

# Ordinary Meeting of Council

to be held at the Civic Centre, Civic Drive, Greensborough  
on Tuesday 28 April 2020 commencing at 7:00pm.

## Agenda

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

Friday 24 April 2020

Distribution: Public

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# Ordinary Meeting of Council seating plan

**Cr Peter Perkins**  
Ellis Ward

**Cr John Dumaesq**  
Edendale Ward

**Cr Grant Brooker**  
Blue Lake Ward

**Cr Jane Ashton**  
Sugarloaf Ward

**Cr Bruce Ranken**  
Swipers Gully  
Ward

**Cr Peter Clarke**  
Wingrove Ward

**Katia Croce**  
Governance Lead

**Blaga Naumoski**  
Executive Manager  
Governance,  
Communications  
and Engagement

**Cr Karen Egan**  
**(Mayor)**  
Bunjil Ward

**Carl Cowie**  
Chief Executive  
Officer

## Nillumbik Shire Council

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**Nillumbik Shire Council**

**Agenda of the Ordinary Meeting of Nillumbik Shire Council to be held  
Tuesday 28 April 2020 commencing at 7:00pm.**

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**1. Welcome by the Mayor**

Members of the public are advised the meeting will be streamed live, recorded and an audio recording of the meeting will be made publicly available on Council's website.

**2. Reconciliation statement**

**The reconciliation statement to be read by the Mayor**

Nillumbik Shire Council acknowledges the Wurundjeri people who are the Traditional Custodians of this Land. We would also like to pay respect to the Elders both past and present and extend that respect to other Indigenous Australians present.

**3. Prayer**

A prayer will be read by the Mayor.

**4. Apologies**

**Recommendation**

That the apologies be noted.

**5. Presentations**

**6. Confirmation of minutes**

Confirmation of minutes of the Ordinary Council Meeting held on Tuesday 24 March 2020.

**Recommendation**

That the minutes of the Ordinary Council Meeting held on Tuesday 24 March 2020 be confirmed.

**7. Disclosure of conflicts of interest**

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

**8. Petitions**

**9. Questions from the gallery**

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10. Reports of Advisory Committees

AC.004/20 Advisory Committee Report

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**Distribution:** Public

**Manager:** Blaga Naumoski, Executive Manager Governance, Communications and Engagement

**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.

**Attachments**

1. Positive Ageing Advisory Committee minutes - 13 March 2020

**Recommendation**

**That** Council notes the minutes of the Positive Ageing Advisory Committee meeting held on 13 March 2020.

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**11. Reports of Special Committees**

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## 12. Officers' reports

### OCM.054/20 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

#### Summary

The purpose of this report is to present the Council Plan Quarterly Performance Report for Council's consideration. This report (**Attachment 1**) provides the end of Quarter 3, 2019-2020 update on delivery progress and performance of the 2019-2020 Annual Plan priority actions, which aligns to delivery of the Council Plan 2017-2021.

Of the 40 actions in the 2019-2020 Annual Plan, 28 are on track, five are completed, two are now part of business as usual activities, three are experiencing minor issues, one action has been re-scoped and one action has been postponed.

The year's performance against the delivery of the Council Plan will be published in the Annual Report 2019-2020, which will be presented to the Minister for Local Government before 30 September 2020.

#### Recommendation

**That** Council receives the Council Plan Quarterly Performance Report (**Attachment 1**) for the third quarter of 2019-2020, being the period ended 31 March 2020.

#### Attachments

1. Q3 2019-2020 Council Plan Performance Report

#### Background

1. The Council Plan 2017-2021 was developed following the general Council Election in October 2016 and adopted by Council on 27 June 2017.
2. The Annual Plan 2019-2020 was developed and endorsed at the June 2019 Ordinary Council Meeting. The Annual Plan 2019-2020 contains 40 actions contributing to delivery of the Council Plan within the corresponding financial year.
3. This report provides Council with an update on the progress delivery of the 40 Annual Plan actions. The report documents how Council is performing and delivering on the Council Plan for the Nillumbik community.

