

# Ordinary Meeting of Council

held at Eltham Community and Reception Centre, 801 Main Road,  
Eltham

on Tuesday 27 August 2019 commencing at 7:00pm.

## Minutes

**Carl Cowie**  
**Chief Executive Officer**

Friday 30 August 2019

Distribution: Public

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## Nillumbik Shire Council

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**Nillumbik Shire Council**

**Minutes of the Ordinary Meeting of Nillumbik Shire Council held  
Tuesday 27 August 2019. The meeting commenced at 7:04pm.**

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**Councillors present:**

Cr Karen Egan	Bunjil Ward (Mayor)
Cr Grant Brooker	Blue Lake Ward
Cr John Dumaresq	Edendale Ward
Cr Peter Perkins	Ellis Ward
Cr Jane Ashton	Sugarloaf Ward
Cr Bruce Ranken	Swipers Gully Ward
Cr Peter Clarke	Wingrove Ward

**Officers in attendance:**

Carl Cowie	Chief Executive Officer
Vince Lombardi	Chief Financial Officer
Hjalmar Philipp	Director Operations and Infrastructure
Blaga Naumoski	Executive Manager Governance and Legal Services
Kelly Reaburn	Acting Executive Manager Communications and Engagement
Rosa Zouzoulas	Executive Manager Planning and Community Safety
Corrienne Nichols	Executive Manager Community Services
Kylie Lethbridge	Executive Manager Economic Development and Tourism
Jeremy Livingston	Executive Manager Business Transformation and Performance
Katia Croce	Governance Lead
Melika Sukunda	Manager Finance
Jonathan McNally	Manager Community Safety and Amenity
Lisa Pittle	Manager Environment
Mehran Khademollah	Manager Building Services
Heath Gillett	Manager Recreation and Leisure
Joseph Emmanuel	Manager Infrastructure
Hannah Burns	Project Officer, Environment
Sally Pickett	HR Senior Lead
Mikael Ooi	Waste Management Coordinator
Lance Clark	Senior Procurement Specialist
Nichole Johnson	Coordinator Strategic Projects

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**1. Welcome by the Mayor**

**2. Reconciliation statement**

The reconciliation statement was read by the Mayor, Cr Karen Egan.

**3. Prayer**

A prayer was read by Josh Boutros of the Vine Baptist Church.

**4. Apologies**

Nil

## 5. Presentations

### Country Fire Authority

Certificates of Recognition will be presented to outgoing CFA captains and other key personnel from fire brigades across Nillumbik.

*The Mayor, Cr Karen Egan made the following address:*

We are very pleased to recognise a number of CFA personnel this evening from the 14 volunteer brigades across Nillumbik.

They are an outgoing Group Officer, Deputy Group Officers, Captains, 1st, 2nd, 3rd, 4th and 5th Lieutenants, Secretaries, Treasurers, Community Safety Coordinators, Health and Safety Coordinators, Communications Officers and a President.

Some members held several roles, so please accept this certificate as acknowledgment for your dedication to all the roles you have partaken in.

In total they have dedicated a staggering total of 898 years of service to the CFA and to keeping our communities safe – what an outstanding achievement.

Each of Nillumbik's volunteer brigades consists of a Brigade Management Team (BMT) with mandatory roles such as those I've just mentioned.

The BMT has responsibility for managing the affairs and activities of the brigade and for efficient service delivery.

Sitting above the brigades are the Groups – Nillumbik's volunteer fire brigades are part of Nillumbik and Whittlesea/Diamond Valley Groups.

The roles of the Group is to support the brigades to be prepared to respond to incidences and facilitate that response.

In addition to the operational brigades (and made up primarily from members of Nillumbik Brigades) is District 14 Headquarters East Brigade.

Based at the Kangaroo Ground Incident Control Centre, they provide incident management support as required.

I'd like to thank and acknowledge Commander David Maxwell from District 14, who is in attendance tonight in support of the CFA personnel receiving certificates.

Before we hand out certificates to acknowledge the tremendous work of these CFA personnel – I'll like to share some quirky, fun facts with you that are unique to Nillumbik.

- Sue Sheldrick was a member of Research and was the first female Captain in CFA
- Kangaroo Ground is the oldest Rural Fire Brigade in the CFA – formed on 6 February 1892, it celebrated its 125th anniversary in 2017.
- The 14 Nillumbik volunteer brigades have a membership of 861 volunteers and responded in excess of 1242 fire calls last financial year.

The majority of recipients continue to be members. They have just finished their terms as holding this position in the Brigade Management Team or Group.

On behalf of Council, it now gives me great pleasure to formally recognise and acknowledge the outstanding contributions that these personnel have made to their brigades and local communities, as well as Nillumbik and Victoria more broadly.

Our Councillors have personally worked closely with many of the brigades and personnel and of course we have our own 'firey' Cr Peter Perkins who was Captain of the Diamond Creek Brigade for more than 10 years.

*Cr Jane Ashton presented a Certificate of Recognition to the following recipients:*

Peter Rae	Captain	Christmas Hills
Jeffrey Walters	Community Safety Co-ordinator	Christmas Hills
Timothy Coop	Treasurer	North Warrandyte
Sean Warren	1st Lieutenant	St Andrews
Denise Bryant	Health and Safety Coordinator	St Andrews

*Cr Grant Brooker presented a Certificate of Recognition to the following recipients:*

Stewart Scale	4th Lieutenant	Plenty
Graeme Cornell	Communications Officer	Plenty
Ken Collins	1st Lieutenant	Yarrambat
Michael Hall	2nd Lieutenant	Yarrambat
Stephanie Collins	Community Safety Coordinator	Yarrambat

*Cr Peter Clark presented a Certificate of Recognition to the following recipient:*

Gregory Heaven	3rd Lieutenant	Eltham
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*Cr Peter Perkins presented a Certificate of Recognition to the following recipients:*

Joy Pitts	Group Secretary/Treasurer	Whittlesea Diamond Valley Group
Noel Speakman	2nd Lieutenant	District 14 Headquarters East
Andrew Rouch	Treasurer	District 14 Headquarters East

*Cr Bruce Ranken presented a Certificate of Recognition to the following recipients:*

Jim Dusting	Group Treasurer	Nillumbik Group
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*Cr Karen Egan presented certificates of Recognition to the following recipients:*

Peter Murphy	4 <sup>th</sup> Lieutenant	Arthurs Creek
Matt Knight	3 <sup>rd</sup> Lieutenant	Hurstbridge
Lawrence Jenkin	5 <sup>th</sup> Lieutenant	Panton Hill
Martin Burger	Health and Safety Coordinator	Panton Hill
Michael Jansz	President	Panton Hill
Alec Marsden	Secretary	Wattle Glen
John Griffith	Treasurer	Wattle Glen

