edge of the applicants' dwelling. I was able to faintly hear the Plenishing Hammer in operation. This may be due to the mitigation measures undertaken following the assessment by JTA. In my view, the extent of the noise I heard I did not consider to be detrimental to the amenity of the area.



50 I however accept that there should be further testing carried out.

51 Mr Henderson considered that on his assessment ‘compliance with the Noise Protocol ‘day’ and ‘evening’ limits is evident at #13 Nyora Road, Eltham.’ However, he had not confirmed compliance at any other noise sensitive areas which he considered could be on Eucalyptus Road and Pitt Street. Based on superficial calculations he considered compliance likely to be achieved at all noise sensitive areas providing all roller doors are closed during the operation of the Plenishing Hammer.

52 Mr Henderson made the following recommendations:

- Group art workshops that would make use of the Plenishing Hammer and other mechanical plant of significance are not to be use during the Noise Protocol ‘evening’ or ‘night’ period. This includes the compressor, buzzer, thickness and dust extractor, Plenishing Hammer, Saw and dust extraction belt sander and lathe.

•

Permitted Use	Day	Time	EPA Period
Workshop for Artist Use or Group Art Workshops that would make use of mechanical plant of significance.	Monday to Saturday	7 am – 6 pm	Day
All other activities not using mechanical plant of significance.	Any	Any	Day, Evening and Night

- All doors including roller doors should be kept closed during operation of the Plenishing Hammer. It is suggested when possible, the doors and windows also be closed when other mechanical plant of significance is in use.
- It is recommended any significant gaps or missing sections in the façade of the building are covered with materials similar to the existing materials i.e., corrugated metal sheet. If required a flexible sealant or non-setting mastic can be used to seal any smaller gaps of concern. As a general rule it would be advisable to seal any gaps that light shines through.

53 Mr Henderson also indicated that if compliance occurred during the EPA ‘day period’ there was no requirement on the restrictions of ‘group art workshops’ or duration of ‘group art workshops’ that can occur throughout the day. Therefore, condition 15 is unwarranted.

15. Unless with the prior written consent from the Responsible Authority, no more than one workshop not exceeding 8 patrons can be undertaken on any day, unless with the prior written consent of the Responsible Authority.

54 I agree with Mr Henderson on the measures to be undertaken. I will therefore reword several conditions imposed by the Council to take account of Mr Henderson’s recommendations.

Car parking

55 The proposed car parking area is in the same general area as the previously approved car park which provided for 8 car spaces. It is now proposed to add an additional 8 car spaces with a setback from the southern wall of the workshop of 5 metres.

56 Under the provision of the planning scheme 20 car spaces are required for the increased floor area. A reduction of 4 car spaces is sought under the amendment.

57 The area of the car park is located on a cleared section of the land and is accessible from the existing driveway.

58 It is proposed that there be one ‘artist in residence’ and up to 8 patrons attending workshops at any one time.

59 Council considers ‘the permitted operational hours, number of artists, staff (who currently live on the land), patrons who can attend one workshop either Saturday or Sunday or by appointment only’, remains low scale and unlikely to generate excessive demand for onsite car spaces. The distance from dwellings is more than 50 metres with intervening buildings, roads, or the external storage area. Landscaping is proposed around the storage and car park areas providing further screening.

60 The proposed car parking is appropriate and will not result in any detrimental impact on the surrounding area.

Hours of Operation

61 The request includes amendment to condition 5 regarding operating hours. The current permitted operating hours are Saturday and Sunday (or by Appointment Only) between 11am to 5pm.

62 The proposed amendment to the operating hours is Monday to Friday not before 7am or after 8pm and public holidays and weekends not before 9am or after 8pm.

63 The Council has also included conditions to reference the average number of patrons to anyone workshop held at the centre being eight and the



average number of 'artist in residence' at the centre at any one time being one.

64 The following conditions will be imposed:

Artist in Residence

Unless with the prior written consent from the Responsible Authority, the number of 'artist in residence' using the land hereby permitted at any one time must not exceed 1 to the satisfaction of the Responsible Authority.

Patrons

Unless with the prior written consent from the Responsible Authority, the number of patrons at any one workshop hereby permitted at any one time must not exceed 8, to the satisfaction of the Responsible Authority.

Hours of Operation

The workshops conducted at the premises and displaying and selling of art for the arts and crafts centre use hereby permitted may only operate between the following hours, unless with the prior written consent of the Responsible Authority:

- i. Saturday and Sunday 9:00am to 5:00pm
- ii. Or by Appointment only.

The use of the Planishing Hammer, other machinery and other tools and equipment used to fabricate and manufacture art and sculptures may only operate between the following hours, unless with the prior written consent of the Responsible Authority:

Monday to Friday - 7:00am to 6:00pm

Public holidays and weekends - 9:00am to 6:00pm.