#### Policy context

4. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Maintain good governance and effective leadership.

#### Budget implications

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

**12. Officers' reports**

**OCM.054/20 Council Plan Quarterly Performance Report**

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**Consultation/communication**

6. The Council Plan 2017-2021 was developed following a comprehensive program of workshops and briefings with Councillors following the general Council election in October 2016, as well as a period of consultation with the community in May and June 2017. The Council Plan 2017-2021 was adopted by Council on 27 June 2017.
7. The Annual Plan 2019-2020, developed following briefings with Councillors, was adopted by Council in June 2019 and contains 40 actions contributing to delivery of the Council Plan within the corresponding financial year.

**Commentary on performance report**

8. The 2019-2020 Annual Plan contributes to the delivery of the Council Plan 2017-2021 through 40 priority actions that sit under the five high-level strategic objectives of:
  - Engaged, connected communities – a place where communities and ideas thrive, underpinned by trust, confidence and continuous learning.
  - Active and creative people – active lifestyles and artistic expression are fostered through participation and innovation.
  - Safe and healthy environments – healthy and safe communities enjoy living in our iconic Green Wedge environment.
  - A prosperous economy – a strong local economy that supports business growth, jobs and community wealth.
  - Responsible leadership – collaborative and consultative leadership that builds trust and makes the best use of available resources to the benefit of all in the pursuit of excellence.
9. Of the 40 actions in the 2019-2020 Annual Plan, 28 are on track, five are completed, two are now part of business as usual activities, three are experiencing minor issues, one action has been re-scoped and one action has been postponed.
10. Key activities and deliverables achieved during the third quarter (January to March 2020) include:
  - In preparation for the development of the Shire Plan 2040 Background Paper, two workshops were developed and delivered by Futurist Steve Sammartino in February 2020. In March 2020, a structure for the Background Paper was supported by Councillors (Action 1);
  - The Customer Experience Strategy Annual Update was noted by Council at the March Ordinary Council Meeting. An updated Customer Complaints Policy was also adopted at the March Future Nillumbik Committee Meeting (Action 2);
  - Council engaged a consultant to prepare a Community Infrastructure Needs Analysis. The report was circulated to relevant managers for discussion. The policy will continue to be drafted based on the report's findings (Action 5);
  - Scope has been agreed to produce a digital plan of all community facilities, and to provide an external facing facility availability system on Council's website (Action 6);

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OCM.054/20 Council Plan Quarterly Performance Report

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- A \$20,000 budget has been allocated to engage a consultant to undertake an organisational cultural awareness capacity building project. The project will be led by Indigenous Employment Partners and will launch a cultural self-reflection survey in Reconciliation Week in May (Action 8);
- Construction works are in progress on the Diamond Creek Trail (Action 13a);
- The 2019-2020 Capital Works Program shows 81% of programs and projects as being completed/in progress, with 19% yet to be initiated (Action 15);
- Development of a regional public art gallery is on hold pending direction from the State Government regarding the acquisition of the 895 Main Road, Eltham site (Action 18);
- Public exhibition of the Housing Strategy Discussion Paper closed in March, with consultants engaged to prepare the draft strategy, scheduled for adoption at the August Ordinary Council Meeting (Action 22);
- The customer request system for kerbside waste collection has been reviewed and updated to enable new service types and the integration with the new contractor's system is in test phase. This is on track to go live on 1 July 2020 (Action 27);
- Public consultation on the Economic Development Strategy is complete. Council will be briefed on the submissions received in May 2020 (Action 28);
- The Diamond Creek and Eltham Major Activity Structure Plans are currently on public exhibition until 29 April 2020 (Action 33);
- The procurement process for the Asset Management System commenced (Action 39);
- Five priority actions in the Digital Transformation Plan received funding to enable commencement of those projects (Action 40).