*Cr Karen Egan acknowledged the personnel who were unable to attend:*

Stephen Cochrane	Secretary	Research
Karen Cochrane	Treasurer	Research
Robert Reid-Smith	Community Safety Co-ordinator	Research
Jocelyn Barker	5th Lieutenant	Research
Stephen Gaunt	Captain	Wattle Glen
Olly Phillips	Captain	Wattle Glen
Glen Jones	3rd Lieutenant	Wattle Glen
Andrew Phillips	Communications Officer	Wattle Glen
David Cooper	Group Officer	Nillumbik Group
Dianne Simmons	2nd Deputy Group Officer	Nillumbik Group
Laurence Steel	3rd Deputy Group Officer	Nillumbik Group
Paul Dixon	Group Communications Officer	Nillumbik Group
Quentin Matiske	1st Lieutenant	Christmas Hills
Gareth Millington	3rd Lieutenant	Christmas Hills
Michael Skewes	1st Lieutenant	Christmas Hills
Rebecca Wyllie	Secretary	Eltham
Bernard Daly	Community Safety Officer	Hustbridge
Peter Grant	Captain	Kangaroo Ground
Gill Poulton	Treasurer	Kangaroo Ground
Michael Reed	3rd Lieutenant	Kangaroo Ground
Michael Sanderson	5th Lieutenant	Kangaroo Ground
Craig Miller	1st Lieutenant	North Warrandyte
Eleanor Hill	Communications Officer	North Warrandyte
Christopher Droge	3rd Lieutenant	Diamond Creek
Howard Jeffery- Wright	3rd Lieutenant	DiamondCreek
Earle Webber	2nd Lieutenant	Plenty
Ashley Bray	2nd Lieutenant	Plenty
Yvonne Dinnage	Secretary	Yarrambat
Andrew Hoogenraad	4th Deputy Group Officer	Whittlesea Diamond Valley Group
Daniel Bird	Group Communications Officer	Whittlesea Diamond Valley Group
Geoffrey Schmidt	5th Deputy Group Officer	Whittlesea Diamond Valley Group
Emily Whiltshire	3rd Lieutenant	District 14 Headquarters East

Thank you all for your incredible years of dedication and for the role you have played and will continue to play in in keeping our community safe in Nillumbik. I thank you all.

**Hannah Bird** (Sugarloaf Ward) received \$150 as a contribution for being selected to represent Victoria at the Equestrian Interschool National Championships in Sydney.

Hannah thanked Council.

**Bonnie Brown** (Edendale Ward) received \$150 as a contribution for being selected to represent Victoria at the School Sports U12 Netball Team in Canberra.

Bonnie thanked Council.

**Caitlin Seini** (Bunjil Ward) received \$200 as a contribution for being selected to represent Australia at the International Mounted Games in the USA.

**Ryan Seini** (Bunjil Ward) received \$200 as a contribution for being selected to represent Australia at the International Mounted Games World Championships in Wales.

Ryan thanked Council on behalf of himself and Caitlin.

Nillumbik Shire Council wishes them every success with their future sporting pursuits.

**6. Confirmation of minutes**

Confirmation of minutes of the Ordinary Council Meeting held on Tuesday 30 July 2019.

**Council Resolution**

**MOVED: Cr Bruce Ranken**

**SECONDED: Cr Peter Clarke**

**That** the minutes of the Ordinary Council Meeting held on Tuesday 30 July 2019 be confirmed.

**CARRIED**

**7. Disclosure of conflicts of interest**

Nil

**8. Petitions**

Nil

**9. Questions from the gallery**

**Sue Ormerod** asked Council:

1. In reference to the proposed upgrade to the Fitzsimons Lane/Main Road roundabout: Currently there can be dangerously competitive driver behaviour on the short stretch west of the roundabout travelling to Eltham town when merging from two lanes to one to cross the bridge over Diamond Creek.

How can this be safely managed if the same stretch is widened so that three lanes need to merge to one?

**Sue Ormerod** on behalf of Friends of Eltham Lower Park asked Council:

2. In reference to the proposed upgrade to the Fitzsimons Lane/Main Road roundabout which seems likely to have additional road laneways:

Can Council assure the users of Eltham Lower Park that there will be safe vehicle entrance and exit from Eltham Lower Park, especially as when exiting left towards Main Road, Montmorency and Bolton Street it will mean merging right across

multiple lanes, and when exiting right crossing a number of lanes to drive towards Eltham Town?

**Greg Johnson** on behalf of Friends of Nillumbik asked Council:

1. How will Council facilitate necessary improvements to traffic flow through the Fitzsimons Lane/Main Rd Eltham intersection, while also protecting the amenity of Eltham's Gateway entrance?

**Response to questions from Sue Ormerod and Greg Johnson**

The proposed upgrade to the Fitzsimons Lane/Main Road roundabout is a State project.

Council understands the project is yet to undergo detailed design.

As resolved by Council at the August Future Nillumbik Committee meeting, the Mayor has written to MRPV requesting additional information about the project. This may help us to respond to these type of questions as the project progresses.

**Carlota Quinlan** asked Council:

The Community Consultation period for the Fitzsimons Lane project ran from 3 September to 28 October 2018. That is nearly a year ago. The MRPV update April 2019 states that during that time "We also met with local Councils and businesses to gather feedback on our design".

1. Did any Nillumbik Councillor(s), as elected community representatives met with MRPV to give feedback? If not, why not?
2. Which businesses met with MRPV?

**Response**

Councillors have not met with MRPV with regards to this project, because they were not made aware that there was an opportunity to meet.

Cr Clarke however did make email contact but no further information was provided.

Subsequently, a tentative briefing with Councillors has been scheduled for 3 September.

Similarly, Council officers are not aware which businesses, if any, met with MRPV. This is a State project and the consultation was managed by MRPV.

**Sue Dyet** asked Council:

1. Eltham Community Action Group, apparently like Nillumbik Councillors, had not been made aware of the magnitude of the Fitzsimons Lane road project on Eltham until recently. We had not been informed by MRPV, who had apparently asked Council Officers about appropriate stakeholders, despite being involved with the Eltham Gateway since 1996. However MRPV told us that, prior to the consultation period last year, the three Councils involved had been encouraged to put information about the project on their websites/Facebook pages to alert their communities of the opportunity to provide input.

Did Nillumbik?

**Response**

No we did not alert communities. Council are looking to formalise its engagement with MRPV through an initial briefing as resolved at the Future Nillumbik Committee meeting on 13 August 2019.

2. At the July Council meeting a motion was passed 'Design an appropriate consultation framework to inform councillors and the community on barriers, challenges, and opportunities for the future of Edendale Community Environment Farm.' What progress, including timeframes and dates, has been made on this motion?

**Response**

Since the Ordinary Council Meeting on 30 July 2019, officers have been working on an engagement plan that will respond to that council resolution.

When the engagement plan is complete, it will be presented for adoption at an Ordinary Council Meeting.

**Henry Haszler** asked Council:

1. Would it not be more respectful of all councillors to each other and to the members of the public present to put away their phones and concentrate on the living, breathing human beings in the Chamber?

**Response**

The Meeting Procedure Local Law 2017 does not prohibit the use of mobile phones by Councillors during the meeting.

2. I remind councillors that MRPV recently required Council staff to sign confidentiality agreements about discussions concerning the proposed Fitzsimons Lane roadworks and that Council staff then rejected several offers by MRPV to brief councillors. Whilst such arrangements are probably convenient to both sets of bureaucrats, I ask do councillors believe this kind of secrecy is conducive to good governance which must surely be based on policy transparency and community consultation.

**Response**

I cannot comment on the thought process and decision of the MRPV.

**Response to questions from Will Wyatt and Ben Ramcharan**

Clause 6.9 of Council's Meeting Procedure Local Law states:

A question will only be read to the meeting if the Chairperson and/or Chief Executive Officer has determined that the question:

- e) does not relate to a matter which the Council has discussed in camera or proposes to discuss after closing the meeting to members of the public in accordance with section 89(2) of the *Local Government Act 1989*.

The Chief Executive Officer has an obligation to adhere to the Meeting Procedure Local Law and has done so in this case. The matter is designated confidential in accordance with the *Local Government Act 1989*, and therefore the decision to not read out the questions is in line with the Meeting Procedure Local Law.

As you are aware, this matter is being discussed by Council this evening and following Council Resolution on the matter the CEO will respond directly to each of you.