65 Taking account of the extract provided by Mr Henderson from the Noise Protocol: Table 5 Definitions of Operating Times for Trade, Commerce, and Industry I have slightly amended the times referred to by the Council.

66 The Council considered the workshop hours should commence on a Saturday or Sunday at 11:00am. Taking account of the evidence of Mr Henderson, I consider commencement could be 9:00am.

67 Regarding the operation of the Planishing hammer and other machinery the request was for weekdays from 7:00am to 8:00pm and public holidays and weekends from 9:00am to 8:00pm. In this respect and following the evidence of Mr Henderson, I have changed the times to 6:00pm, falling within the day time period.

Trees

68 The land is highly modified with some remnant scattered vegetation with cleared areas void of vegetation and some grassed areas. Trees have been removed in the past.



- 69 Under the Environmental Significance Overlay Schedule 1 (ESO1) at clause 42.01-2 a permit is required for ‘the removal, destruction, or lopping of any vegetation (planted vegetation is exempted)’ and also for ‘excavations within 5 metres of any native vegetation or any excavations greater than 500mm in depth’.
- 70 Under the Bushfire Management Overlay (BMO) at clause 52.12-1 exemptions apply for the removal of some vegetation including tree T1, clause 52.12-2 for trees identified as T6, T7, and T8, and under clause 52.17 Schedule 1 in relation to the removal of native vegetation, tree T 25.
- 71 The proposed accessway and part of the car park is located within 5 metres of trees T9, T10 and T11. The Arborist Report prepared by Mr Nick Withers dated October 2019 concluded that the ‘formalisation/final construction of the proposed car parking area will not impact any retained trees’. Mr Withers recommends that trees T5, T6, T7, T9 and T11 be protected throughout any works being undertaken.
- 72 Council has imposed conditions within the amended permit that address the recommendations of Mr Withers.
- 73 Although the land is subject to the BMO, no permits are required under this overlay.

Conclusion

- 74 The decision of the Council is varied. Permit 391/2003/01P is amended. The amended permit is contained in full at appendix A.

Jeanette G Rickards
Senior Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	391/2003/01P
LAND:	1 Nyora Road, Eltham

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use of the land for an art and craft centre, buildings and works for an art and craft centre and associated paving and reduction in car parking.

CONDITIONS:

Amended Plans

- 1 Within 90 days of the date of this amended permit and before the development hereby permitted and use of the Plenishing hammer commences and any other machinery or equipment which emits a noise or frequency which is audible at any nearby noise sensitive areas, 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 15 October 2020 and 13 October 2020 and prepared by Michael Scalzo but modified to show:
 - (a) Amended Site and Floor Plan showing the location and layout of the Plenishing hammer machine and any other machinery or equipment which emits a noise or frequency which is audible at any nearby noise sensitive areas to be located within an acoustic structure or treatment within the workshop building to comply with EPA Publication 1826.4 'Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues' Part I (Noise Protocol) (State of Victoria, 2021) so that the noise is inaudible at nearby noise sensitive areas.
 - (b) Amended Site Plan showing:
 - i Areas designated for the art and craft centre use, including storage areas for materials, the areas used for the fabrication and manufacture of art, workshops and the selling and displaying of art.
 - ii Tree numbering in accordance with the Arborist Report prepared by Nick Withers and dated October 2019.



- iii Exact location and measurements of the Tree Protection Zone and associated tree protection fencing for all trees numbered T4 to T24 shown on the plans to be retained.
 - iv Trees numbered 1,6, 7, 8 and 25 to be removed.
 - v Details of the driveway surface and carpark surface.
 - vi Location of the holding tank, or tanks, with a minimum storage capacity of 2000 litres each, which captures stormwater from the roof of the existing outbuilding.
- (c) Schedule of external colour materials and finishes for the workshop and external screened outdoor storage area as detailed on an amended Elevation Plan.
- (d) Landscape Plan in accordance with Condition 12.
- 2 The development and use of the land for an art and craft centre and associated paving as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Mechanical Plant of Significance