**Conclusion**

11. The Council Plan Quarterly Performance Report provides an update on the outcome of the Council Plan at the end of the third quarter of the 2019-2020 financial year. The report documents how Council performed and delivered over the third quarter and provides an overview of progress on the Council Plan for the Nillumbik community.
12. Despite the unplanned challenges with COVID-19 situation, the overall position as outlined in this report suggests that Council continues to make a solid effort at delivering on the priority actions and significant outcomes for the community.

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OCM.055/20 Financial Hardship Policy - COVID-19 Pandemic Event

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**Distribution:** Public

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

**Author:** Melika Sukunda, Finance Manager

**Summary**

This report presents a temporarily revised Financial Hardship Policy – COVID-19 Pandemic Event for Council’s endorsement.

Council has a Financial Hardship Policy which has been endorsed by the Audit and Risk Committee in May 2016. The policy provides guidelines to assist in the assessment of applications received for the deferment of rates and charges due to financial hardship. The latest review has been conducted in response to the COVID-19 Pandemic Event (the event).

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

1. Council endorses the Financial Hardship Policy (**Attachment 1**).
2. These temporary provisions be reviewed on a quarterly basis to assess when the interim measures can be lifted.

**Attachments**

1. Financial Hardship Policy - COVID-19 Pandemic Event

**Background**

1. Council has a Financial Hardship Policy to provide guidance regarding the deferment of rates and charges and the waiving of penalty interest charges in line with *Local Government Act 1989* and the *Penalty Interest Rates Act 1983*.
2. This temporarily revised policy seeks to balance equity and equality across all ratepayers within the Shire.
3. The policy will be presented to the Audit and Risk Committee in May 2020.

**Policy context**

4. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Maintain good governance and effective leadership.

**Budget implications**

5. Council may experience a reduction in cash-flow during the event resulting from the non-payment of rates instalments.
6. Penalty interest forms part of the budget and under the temporary measures there may be an impact as a result.

**Consultation/communication**

7. The updated Financial Hardship Policy has been circulated to the independent audit committee members for review and commentary which has been incorporated.

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**OCM.055/20 Financial Hardship Policy - COVID-19 Pandemic Event**

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8. Subsequently, the policy will be presented to the Audit and Risk Committee in May 2020.

**Policy changes**

Who may make an application

9. The property owner or the named agent on the rates instalment notice may make an application. Tenants must contact their property owner or the named agent to apply.

Considerations during the COVID-19 Pandemic Event

10. Allows the relaxing of provisions within the policy to expedite the granting of rates and charges deferral or interest free period(s).
11. Financial counselling requirements prior to the acceptance of a financial hardship application have been temporarily suspended.
12. An initial interest free period to 30 September 2020, to be reviewed at that time.
13. Payment arrangements will not be mandatory to receive the interest free period for the property owner's primary residence.
14. Owners of investment or holiday property will be able to apply for hardship consideration during the event, provided they enter into a payment arrangement.

**Conclusion**

15. Council's Financial Hardship Policy has been updated and is presented to Council for formal endorsement.
16. The temporary provisions will be reviewed on a quarterly basis to assess when the interim measures can be lifted.



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OCM.056/20 Municipal Emergency Management Plan 2020-2023

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**Distribution:** Public

**Manager:** Blaga Naumoski, Executive Manager Governance, Communications and Engagement

**Author:** Kim Halse, Emergency Management Lead

**Summary**

It is a requirement of the *Emergency Management Act 1986*, that each municipal council must prepare and maintain a Municipal Emergency Management Plan (**Plan**).

The Plan is audited by the Victoria State Emergency Service every three years.

In preparation for the 2020 audit, the Municipal Emergency Management Planning Committee (**MEMPC**) has reviewed and updated the MEMP. The updated plan was endorsed by the MEMPC on 27 March 2020.

The updated plan is presented with this report for Council's consideration and adoption.