10. Reports of Advisory Committees

AC.008/19 Advisory Committee Report

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**Distribution:** Public

**Manager:** Blaga Naumoski, Executive Manager Governance and Legal Services

**Author:** Alena Spry, Governance Officer

**Summary**

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.

**Council Resolution**

**MOVED** Cr Jane Ashton

**SECONDED:** Cr Peter Clarke

**That** Council notes the minutes of the following meetings:

- Arts Advisory Committee held on 17 June 2019; and
- Environment and Sustainability Advisory Committee held on 10 July 2019.

**CARRIED**

**11. Reports of Special Committees**

Nil

12. Officers' reports

OCM.116/19 Shire Plan 2050

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**Distribution: Public**

**Manager: Jeremy Livingston, Acting Director Community and Planning**

**Author: Yasmin Green, Coordinator Strategy and Policy  
Nichole Johnson, Coordinator Strategic Projects**

**Summary**

The purpose of this report is to formalise the approach and timelines for the Shire Plan 2050 project. This project has been re-scoped following recent announcements regarding proposed reforms to the *Local Government Act 1989*, which would legislate a similar product to what is envisaged in this Council Plan action.

Amongst the proposed reforms is the requirement for councils to develop a Community Vision and undertake long-term community planning concurrent with the development of a new Council Plan, which would occur in early 2021.

**Council Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**That** Council endorses the Shire Plan 2050 associated timelines (**Attachment 1**) and project approach (**Attachments 2**).

**CARRIED**

12. Officers' reports

OCM.117/19 Eltham Trader Parking Permit Scheme

**Distribution: Public**

**Manager: Hjalmar Philipp, Director Operations and Infrastructure**

**Author: Joseph Emmanuel, Manager Infrastructure**  
**Ayman William, Transport Coordinator**

**Summary**

Council has received significant feedback from trader permit holders within the Eltham CBD precinct regarding limited availability of carparking spaces in the Circulatory Road and Dudley Street carparks.

There are a total of 149 businesses in the Eltham CBD precinct with a total supply of 141 car parking spaces in the Circulatory Road and Dudley Street carparks. As of 20 October 2017 a total of 543 trader permits have been issued to the varying businesses for the exclusive use of these spaces.

Council officers have considered the feedback and assessed available data, including the parking study completed in April 2018 and historic data relating to issued permits. This report recommends an updated Eltham Trader Parking Permit Scheme.

<b>Recommendation</b>
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**That Council:**

1. Endorses the following Eltham Trader Parking Permit Scheme (Scheme) for the Circulatory Road and Dudley Street carparks in the Eltham CBD precinct:
  - a) \$100 per permit for the first five permits;
  - b) \$200 per permit for every permit thereafter;
  - c) No cap is applied per business;
  - d) No cap is applied to the total permits available; and
  - e) Businesses at 6-20 Luck Street, 19 Arthur Street and 906 Main Road, Eltham are ineligible for permits.
2. Instructs officers to:
  - a) Implement the Scheme no later than 28 October 2019.
  - b) Commence negotiations with traders operating from business addresses 6-20 Luck Street, 19 Arthur Street and 906 Main Road, Eltham to create private trader parking permit schemes to allow trader parking within the respective parking areas for these sites.
  - c) Advise all existing permit holders of the new Scheme and that permits will no longer be valid at the commencement of the new Scheme.
  - d) Advise all traders in the Eltham CBD precinct of the new Scheme.
3. Reviews the Circulatory Road, Dudley Street and private trader parking permit schemes, including consideration of available technology options and requests officers to report to Council prior to December 2020.

12. Officers' reports

OCM.117/19 Eltham Trader Parking Permit Scheme

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**Motion**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Bruce Ranken**

**That** Council defers consideration of the proposed motion noted below for the Eltham Trader Parking Scheme to the September meeting to allow consultation with the Eltham Chamber of Commerce and Traders General.

**That** Council:

1. Endorses the following Eltham Trader Parking Permit Scheme (Scheme) for the Circulatory Road and Dudley Street carparks in the Eltham CBD precinct:
  - a) \$100 per permit for all permits;
  - b) No cap is applied per business;
  - c) No cap is applied to the total permits available; and
  - d) Businesses at 6-20 Luck Street, 19 Arthur Street and 906 Main Road, Eltham are ineligible for permits.
2. Instructs officers to:
  - a) Implement the Scheme no later than 28 October 2019.
  - b) Commence negotiations with traders operating from business addresses 6-20 Luck Street, 19 Arthur Street and 906 Main Road, Eltham to create private trader parking permit schemes to allow trader parking within the respective parking areas for these sites.
  - c) Advise all existing permit holders of the new Scheme and that permits will no longer be valid at the commencement of the new Scheme.
  - d) Advise all traders in the Eltham CBD precinct of the new Scheme.
3. Reviews the Circulatory Road, Dudley Street and private trader parking permit schemes and requests officers to report to Council prior to December 2020.
4. Implement a technology solution to cater for the casual workforce at the earliest convenience.
5. Delegates the decision to consider altering the hours of operation of the traders parking area to Monday to Friday 9am to 3pm to the Director Infrastructure and Operations

THE MOTION WAS PUT TO THE VOTE AND CARRIED AND BECAME THE COUNCIL RESOLUTION AS FOLLOWS:

12. Officers' reports

OCM.117/19 Eltham Trader Parking Permit Scheme

**Council Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Bruce Ranken**

**That** Council defers consideration of the proposed motion noted below for the Eltham Trader Parking Scheme to the September meeting to allow consultation with the Eltham Chamber of Commerce and Traders General.

**That** Council:

1. Endorses the following Eltham Trader Parking Permit Scheme (Scheme) for the Circulatory Road and Dudley Street carparks in the Eltham CBD precinct:
  - e) \$100 per permit for all permits;
  - f) No cap is applied per business;
  - g) No cap is applied to the total permits available; and
  - h) Businesses at 6-20 Luck Street, 19 Arthur Street and 906 Main Road, Eltham are ineligible for permits.
2. Instructs officers to:
  - e) Implement the Scheme no later than 28 October 2019.
  - f) Commence negotiations with traders operating from business addresses 6-20 Luck Street, 19 Arthur Street and 906 Main Road, Eltham to create private trader parking permit schemes to allow trader parking within the respective parking areas for these sites.
  - g) Advise all existing permit holders of the new Scheme and that permits will no longer be valid at the commencement of the new Scheme.
  - h) Advise all traders in the Eltham CBD precinct of the new Scheme.
3. Reviews the Circulatory Road, Dudley Street and private trader parking permit schemes and requests officers to report to Council prior to December 2020.
4. Implement a technology solution to cater for the casual workforce at the earliest convenience.
5. Delegates the decision to consider altering the hours of operation of the traders parking area to Monday to Friday 9am to 3pm to the Director Infrastructure and Operations

**CARRIED**

*Cr Bruce Ranken called for a division*

For: Cr Bruce Ranken, Cr Jane Ashton, Cr Karen Egan and Cr Peter Clarke

Against: Cr Peter Perkins, Cr John Dumaresq and Cr Grant Brooker

*The Mayor, Cr Karen Egan declared the Motion Carried.*

12. Officers' reports

OCM.118/19 Financial statements and performance statement for 2018-2019

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**Distribution:** Public

**Manager:** Vince Lombardi, Chief Financial Officer

**Author:** Melika Sukunda, Manager Finance

**Summary**

Council is required to produce an audited Annual Financial Report and a Performance Statement pursuant to the requirements and process outlined in the *Local Government Act 1989* (the Act) and the Local Government (Planning and Reporting) Regulations 2014.

The draft 2018-2019 Annual Financial Report and the draft 2018-2019 Performance Statement have been reviewed by Council's external auditors on behalf of the Victorian Auditor General.