- 3 Prior to the commencement of the use of the Plenishing hammer machine and any other machinery or equipment which emits a noise or frequency which is audible at any nearby noise sensitive areas, the acoustic treatment for the Plenishing hammer and any other machinery or equipment which emits a noise or frequency which is audible at any nearby noise sensitive areas must be fully constructed, designed and verified by an accredited acoustic engineer who must test the levels to demonstrate that the amenity of the surrounding area is protected, to the satisfaction of the Responsible Authority.
- 4 Prior to the commencement of the use of the Plenishing hammer machine and any other machinery or equipment which emits a noise or frequency which is audible at any nearby noise sensitive areas, the acoustic treatment and measures for the Plenishing hammer and any other machinery or equipment which emits a noise or frequency which is audible at any nearby noise sensitive areas, must be inspected and assessed by Council Officers who must be satisfied that the amenity of the surrounding area is protected, to the satisfaction of the Responsible Authority.
- 5 Unless with the prior written consent of the Responsible Authority, the acoustic treatment and measures for the Plenishing hammer and any other machinery or equipment which emits a noise or frequency which is audible at any nearby noise sensitive areas, as shown on the endorsed plans, must be carried out, completed, and thereafter maintained to the satisfaction of the Responsible Authority.



Outdoor Storage

- 6 Unless with the prior written consent of the Responsible Authority, within 90 days of plans being endorsed as per Condition 1 of this permit, the screened outdoor storage area must be constructed and completed, to the satisfaction of the Responsible Authority.
- 7 Within 30 days of the screened outdoor storage area being completed, any materials located outside of any buildings related to the art and craft use hereby permitted, must be relocated to the storage within the workshop, outbuilding or screened storage area, to the satisfaction of the Responsible Authority.
- 8 Within 30 days of the date of this permit, any and all building materials within the Tree Protection Zone of any trees must be removed and located within the defined use areas, to the satisfaction of the Responsible Authority.
- 9 All materials associated with the approved use must be contained within the use area as defined on the approved plan, within 60 days of the permit issue date and must thereafter be contained within the use area, to the satisfaction of the Responsible Authority.
- 10 Goods associated with the use of the land must not be stored or left exposed outside any buildings to be visible from any public road or thoroughfare to the satisfaction of the Responsible Authority.
- 11 Provision shall be made for the appropriate storage and disposal of garbage to the satisfaction of the Responsible Authority. All garbage storage areas must be screened from public view.

Landscaping

- 12 Within 90 days of the date of this amended permit and before the development hereby permitted and use of the plenishing Hammer commences and any other machinery or equipment which emits a noise or frequency which is audible at the property boundaries, 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:
 - i A survey of all existing vegetation and natural features.
 - ii The area or areas set aside for landscaping.
 - iii A schedule of all proposed trees, shrubs/small trees, and ground cover. This schedule shall include a mixture of exotic plants and plants selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing.



- iv The location of each species to be planted and the location of all areas to be covered by grass, lawn, or other surface material.
 - v Location, quantity, and plant species of additional plant screening to be provided to the east and south of the storage area located east of the carpark.
 - vi Paving, retaining walls, fence design details and other landscape works including areas of cut and fill.
 - vii Appropriate irrigation systems.
- 13 Unless with the prior written consent of the Responsible Authority, within 30 days of the completion of the screened storage area, the landscaping works shown on the endorsed plans must be carried out, completed, and thereafter maintained to the satisfaction of the Responsible Authority.

Artist in Residence

- 14 Unless with the prior written consent from the Responsible Authority, the number of 'artist in residence' using the land hereby permitted at any one time must not exceed 1 to the satisfaction of the Responsible Authority.

Patrons

- 15 Unless with the prior written consent from the Responsible Authority, the number of patrons at any one workshop hereby permitted at any one time must not exceed 8, to the satisfaction of the Responsible Authority.

Hours of Operation

- 16 The workshops conducted at the premises and displaying and selling of art for the arts and crafts centre use hereby permitted may only operate between the following hours, unless with the prior written consent of the Responsible Authority:

- i Saturday and Sunday 9:00am to 5:00pm
- ii Or by Appointment only.

- 17 The use of the Planishing Hammer, other machinery and other tools and equipment used to fabricate and manufacture art and sculptures may only operate between the following hours, unless with the prior written consent of the Responsible Authority:

Monday to Friday: 7:00am to 6:00pm

Public holidays and weekends: 9:00am to 6:00pm

Loading and unloading

- 18 Unless with the prior written consent of the Responsible Authority, deliveries to and from the site (including waste collection) and the collection of any materials and goods related to the art and craft centre use



hereby permitted must only take place on weekdays between the hours of 9am to 5pm.

Amenity

- 19 The use hereby permitted must, at all times, meet the requirements of the State Environment Protection Publication 1826.4 'Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues' Part I (Noise Protocol) (State of Victoria 2021).
- 20 The development and use hereby permitted must be managed so that the amenity of the area is not detrimentally affected, through the:
 - (a) Transport of materials, good or commodities to or from the land and deliveries to and from the site (including waste collection) related to the art and craft centre use hereby permitted must only take place on weekdays between the hours of 9am to 5pm;
 - (b) Appearance of any building, works or materials;
 - (c) Emissions of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - (d) Presence of vermin.
- 21 The amenity of the locality must not be adversely affected by the activity on the site, the appearance of any buildings, works or materials, emissions from the premises or in any other way, all to the satisfaction of the Responsible Authority.

