

# **Fitzsimons Lane (Foote Street, Porter Street, Main Road and Leane Drive) Upgrade Project**

**Incorporated Document**

---

**July 2019**

**DRAFT**

## **1.0 INTRODUCTION**

This document is an incorporated document in the Manningham, Banyule and Nillumbik Planning Schemes (the planning schemes) pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in Clause 3.0 of this document may be used or developed in accordance with the specific control in Clause 4.0 of this document.

The control in this incorporated document prevails over any contrary or inconsistent provision in the planning scheme.

## **2.0 PURPOSE**

The purpose of the control in this incorporated document is to allow the use and development of land described in Clause 3.0 of this document for the purposes of upgrading Fitzsimons Lane through intersection upgrades at Foote Street and Porter Street, Templestowe, Main Road and Leane Drive, Eltham (the project).

## **3.0 LAND TO WHICH THIS INCORPORATED DOCUMENT APPLIES**

The control in this incorporated document applies to land shown as SCO1 on planning scheme maps forming part of the Banyule Planning Scheme; Manningham Planning Scheme; and Nillumbik Planning Scheme (project land).

## **4.0 CONTROL**

### **4.1 Exemption from Planning Scheme Requirements**

Despite any provision to the contrary or any inconsistent provision in the planning schemes, no planning permit is required for, and no provision in the planning scheme operates to prohibit, restrict or regulate the use and development of the project land for the purposes of the project.

The project includes, but is not limited to, the following uses and development:

- a) Roadworks including: the upgrading of Fitzsimons Lane and Williamsons Road through conversion of existing roundabouts at Main Road and Porter Street, intersection upgrades, conversion of bus lanes to all vehicle lanes between Porter Street and Foote Street and Main Road and Leane Drive intersection upgrade.
- b) Creating or altering access to roads, including roads in a Road Zone Category 1 or land in a Public Acquisition Overlay.
- c) Ancillary activities including, but not limited to:
  - i) creating and using lay down areas for construction purposes
  - ii) stockpiling of excavation materials
  - iii) constructing and using temporary site workshops and storage administration and amenities buildings
  - iv) removing, destroying or lopping trees and vegetation, including dead vegetation
  - v) constructing scaffolding, working platforms and provision of pedestrian access to construction or maintenance sites
  - vi) demolishing and removing buildings, structures and works
  - vii) relocating, modifying and upgrading and installing services and utilities
  - viii) constructing and using temporary access roads, diversion roads and vehicle parking areas
  - ix) constructing fences, temporary site barriers and site security

- x) constructing or carrying out works to create or alter roads, carparking areas, bunds, mounds, shared use paths, landscaping, excavate land, salvage artefacts and alter drainage
- xi) earthworks including cutting and spoil removal, and formation of drainage works
- xii) displaying signs
- xiii) subdividing and consolidating land
- xiv) storage and assembly of materials required for the project
- xv) restoration and reinstatement works.

## 4.2 Conditions

The use and development permitted by this incorporated document must be undertaken in accordance with the following conditions:

### Environmental Management

- 4.2.1 An Environmental Management Strategy (EMS) must be prepared to the satisfaction of the Minister for Planning. The EMS must be prepared in consultation with the Manningham City Council, Banyule City Council and Nillumbik Shire Council (the councils). The EMS must include:
- a) A summary of key construction methodologies.
  - b) An overarching framework for site or works specific measures to reduce and manage environmental and amenity effects during construction of the project.
  - c) A summary of the consultation that informed the preparation of the EMS and a summary of the proposed ongoing engagement activities with the council, the community and other stakeholders during construction of the project, including enquiries and complaints management.
  - d) A summary of performance monitoring and reporting processes, including auditing to ensure environmental and amenity effects are reduced and managed during construction of the project.

### Native Vegetation

- 4.2.2 Prior to removal of native vegetation (excluding native vegetation removed under Clause 4.3), information about that native vegetation in accordance with Application Requirements 1, 5 and 9 of the *Guidelines for removal, destruction or lopping of native vegetation (DELWP, December 2017)* (Guidelines) must be provided to the satisfaction of the Secretary to the Department of Environment, Land, Water and Planning (DELWP). For the avoidance of doubt, the information provided to the Secretary to DELWP must include information about any native vegetation that has been, or is to be, removed under Clause 4.3.
- 4.2.3 Prior to removal of native vegetation (excluding native vegetation removed under Clause 4.3), the biodiversity impacts from the removal of that native vegetation must be offset in accordance with the Guidelines, and evidence that the required offset(s) has been secured must be provided to the Secretary to DELWP.
- 4.2.4 In exceptional circumstances, the Secretary to DELWP may vary the timing requirement in Clause 4.2.3.
- 4.2.5 The secured offset(s) for the project may be reconciled at the completion of the project in accordance with the *Assessor's handbook – Applications to remove, destroy or lop native vegetation (DELWP, October 2018)*.

- 4.2.6 For the purpose of this document, the term 'remove native vegetation' includes to destroy and/or lop native vegetation.