For the 2018-2019 financial year, Council has achieved an operating surplus of \$10.202 million on an accrual basis.

This report recommends that Council approves 'in principle' the 2018-2019 accounts and appoints the Mayor, Deputy Mayor and Chief Executive Officer to sign the 2018-2019 Annual Financial Report and the 2018/2019 Performance Statement.

Council has produced a Performance Statement in accordance with the Local Government Performance Reporting Framework. This provides results on a range of prescribed indicators of service performance, financial performance and sustainable capacity.

The draft statements have been presented to Council's Audit and Risk Committee which has recommended that Council give 'in principle' approval for the statements pursuant to section 132 of the Act, prior to formal presentation to the Victorian Auditor General.

<b>Council Resolution</b>
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**MOVED:** Cr Peter Clarke

**SECONDED:** Cr Bruce Ranken

**That** Council:

1. Approves 'in principle' the 2018-2019 Annual Financial Report (**Attachment 1**) and 2018-2019 Performance Statement (**Attachment 2**).
2. Authorises the Mayor, Deputy Mayor and the Chief Executive Officer to sign the 2018-2019 Annual Financial Report and 2018/2019 Performance Statement in their final form after any changes recommended, or agreed to, by the auditor have been made.

**CARRIED**

12. Officers' reports

OCM.119/19 Council Plan Quarterly Performance Report

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**Distribution:** Public

**Manager:** Jeremy Livingston, Executive Manager Business Transformation and Performance

**Author:** James Hartigan, Business Performance Analyst  
Sue Richards, Business Support Officer

**Summary**

The purpose of this report is to present the Council Plan Quarterly Performance Report for Council's consideration. The attached report provides the final quarterly update on the progress of the 2018-2019 Annual Plan priority actions, which aligns to delivery of the Council Plan 2017-2021.

Of the 51 actions in the 2018-2019 Annual Plan, 41 are complete, five have minor issues/delays, and five actions have been re-scoped and are now due to be delivered in the 2019-2020 year.

The year's performance against the delivery of the Council Plan will be published in the Annual Report 2018-2019, which will be presented to the Minister for Local Government before 30 September 2019.

**Recommendation**

**That** Council receives the Council Plan Quarterly Performance Report (**Attachment 1**) for the fourth quarter, being the period ending 30 June 2019.

**Motion**

**MOVED:** Cr Peter Clarke  
**SECONDED:** Cr Jane Ashton

**That** Council:

1. Receives the Council Plan Quarterly Performance Report (**Attachment 1**) for the fourth quarter, being the period ending 30 June 2019.
2. Receives an update on the five outstanding actions with a status of "minor issues" as part of the Council Plan Quarterly Performance Report for Quarter 1, 2019-2020.

THE MOTION WAS PUT TO THE VOTE AND CARRIED AND BECAME THE COUNCIL RESOLUTION AS FOLLOWS:

**Council Resolution**

**MOVED:** Cr Peter Clarke  
**SECONDED:** Cr Jane Ashton

**That** Council:

1. Receives the Council Plan Quarterly Performance Report (**Attachment 1**) for the fourth quarter, being the period ending 30 June 2019.

12. Officers' reports

OCM.119/19 Council Plan Quarterly Performance Report

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2. Receives an update on the five outstanding actions with a status of "minor issues" as part of the Council Plan Quarterly Performance Report for Quarter 1, 2019-2020.

**CARRIED**

12. Officers' reports

OCM.120/19 IT Reserve

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**Distribution:** Public

**Manager:** Vince Lombardi, Chief Financial Officer

**Author:** Eddie Cheng, Head of IT Operations

**Summary**

This report seeks Council's approval to access the IT reserve funds.

Council is embarking on a digital business transformation with the focus of improving and modernising the platforms through which services are delivered and information is held.

As part of the digital business transformation project, investment in IT systems is required for council to be able to meet community needs into the future. Access to the funds in the IT reserve will enable the commencement of two projects towards the overall digital business transformation.

**Council Resolution**

**MOVED:** Cr Peter Clarke

**SECONDED:** Cr Bruce Ranken

**That** Council:

1. Authorises the release of the funds (\$987,000) held in the IT reserve for the commencement of digital business transformation projects.
2. Notes subsequent authorisation for proposed expenditure on projects will be sought from Council reflective of the procurement policy and sub delegation of authority.

**CARRIED**

*Jonathan McNally, Manager Community Safety and Amenity left the meeting at the conclusion of the above item at 8:23pm.*

12. Officers' reports

OCM.121/19 Assembly of Councillors

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**Distribution:** Public

**Manager:** Blaga Naumoski, Executive Manager Governance and Legal Services

**Author:** Alena Spry, Governance Officer

**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 Council Meeting 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 30 July 2019.

An Assembly of Councillors record was kept for:

- Councillor Briefing – 23 July 2019;
- Arts Advisory Committee – 29 July 2019;
- Pre-meeting to Ordinary Council Meeting – 30 July 2019;
- Environment and Sustainability Advisory Committee – 31 July 2019;
- Councillor Briefing – 6 August 2019;
- Economic Development Advisory Committee – 8 August 2019; and
- Councillor Briefing and Pre-meeting to Future Nillumbik Committee – 13 August 2019.

**Council Resolution**

**MOVED:** Cr Peter Clarke

**SECONDED:** Cr Grant Brooker

**That** Council, in accordance with section 80A(2) of the *Local Government Act 1989*, receives the records of the Assemblies of Councillors held on 23 July 2019, 29 July 2019, 30 July 2019, 31 July 2019, 6 August 2019, 8 August 2019 and 13 August 2019 (**Attachment 1**).

**CARRIED**

12. Officers' reports

**OCM.122/19 Yan Yean Road Upgrade - Acquisition of Council land at 55-73 and 75-101 Yan Yean Road, Plenty**

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**Distribution: Public**

**Manager: Hjalmar Philipp, Director Operations and Infrastructure**

**Author: Natalie Campion, Coordinator Property**

**Jonathon Miller, Manager Assets and Property**

**Summary**

VicRoads has compulsorily acquired 10 parcels (or parts thereof, included in 12 separate titles) of Council owned land with frontage onto Yan Yean Road, to allow for the upgrade of Yan Yean Road.

At the July 2018 Ordinary Meeting of Council (OCM), Council resolved to accept offers of compensation from VicRoads for 7 of the 10 parcels.

In relation to the two parcels of land compulsorily acquired at 55-73 and 75-101 Yan Yean Road (Plenty War Memorial Park), due to the substantial difference between the value of compensation being offered by VicRoads and the professional valuation advice provided by Council's appointed property valuer (Property Dynamics), Council also endorsed a recommendation to initiate formal action to dispute the compensation being offered.

The confidential report will provide Councillors with an update on the status of negotiations between VicRoads and Council's representative in relation to the compulsorily acquired land at 55-73 and 75-101 Yan Yean Road, Plenty (Land). It also seeks Council's endorsement to accept the proposed settlement amount from VicRoads for this Land.

**Council Resolution**

**MOVED: Cr Grant Brooker**

**SECONDED: Cr Peter Clarke**

**That Council notes this report.**

**CARRIED**

**ADOPTION OF SEVERAL REPORT RECOMMENDATIONS 'EN BLOC'**

**Council Resolution**

**MOVED: Cr Bruce Ranken**

**SECONDED: Cr Peter Clarke**

**That** Council agree to move 'en bloc' the reports listed below and their recommendations be adopted as printed in the agenda:

- OCM.123/19 Eltham Men's Shed Loan Guarantee Request
- OCM.124/19 Eltham Redbacks Football Club Loan Guarantee Request
- OCM.125/19 North Eltham Wanderers Cricket Club Loan Guarantee Request
- OCM.126/19 Contract 1819-38 - Variation to Contract

**CARRIED**

12. Officers' reports

OCM.123/19 Eltham Men's Shed Loan Guarantee Request

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**Distribution:** Public

**Manager:** Corrienne Nichols, Executive Manager Community Services

**Author:** Melanie Holt, Coordinator Youth and Community Partnerships

**Summary**

This report is an overview of a separate report considering a loan guarantee request from the Eltham Men's Shed operating from Council-owned facilities at 20 Wattletree Road, Eltham North.