Tree Protection

- 22 Prior to the construction of the car park and external storage area commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the trees marked on the endorsed plans as being retained must have a Tree Protection Zone to the satisfaction of the Responsible Authority. The fencing associated with this Tree Protection Zone must meet the following requirements:
 - (a) Extent

The tree protection fencing is to be provided to the extent of the identified Tree Protection Zone. If works are shown on any endorsed plan of this permit within the confines of the calculated Tree Protection Zone, then the Tree Protection Fencing must be taken in to only the minimum amount necessary to allow the works to be completed.
 - (b) Fencing

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



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

(c) Signage

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

(d) Irrigation

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

(e) Provision of Services

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

(f) Access to Tree Protection Zone

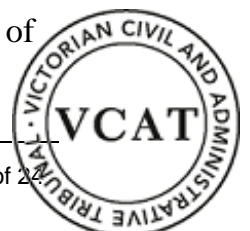
Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

- 23 Prior to the commencement of the approved works including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the erected tree protection fences must be inspected and approved by the Responsible Authority.

Once erected to the required standard, the tree protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority.

- 24 The following actions must not be undertaken in any tree protection zone as identified in this permit, to the satisfaction of the Responsible Authority:

- (a) Materials or equipment stored within the zone;
- (b) Servicing and refuelling of equipment and vehicles;
- (c) Storage of fuel, oil dumps or chemicals;
- (d) Attachment of any device to any tree (including temporary service wires, nails, screws or any other fixing device);
- (e) Open cut trenching or excavation works (whether or not for laying of services);



- (f) Changes to the soil grade level;
- (g) Temporary buildings and works; and
- (h) Unauthorised entry by any person, vehicle or machinery.

Car parking

- 25 Except with the prior written consent of the Responsible Authority, within 60 days of the plans being endorsed under Condition 1 of this amended permit, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
- (a) Constructed;
 - (b) Properly formed to such levels that they can be used in accordance with the plans;
 - (c) Surfaced with an all-weather sealcoat or treated to the satisfaction of the Responsible Authority to prevent dust and gravel being emitted from the site;
 - (d) Drained and maintained;
 - (e) Line marked to indicate each car space and all access lanes;
 - (f) Clearly marked to show the direction of traffic along access lanes and driveways;
- to the satisfaction of the Responsible Authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times, to the satisfaction of the Responsible Authority.
- 26 A minimum of 16 car spaces must be provided on the land for the use hereby permitted and the defined car park area must only be used for car parking and not used to store materials, to the satisfaction of the Responsible Authority.

Drainage

- 27 No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property during the construction of the development and car parking hereby approved.
- In this regard, pollution or litter traps must be installed on site prior to the commencement of any works associated with the car parking construction and serviced accordingly, all to the satisfaction of the Responsible Authority.
- 28 The outbuilding hereby approved, 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 for all rainfall events up to, and including, the 5% Annual Exceedance Probability



(AEP) Event. Stormwater from the roof of the outbuilding hereby approved, must be directed to a holding tank, or tanks, with a minimum storage capacity of 2000 litres each. The overflow from the tank, or tanks, must be directed to the Council nominated point of stormwater discharge, via an on-site detention device.

Water in the holding tank may be used for one or more of the following purposes: Toilet flushing; property irrigation, vehicle washing, and any other purpose approved by the Responsible Authority.

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

- 29 Stormwater must not be discharged from the subject land other than by means of an underground pipe drain to the nominated legal stormwater point of discharge. The property does not have a legal stormwater point of discharge, consequently, the applicant must apply for a legal point of discharge.
- 30 Within 120 days of the date of the amended permit, the connection into Council's stormwater network will be outside of the development site and requires the construction of drainage works outside the boundaries of the site. Such drainage works must be designed by a qualified engineer and plans, and computations submitted to the Responsible Authority (Nillumbik Shire) for approval prior to the commencement of the development. Plans must detail underground drains, types and sizes of drainage pits, drainage longitudinal sections, pit schedule etc. for approval. The construction plans and computations are to be prepared in accordance with Nillumbik Shire Council's "Subdivisional Design and Construction Standards" and "Drainage Design Guidelines".
- 31 All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Act 1970. All wastewaters 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.

Expiry of permit

- 32 This permit will expire if one of the following circumstances applies:
 - (a) The development as approved in this amended permit is not completed within 2 years of the date of this permit.
 - (b) The use ceases for more than 2 years.



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

- End of conditions -