#### Utility Installation

- 4.2.7 Where, but for this incorporated document, a planning permit would be required under the Banyule Planning Scheme, Manningham Planning Scheme, or Nillumbik Planning Scheme for buildings and works associated with an above-ground utility installation, site plans and elevations must be prepared to the satisfaction of the Minister for Planning.

#### Flood Management

- 4.2.8 Buildings and works on land within the Urban Floodway Zone, Land Subject to Inundation Overlay or Special Building Overlay must be undertaken to the satisfaction of the relevant floodplain management authority.

#### Heritage

- 4.2.9 A Tree Protection Management Plan must be prepared for River Red Gums within the Heritage Overlay (HO63), in consultation with Manningham City Council, to the satisfaction of the Minister for Planning.

#### Other Conditions

- 4.2.10 Unless otherwise stated, the conditions set out in Clause 4.2 must be satisfied prior to the commencement of development. The conditions may be satisfied in separate components or stages of the project, however each condition must be satisfied prior to the commencement of development for that component or stage.
- 4.2.11 The plans and documentation required under Clause 4.2 may be amended from time to time to the satisfaction of the Minister for Planning or relevant approving authority. In deciding whether a plan or document is satisfactory or whether to consent to an amendment to a plan or document, the Minister for Planning or relevant approving authority, may seek the views of the councils, or any other relevant approving authority.
- 4.2.12 The use and development of land must be undertaken generally in accordance with this document and the plans and documentation prepared to the satisfaction of the Minister for Planning or relevant approving authority.

### **4.3 Preparatory Buildings and Works**

Preparatory buildings and works may commence on the land described in Clause 3.0 before the conditions set out in Clause 4.2 are satisfied.

- 4.3.1 Preparatory buildings and works include, but are not limited to:
- a) Works, including vegetation removal, where, but for this incorporated document, a planning permit would not be required under the provisions of the planning scheme.
  - b) Investigating, testing and preparatory works to determine the suitability of land, and property condition surveys.
  - c) Construction and use of access points and working platforms.
  - d) Site establishment works including temporary site fencing and hoarding, site offices, and hardstand and laydown areas.

- e) Construction, protection, modification, removal or relocation of utility services.
  - f) Establishment of environment and traffic controls, including designation of “no-go” zones.
  - g) Establishment of temporary car parking.
  - h) Demolition to the minimum extent necessary to enable preparatory works.
  - i) Removal of native vegetation to the minimum extent necessary to enable preparatory buildings and works.
  - j) Salvage of aboriginal cultural heritage material and other management actions required to be undertaken in compliance with a Cultural Heritage Management Plan approved under the *Aboriginal Heritage Act 2006* or otherwise in compliance with that Act.
- 4.3.2 Prior to the removal of native vegetation under Clause 4.3, information about the native vegetation to be removed must be provided to the Secretary to DELWP. The information provided to the Secretary to DELWP must include a description of, and maps showing, the native vegetation to be removed in accordance with Application Requirement 1 of the Guidelines.
- 4.3.3 The biodiversity impacts from the removal of native vegetation under Clause 4.3 must be included in the total biodiversity impacts when determining the offset in accordance with Clause 4.2.3.

## **5.0 EXPIRY**

The control in this document expires if any of the following circumstances apply:

- The development allowed by the control, including preparatory buildings and works, is not started by 1 October 2023.
- The development allowed by the control is not completed by 1 October 2027.

The Minister for Planning may extend these periods if a request is made in writing before the expiry date or within three months afterwards.

**Extract from FNC Meeting Minutes of 13 August 2019:**

---

**Committee Resolution****MOVED: Cr John Dumaresq****SECONDED: Cr Grant Brooker**

- a) That the Mayor be authorised to write to the Major Road Projects Victoria (MPRV), Victorian State Government Minister of Roads, Minister of Planning and Local member for Eltham Vicki Ward advising that Council rejects Ministerial Amendment (GC119) utilising a 20 part (4) process of the *Planning and Environment Act 1987* for the proposed works at Fitzsimons Lane / Main Road Eltham intersection (Eltham Gateway) and requests that the State Government and its agencies:
1. Supply to Council a full set of the drawings of the proposed road design, landscaping proposal, environmental impact statements and traffic modelling for the proposed works.
  2. Place on public exhibition the proposed road design including landscape proposals, environmental impact statements and traffic modelling.
  3. Undertake a full public consultation process and be immediately commenced including a briefing by Major Road Projects Victoria to Council for the proposed road works and intersection design on Main Road and Fitzsimons Lane.
  4. Advise Council of the program to complete the project from commencement of consultation and planning scheme amendment through to completion.
  5. Advise Council of proposed future stages of widening / duplication of the Diamond Creek / Main Road bridge or the widening of Main Road to Bridge Street and how many lanes are proposed into future as a consequence of the current proposed design for Fitzsimons Lane and Main Road.
- b) That the Nillumbik CEO requests advice from our abutting Councils, Banyule and Manningham on the impact the proposed roadworks and their proposed response.
- c) That the proposed works on Leane Drive be continued.

**CARRIED**