**Council Resolution**

**MOVED:** Cr Bruce Ranken

**SECONDED:** Cr Peter Clarke

**That** Council notes this report.

**CARRIED**

*Note: This item was carried 'en bloc' earlier in the meeting.*

12. Officers' reports

OCM.124/19 Eltham Redbacks Football Club Loan Guarantee Request

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**Distribution:** Public

**Manager:** Hjalmar Philipp, Director Operations and Infrastructure

**Author:** Rosalynd Ponte, Leisure Services Development Officer

**Summary**

This report is an overview of a separate report considering a loan guarantee request from the Eltham Redbacks Football Club operating from Council-owned facilities at Eltham North Reserve, Eltham North.

**Council Resolution**

**MOVED:** Cr Bruce Ranken

**SECONDED:** Cr Peter Clarke

**That** Council notes this report.

**CARRIED**

*Note: This item was carried 'en bloc' earlier in the meeting.*

12. Officers' reports

OCM.125/19 North Eltham Wanderers Cricket Club Loan Guarantee Request

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**Distribution:** Public

**Manager:** Hjalmar Philipp, Director Operations and Infrastructure

**Author:** Rosalynd Ponte, Leisure Services Development Officer

**Summary**

This report is an overview of a separate report considering a loan guarantee request from the North Eltham Wanderers Cricket Club's request to obtain a loan guarantee for a portion of their contribution to the Eltham North Reserve Pavilion, but the particulars of this request remain confidential.

**Council Resolution**

**MOVED:** Cr Bruce Ranken

**SECONDED:** Cr Peter Clarke

**That** Council notes this report.

**CARRIED**

*Note: This item was carried 'en bloc' earlier in the meeting.*

12. Officers' reports

OCM.126/19 Contract 1819-38 - Variation to Contract

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**Distribution: Public**

**Manager: Hjalmar Philipp, Director Operations and Infrastructure**

**Author: Heath Gillett, Manager Recreation and Leisure  
Andrea Jackson, Senior Leisure Facilities Officer**

**Summary**

At Council's Ordinary Council Meeting, on 18 December 2018, Council resolved "in camera" to award of the contract for the development, management and maintenance of the Yarrambat Park Golf Course.

The report outlined a change in contract commencement dates to ensure the previous management and maintenance contracts expired at the same time. The report also noted an additional maintenance cost as a result of the change in dates. Council officers have since worked with the successful tenderer to address the maintenance cost.

This report is an overview of a separate confidential report noting how the maintenance cost will be dealt with, and requests authorisation for the CEO to finalise contract documentation with the successful tender.

<b>Council Resolution</b>
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**MOVED: Cr Bruce Ranken**

**SECONDED: Cr Peter Clarke**

**That** Council notes this report.

**CARRIED**

*Note: This item was carried 'en bloc' earlier in the meeting.*

12. Officers' reports

OCM.127/19 RFT 1819-86 Provision for Garbage, Recycle, Organics Waste Collection

**Distribution:** Public

**Manager:** Hjalmar Philipp, Director Operations and Infrastructure

**Author:** Lisa Pittle, Manager Environment

Mikael Ooi, Waste Management Coordinator

Hannah Burns, Project Officer, Environment

**Summary**

This report is an overview of a separate confidential report considering the review, service quality and cost of Council's kerbside waste collection service through an open tender process.

The initial contract term is seven (7) years with an extension option of up to three (3) years. The total duration of the contract, including the exercise of any options, shall not exceed ten (10) years.

The Tender Evaluation Panel has assessed all submissions including a like for like comparison with the quality and cost of the in house service.

The confidential contains a recommendation to make public the decision regarding this contract but any associated evaluation remain confidential.

**Council Resolution**

**MOVED:** Cr Peter Clarke

**SECONDED:** Cr Grant Brooker

**That** Council notes this report.

**CARRIED UNANIMOUSLY**

*A notice of rescission has been issued in line with the Meeting Procedure Local Law 2017, therefore the CEO must defer implementing the confidential resolution until such time as the rescission motion has been considered by Council.*

*At its Special Council Meeting on 10 September 2019, Council heard a rescission motion regarding this item. The rescission motion was lost, hereby reinstating the Council decision made in camera at its Ordinary Council Meeting on 27 August 2019.*

*The confidential report relating to this item was heard in a closed meeting and Council resolved to make the following resolution public:*

**Council Resolution**

**MOVED:** Cr Peter Clarke

**SECONDED:** Cr Bruce Ranken

**That** Council:

1. Resolves to cease delivering the in-house kerbside waste collection service.

12. Officers' reports

**OCM.127/19 RFT 1819-86 Provision for Garbage, Recycle, Organics Waste Collection**

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2. Engage an external provider to deliver the kerbside waste collection service based on the outcome of RFT 1819-86 Provision for Garbage, Recycle, Organics Waste Collection.
3. Accepts the submission of JJ Richards Pty Ltd and delegates authority to the CEO to enter into negotiations to finalise price based on their best price offer inclusive of:
  - a) The services to be delivered from JJ Richards' Somerton depot.
  - b) Offers of employment to staff wishing to take up employment with the new provider.
  - c) No staff to transfer on the Nillumbik Enterprise Agreement.
  - d) Weekly garbage service price to be negotiated separately following service establishment.
4. Authorises the CEO or delegate to finalise and execute the contract documentation.
5. Delegates the powers and authorisation to the CEO or delegate to review and approve the options to extend the contract term for a maximum of up to three (3) further years.
6. Advises all tenderers accordingly.
7. Recognises the contribution of staff who have delivered the in house kerbside waste collection service.
8. Makes public the decision regarding this contract but the tender evaluation and report remain confidential.
9. Authorise the CEO to make any applicable redundancy payments to impacted staff that are reflective of the current enterprise bargaining agreement and include any additional payments as negotiated with staff in accordance with table 7 of the report.

**CARRIED**

*Cr Peter Perkins called for a division*

For: Cr Bruce Ranken, Cr Karen Egan, Cr Peter Clarke and Cr Grant Brooker

Against: Cr Peter Perkins, Cr Jane Ashton and Cr John Dumaresq

*The Mayor, Cr Karen Egan declared the Motion Carried.*

12. Officers' reports

OCM.128/19 RFT 1819-94 Sugarloaf Link Deer Control

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**Distribution: Public**

**Manager: Hjalmar Philipp, Director Operations and Infrastructure**

**Author: Michelle Hanslow, Biodiversity Officer**

**Lisa Pittle, Manager Environment**

**Kirsten Reedy, Coordinator Environment**

**Summary**

This report is an overview of a separate confidential report considering the awarding of the contract to appoint a panel of two professional, fully accredited pest animal control companies.

This collaborative project has been fully funded by a Department of Environment, Land, Water and Planning (DELWP) Biodiversity Response Planning (BRP) grant and is designed to protect biodiversity across land tenure in the area between Sugarloaf Reservoir and the Yarra River.

The awarding of this tender will formalise the deer control requirements for Council for an initial period of one (1) year. Council may at its discretion, extend the operation of the contract beyond the initial contract term for a minimum period of six (6) months and a maximum of 18 months.

Council will evaluate the project after the initial contract and re-tender if required.

The Tender Evaluation Panel (TEP) has agreed to the results of the evaluation and recommendation to award the contract.

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.

The confidential report associated with this contract contains a recommendation to make public the decision regarding this contract but the evaluation remain confidential.

**Council Resolution**

**MOVED: Cr Jane Ashton**

**SECONDED: Cr Bruce Ranken**

**That** Council notes this report.

**CARRIED**

12. Officers' reports

OCM.128/19 RFT 1819-94 Sugarloaf Link Deer Control

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*The confidential report relating to this item was heard in a closed meeting and Council resolved to make the following resolution public:*

**Council Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**That Council:**

1. Resolves to appoint a panel of contractors including Abzeco Pty Ltd and Victorian Pest Animal Control for their submitted rates for deer control works for an initial contract term of one (1) year.
2. Authorises the Director Operations and Infrastructure to finalise and execute the contract documentation.
3. Delegates the powers and authorisation to the Director Operations and Infrastructure to review and approve the options to extend the contract term for a minimum period of six (6) months and a maximum of 18 months.
4. Advises all tenderers accordingly.

**CARRIED**

12. Officers' reports

OCM.129/19 RFT 1819-112 High Use Sites Tree Inspections

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**Distribution: Public**

**Manager: Hjalmar Philipp, Director Operations and Infrastructure**

**Author: Alicia Fitzgerald, Living Landscapes Project Arborist  
Andrew Solum, Team Leader Arboriculture and Parks Maintenance  
Lisa Pittle, Manager Environment**

**Summary**

This report is an overview of a separate confidential report considering the awarding of a contract for the provision of proactive tree inspections for 130 high use sites.

The contract term is an initial period of two years, with options to extend the contract. The total duration of the contract, including the exercise of any options, shall not exceed six years.

The tender evaluation panel has assessed all submissions and this report outlines their evaluation in recommending the awarding of the contract for High Use Sites Tree Inspection 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.

The confidential report associated with this contract contains a recommendation to make public the decision regarding this contract but the evaluation remain confidential.

**Council Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**That Council notes this report.**

**CARRIED**

*The confidential report relating to this item was heard in a closed meeting and Council resolved to make the following resolution public:*

**Council Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Jane Ashton**

**That Council:**

1. Awards Contract 1819-112 Use Sites Tree Inspections to ENSPEC Pty Ltd.
2. Authorises the Director Operations and Infrastructure to finalise and execute the contract documentation.
3. Delegates the powers and authorisation to the Director Operations and Infrastructure to review and approve the options to extend the contract term for a maximum of up to four (4) further years.

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**OCM.129/19 RFT 1819-112 High Use Sites Tree Inspections**

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4. Advises all tenderers accordingly.
5. Makes public the decision regarding this contract but the tender evaluation and report remain confidential.

**CARRIED**

12. Officers' reports

OCM.130/19 Quarterly Risk and Insurance Report

**Distribution: Public**

**Manager: Jeremy Livingston, Executive Manager Business Transformation and Performance**

**Author: Craig Commene, Risk Advisor**

**Summary**

This report provides a summary of Council's Risk and Insurance Report for the quarter ending June 2019, including annual reporting.

The report is presented in accordance with the Local Government Performance Reporting Framework (LGPRF). This reporting framework requires the presentation of a report to Council at least every six months, detailing the strategic risks, operational risks, the consequences and likelihood of occurrence, and risk mitigation strategies.

Risk and insurance reporting to Council will be tabled each quarter following consideration by the Audit and Risk Committee.

A separate confidential report in this agenda provides detailed information for Council's consideration. It is recommended that this detailed report remain confidential as it includes information which may prejudice the Council or another person.

**Council Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Bruce Ranken**

**That Council notes this report.**

**CARRIED**

*The confidential report relating to this item was heard in a closed meeting and Council resolved to make the following resolution public:*

**Council Resolution**

**MOVED: Cr Peter Clarke**

**SECONDED: Cr Peter Perkins**

**That Council:**

1. Notes the summary of the confidential Quarterly Risk and Insurance Report for the quarter ending June 2019.
2. Resolves that the Report remains confidential in accordance with sections 77 and 89(2) of the *Local Government Act 1989*.
3. Resolves to make the resolution of Council public.

**CARRIED**

**13. Notices of Motion**

Nil

**14. Delegates' reports**

Nil

**15. Supplementary and urgent business**

*The Chairperson, Cr Karen Egan admitted the following Urgent Business Item in accordance with section 6.15 of the Meeting Procedure Local Law 2017.*

**OCM.140/19 Proposed Swimming Pools and Spa Regulations**

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**Distribution: Public**

**Manager: Jeremy Livingston, Acting Director Community and Planning**

**Author: Mehran Khademollah, Manager Building Services**

**Summary**

The Department of Environment, Land, Water and Planning (DELWP) has released a Regulatory Impact Statement (RIS) that examines the costs and benefits of the proposed *Building Amendment (Swimming Pool and Spa) Regulations 2019*. The RIS and draft Regulations have been released for public consultation, which closes on 6 September 2019.

In recognition of the serious drowning hazard that swimming pools and spas pose, a state-wide functioning inspection regime for these private assets is indeed warranted. However, the administration and enforcement of a mandatory inspection regime will impose a significant burden on Council's ongoing resources. This is influenced by the prescribed fees set out in the proposed Regulations, the likely number of swimming pools and spas that will be required to be inspected and certified within the Shire of Nillumbik, the likelihood that many pools and spas will not be compliant (and therefore enforcement will be required to be undertaken by Council), and the timelines set by the Regulations to ensure compliance with the prescribed standards is achieved.

It is recommended that the Council makes a submission to State Government which highlights the significant financial and resource burden that these Regulations will impose on Council.

<b>Council Resolution</b>
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**MOVED: Cr Peter Perkins**

**SECONDED: Cr Peter Clarke**

**That Council:**

1. Makes a submission to State Government on the proposed *Building Amendment (Swimming Pool and Spa) Regulations 2019* in line with the Municipal Association of Victoria's (MAV) draft submission, and specifically advocates to State Government for:
  - a) A commitment for a wide-reaching and multi-media awareness and education campaign to be funded, implemented and communicated to swimming pool and spa owners around their obligations under the proposed Regulations, to complement more localised communications to be undertaken by Council.
  - b) A further review of the proposed fees for lodgements of certificates of pool and spa barrier compliance/non-compliance, both prior to their introduction as well

**OCM.140/19 Proposed Swimming Pools and Spa Regulations**

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as 12 months later (once there is greater clarity around the extent of non-compliant pool and spa barriers), to ensure that they establish full cost recovery for Council to administer and enforce the Regulations.

- c) A commitment to undertake a further review of the proposed timelines for inspections and certifications under the Regulations after 12 months from taking effect, to be informed by an assessment of the level of compliance of the pools and spas inspected within the first year, the associated workload of Council, and the availability of registered practitioners to support the Council's delivery of these statutory requirements.
- d) Funding to support Council to provide work placements for future swimming pool and spa inspectors to obtain their 'on the job experience', to enable them to achieve qualifications to inspect and issue compliance and non-compliance certificates, and respond to the consumer demand as a result of the Regulations.

**CARRIED**

**Attachments**

Nil

**Background**

1. Since 1991, swimming pools and spas in Victoria have been required to have barriers meeting prescribed standards. This is due to a recognition of the serious drowning hazard they pose. However, Victoria has not had an effective compliance regime to ensure those standards are met. It has been reported within the industry that current rates of compliance are less than 10%. Parental supervision is the key to pool safety. A functioning inspection regime can provide additional protections to ensure that momentary lapses do not have tragic and irreversible outcomes.
2. In October 2018, the State Government announced a new swimming pool register and inspection regime that councils will be required to administer. Councils were advised that the drafted *Building Amendment (Swimming Pool and Spa) Regulations* would commence in December 2019, but prior to this a Regulatory Impact Statement (RIS) process would be undertaken which would inform the setting out of more details for the operation of this register and inspection regime.
3. On 30 July 2019, the Department of Environment, Land, Water and Planning (DELWP) released a Regulatory Impact Statement (RIS) that examines the costs and benefits of the proposed Regulations. The RIS and draft Regulations have been released for public consultation which closes on 6 September 2019. They can be viewed at <https://engage.vic.gov.au/new-safety-standards-private-swimming-pools-and-spas> .
4. The Municipal Association of Victoria (MAV) have drafted a submission (still under development and therefore is not yet publishable) on behalf of the local government sector which has highlighted some issues in relation to the Regulations in their current form. The MAV's draft submission states that "*administering a mandatory inspection regime imposes a significant burden on council resources. We believe it is necessary and justified to set fees to meet full cost recovery for councils. Pool owners, and not ratepayers, should bear the cost of ensuring pool safety*".

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5. Future timeframes communicated by DELWP on their website include finalisation of the Regulations between September and November 2019, the Regulations to be gazetted by the Minister for Planning in late November, and the new provisions coming into effect on 1 December 2019. This does allow much time for councils, who will be administering and enforcing these Regulations, to source adequate resources to undertake this new service to the community.

**Details of the proposed Regulations**

6. Council will have a greater role in ensuring safety of the swimming pools and spas within its municipal boundaries. The *Building Amendment (Swimming Pool and Spa) Regulations 2019* will introduce mandatory requirements for owners of private swimming pools or spas to register their pool or spa with their local council. In addition, owners will be required to engage a registered building surveyor or building inspector to inspect and certify the compliance of their safety barrier every three years.
7. The operating implications for Council in terms of administering and enforcing the proposed Regulations can be best summarised in two phases:

**Phase 1 – Pool Registration: 1 December 2019 – 14 April 2020**

8. Council will be required to establish a Swimming Pool and Spa Register by 1 December 2019, and all pools will be required to be registered with Council prior to 14 April 2020. Pools and spas completed (construction) after 14 April 2020 will require registration with Council within 30 days of the issue of the Certificate of Final Inspection (CFI)/Occupancy permit.
9. The fee to Council for registration will be \$51 per lodgement as set by the Regulations. On receipt of an application for registration of the swimming pool and spa, Council will be required to respond in writing back to the owner and confirm registration, as well as outline other statutory requirements. This includes when the pool or spa is required to be certified (as detailed below) and which standard applies. There are four standards that may apply based on the age of the swimming pool or spa.
10. Swimming pools and spas will need to be certified in accordance with the following timelines:
- Pools built prior to 30 June 1994 are required to be inspected and Certificate of pool and spa barrier compliance issued by 30 October 2020
  - Pools built between 1 July 1994 and 1 May 2010 are required to be inspected and Certificate of pool and spa barrier compliance issued by 30 April 2021
  - Pools built after 1 May 2010 are required to be inspected and Certificate of pool and spa barrier compliance issued by 29 October 2021
  - Pools completed after 14 April 2020 (3 years after the date of issue of CFI/Occupancy permit issued for the swimming pool).

**Phase 2 – Certification and ongoing monitoring and enforcement**

11. All swimming pools and spas will be required to be inspected periodically. The first required pool and spa safety barrier compliance inspection is determined by council (phase 1). Further inspections will be required to be carried out every 3 years thereafter. Subject to satisfactory inspection of the pool and spa safety barrier, the pool inspector will issue a *Certificate of pool and spa barrier compliance*. This certificate is required to be lodged with Council (lodgement fee applies: \$30.60). If the barrier is

**OCM.140/19 Proposed Swimming Pools and Spa Regulations**

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inspected by a private building surveyor/inspector and found to be non-compliant, the pool inspector is required to issue the owner a notice to make the pool barrier compliant within 20 days.

12. If the inspected barrier cannot be brought into compliance within 20 days or poses a significant risk or any of the following applies:

- A gate forming part of the barrier is unable to be locked;
- A gate forming part of the barrier is unable to be completely closed;
- Part of the barrier is missing; or
- Any part of the barrier is less than 1 metre in height measured above ground level from the approach side;

a Certificate of pool and spa barrier non-compliance must be issued and sent to Council without delay. The applicable lodgement fee (for a *Certificate of pool and spa barrier non-compliance*) that is to be paid to Council is \$385. On receipt of a *Certificate of pool and spa barrier non-compliance*, Council may:

- Issue a barrier improvement notice requiring the owner to lodge within 14 days a *Certificate of pool and spa barrier compliance*; or
- Initiate other enforcement proceedings (Emergency order, Building Order Minor Work, injunction, etc.) depending on the risk to the public/occupiers.

13. On change of property ownership, Council will be required to notify the new owners of the following:

- Confirmation that their name has been recorded on the register
- The applicable barrier standard that applies to the swimming pool or spa
- The date by which the next certificate of pool and spa barrier compliance is required to be provided to Council by the new owner.

14. A search of Council's records has identified approximately 3,600 swimming pools and spas in the Shire of Nillumbik. The exact numbers are unknown (but likely to be higher than 3,600) as it is difficult to estimate the number of unauthorised pools/spas that are likely to be identified. Also, some authorised pools and spas may have been removed.

15. Under these Regulations, a swimming pool or spa is defined as a structure containing a depth of water more than 300mm and principally used for swimming, wading, paddling or the like, including a bathing or wading pool, or spa.

**Policy context**

16. This report directly supports the achievement of Council Plan 2017-2021 strategy:

- Ensure that Council meets its legal responsibilities and manages its risks.

**Budget implications**

17. At this point in time, there are many 'unknowns' with respect to the operationalisation of the proposed *Building Amendment (Swimming Pool and Spa) Regulations 2019*. This includes the total number of pools and spas within the Shire, the number of those that are 'non-compliant' with the prescribed standards, the final fees to be set for this registration and inspection regime, and the amount of time and resourcing for Council's to undertake these new enforcement activities. Nevertheless, Council's Building

**OCM.140/19 Proposed Swimming Pools and Spa Regulations**

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Manager has undertaken some modelling based on the currently drafted Regulations and the known estimate of around 3,600 swimming pools and spas within the Shire.

18. For delivering this new proposed new service in accordance with the statutory obligations placed on Council, in the 2019-2020 year it is likely to be delivered cost-neutral. Much of 2019-2020 will involve administering Phase 1, with the need for two full-time temporary administration staff to support the mandatory registration process, and an additional building inspector (permanent full time commencing from when the Regulations come into effect in December 2019) to manage the additional workload. Anticipated income (\$183,000) would likely balance anticipated expenditure on resources (\$170,000) and new systems (\$10,000) to support the service.
19. In subsequent years however, based on the currently proposed fees, the service will not be fully cost-recoverable once the swimming pool and spa inspection regime is operational. Likely ongoing additional resources will include an additional building inspector (as per the 2019-2020 year) and a student building surveyor. Even based on very conservative projections (only 10% of registered pools being 'non-compliant' as opposed to a figure that could be significantly higher), anticipated income (\$166,000) will not cover anticipated expenditure (\$182,500). In particular, enforcement activities will not be fully cost recoverable.

**Consultation/communication**

20. Public consultation on the proposed Regulations and Regulatory Impact Statement is being undertaken by State Government through DELWP between 30 July and 6 September 2019. Members of the public and other stakeholders (including councils) must make a written submission by 6 September 2019.

**Issues/options**

21. In recognition of the serious drowning hazard that swimming pools and spas pose, a state-wide functioning inspection regime for these private assets is certainly warranted. Parental supervision is the key to pool safety, however a functioning inspection regime can provide additional protections to ensure that momentary lapses do not have tragic and irreversible outcomes.
22. However, the administration of the proposed Regulations as released by DELWP has identified some adverse consequences on councils in administering these Regulations. Many of these have been identified in MAV's draft submission. Key concerns include:
  - a) Administering a mandatory inspection regime imposes a significant burden on Council's ongoing resources. It is necessary and justified to set fees to meet full cost recovery for Council. In 2020-2021 and beyond, the likely cost for administering and enforcing this inspection regime will not be fully recovered. The extent to which this will occur is not yet known because at this point in time it cannot be ascertained how many swimming pools and spas in the Shire do not comply with the prescribed standards. The more swimming pools and spas that do not comply will equate to the more enforcement that will be required to be undertaken by Council. This not only has resourcing ramifications, but will also possibly divert resources from the other functions undertaken by Council's Building Services (e.g. permit issuing and other statutory functions).
  - b) The need for a review of all the proposed fees in relation to inspections and enforcement both prior to their establishment on 1 December 2019, and a further review 12 months later once there is greater clarity around the extent of non-

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compliant pool and spa barriers. This is required to ensure that the fees establish full cost recovery for councils to administer and enforce the Regulations.

- c) Based on previous local government sector experience, many owners are not cognisant of the requirements of their swimming pool or spa barriers, and ongoing barrier maintenance is not always considered. A commitment from State Government (through the Victorian Building Authority) for a wide reaching and multi-media awareness and education campaign to be funded, implemented and communicated to swimming pool and spa owners around their obligations under the proposed Regulations would be immensely beneficial. Such a campaign would certainly assist all councils with administering and enforcing the proposed Regulations, particularly with respect to public awareness, the need to register, and timeframes and agencies to arrange a required inspection.
- d) The Victorian Building Authority (VBA) must produce effective guidance for practitioners and swimming pool and spa owners. Of particular importance is guidance for private inspectors. Under the proposed Regulations, an inspector must immediately issue a certificate of non-compliance if "*the non-compliance of the barrier with the applicable barrier standard poses a significant and immediate risk to life or safety*". It is likely that practitioners will require guidance on the interpretation of this requirement. In the absence of appropriate guidance, practitioners may choose to refer any issue of non-compliance to councils via a non-compliance certificate. Due to the limited resources of Council, this would undermine the entire operation of the proposed system.
- e) There are four key dates proposed by the Regulations, that for initial registration of all pools and spas, and three different dates for initial lodgement of a certificate based on the date of construction. Each of these dates will result in significant workload for Council. Should the number of non-compliant swimming pools and spas be found to be high, there is concern that the proposed timeframes will not enable councils to complete the work generated by one deadline prior to the next occurring. As with a review of the fees, it would be prudent for the State Government to review these timeframes 12 months after the Regulations come into effect, at which time it would become clearer as to the extent of swimming pool and spa barrier compliance and non-compliance against the prescribed standards.
- f) In order to ensure Council's readiness to manage its statutory obligations which as proposed will take effect on 1 December 2019, Council will need to shortly commence the recruitment process for two temporary administration staff and an additional permanent Building Inspector. If this is not achievable, there would be merit in Council requesting a temporary delay to the December commencement date (notionally for 6 months), to allow time for Council to get the appropriate resourcing in place.
- g) Councils generally do not have accurate and accessible information of swimming pools and spas in their municipality. This will mean a burden in determining the construction date of pools, particularly older structures, as required under the Regulations. Building permit records may be incomplete, missing, or difficult to access. Due to this, the initial registration period will be challenging for councils. Given the mandatory nature of what is being implemented through the

**OCM.140/19 Proposed Swimming Pools and Spa Regulations**

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Regulations, the State Government should ensure administrative support is available for those councils that require it.

- h) The proposed Regulations will generate new employment opportunities in the form of an accredited swimming pool and spa inspector/certifier. The Victorian Building Authority are currently developing a qualification to support this, and it is likely that the qualification will require six months of 'on the job experience'. Given their visibility in the job market, councils are likely to be viewed as an attractive employer to support these 'on the job' accreditation opportunities. Whilst councils would enjoy some benefit from this in the form of workforce planning and resourcing, to accommodate 'on the job experience' opportunities for the anticipated large volume of future inspectors, State Government funding to support employers such as Council to cover salary and on-costs of these future practitioners should be sought and advocated for.

**Conclusion**

23. Having reviewed the proposed *Building Amendment (Swimming Pool and Spa) Regulations 2019*, the various fees and items set out in the Regulatory Impact Statement, and the feedback received from the local government sector via the MAV, the proposed Regulations are likely to impose a significant burden on Council resources. It is necessary and justified to ensure that fees under these Regulations meet full cost recovery for Council. It is recommended that the Council endorse the draft submission of the MAV concerning swimming pool and spa safety standards, as well as undertake its own advocacy to State Government to ensure that our Council is suitably supported to undertake these new statutory obligations.

**16. Confidential reports**

The Chief Executive Officer, pursuant to section 77(2)(c) of the *Local Government Act 1989* (the Act), has designated the following items to be confidential:

**OCM.131/19 Yan Yean Road Upgrade - Acquisition of Council land at 55-73 and 75-101 Yan Yean Road, Plenty**

This item is designated confidential because it is a contractual matter pursuant to section 89(2)(d) matters affecting the security of Council property and Section 89(2)(g) of the Act.

**OCM.132/19 Eltham Men's Shed Loan Guarantee Request**

This item is designated confidential because it is deemed as any other matter pursuant to Section 89(2)(h) of the Act.

**OCM.133/19 Eltham Redbacks Football Club Loan Guarantee Request**

This item is designated confidential because it is deemed as any other matter pursuant to Section 89(2)(h) of the Act.

**OCM.134/19 North Eltham Wanderers Cricket Club Loan Guarantee Request**

This item is designated confidential because it is deemed as any other matter pursuant to Section 89(2)(h) of the Act.

**OCM.135/19 Contract 1819-38 - Variation to Contract**

This item is designated confidential because it is a contractual matter pursuant to section 89(2)(d) of the Act.

**OCM.136/19 RFT 1819-86 Provision for Garbage, Recycle, Organics Waste Collection**

This item is designated confidential because it is a contractual matter pursuant to section 89(2)(d) of the Act.

**OCM.137/19 RFT 1819-94 Sugarloaf Link Deer Control**

This item is designated confidential because it is a contractual matter pursuant to section 89(2)(d) of the Act.

**OCM.138/19 RFT 1819-112 High Use Sites Tree Inspections**

This item is designated confidential because it is a contractual matter pursuant to section 89(2)(d) of the Act.

**OCM.139/19 Quarterly Risk and Insurance Report**

This item is designated confidential because it is deemed as any other matter pursuant to Section 89(2)(h) of the Act.

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

**Council Resolution**

**MOVED: Cr Bruce Ranken**

**SECONDED: Cr Peter Clarke**

**That** in accordance with section 89(2) of the *Local Government Act 1989*, Council resolves to close the meeting to members of the public to consider the items designated confidential by the Chief Executive Officer.

**CARRIED**

The meeting closed to the public at 8:59pm.

The meeting re-opened at 10:24pm.

**Close of Meeting**

The meeting closed at 10:24pm.

Confirmed: \_\_\_\_\_

Cr Karen Egan, Mayor