**Recommendation**

**That** Council adopts the Nillumbik Municipal Emergency Management Plan 2020-2023 (**Attachment 1**).

**Attachments**

1. Municipal Emergency Management Plan 2020-2023

**Background**

1. Section 20 of the *Emergency Management Act 1986*, requires that each municipal council must prepare and maintain a Municipal Emergency Management Plan (**MEMP**).
2. The Municipal Emergency Management Plan (**Plan**) has been reviewed and updated by the MEMPC. The updated plan was endorsed by the Municipal Emergency Management Planning Committee (**MEMPC**) at their meeting on 27 March 2020.
3. The legislation requires that the MEMPC having prepared the Plan should then present it to Council for adoption.

**Policy context**

4. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Meet Council's responsibilities for emergency management.

**Budget implications**

5. Facilitating the development of the Plan is a core role of the Emergency Management team. Associated costs are factored into the Emergency Management operational budget.

**Consultation/communication**

6. Council maintains close association and communication with State Government departments and emergency management agencies in developing and reviewing its

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emergency management plans. This includes the preparation and endorsement of the Municipal Emergency Management Plan, Municipal Fire Management Plan and specific projects to engage the community in developing understanding and resilience to emergency events.

7. The Plan commits to ongoing and improved community consultation on emergency management issues.

**Issues/options**

8. A MEMPC has been established in pursuant of section 21 of the *Emergency Management Act 1986*.
9. The MEMPC is made up of representatives of agencies that play a key role in preparing for, preventing, responding to and recovering from emergencies. Other agencies and subject matter experts also provide input to emergency planning as required.
10. It is a function of the MEMPC to develop a MEMP. This Plan must be consistent with the guidelines published in the Emergency Management Manual Victoria (**EMMV**).
11. The Victoria State Emergency Service audits all Plans on a three yearly basis, to ensure that plans comply with the guidelines. The Nillumbik plan is due to be re-audited.
12. The Plan has undergone a comprehensive review by the MEMPC to ensure its currency and compliance with the guidelines.
13. Amendments have been made to the Plan to reflect:
  - a) changes in emergency management arrangements that have occurred at the state level. This includes strengthening the arrangements in relation to response and recovery coordination;
  - b) updates to statistical information where more current information is available; and
  - c) updates to the Community Emergency Risk Assessment section of the plan following a review undertaken by the MEMPC in late 2019.
14. At the MEMPC meeting on 27 March, the MEMPC endorsed the changes to the Plan.
15. The Victoria State Emergency Service will conduct an audit of the Plan in May and will report back to the MEMPC. A Certificate of Audit will be issued to Council once the Victoria State Emergency Service has completed its review and any amendments are completed. The MEMPC is committed to monitoring and reviewing the Plan on an ongoing basis.

**Conclusion**

16. The MEMPC has updated the Plan to ensure that it is current and compliant with the guidelines as published in the EMMV.
17. The updated Plan is presented for Council's consideration and adoption.

**12. Officers' reports****OCM.057/20 Submission - Integrating Environment Protection Reform into Land Use Planning**

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**Distribution: Public****Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety****Author: Leigh Northwood, Strategic Planning Lead****Summary**

To give effect to environment protection framework changes in the Environment Protection Act, corresponding updates to the land use planning provisions are required. This includes updates to operational material including the Planning Practice Note and Ministerial Directions that accommodate newer approaches, and address known operational issues. The Department of Environment, Land, Water and Planning (DELWP) are seeking submissions to the proposed changes.

**Recommendation**

**That** Council endorses and submits the submission (**Attachment 1**) to the proposed reforms integrating environment protection into land use planning to DELWP by the submission deadline of 5 May 2020.

**Attachments**

1. Nillumbik Submission - Integrating Environment Protection Reform into Land Use Planning

**Background**

1. DELWP are proposing changes to the Victorian Planning Provision's (VPP's) to facilitate changes to the *Environment Protection Act 2017* (EP Act) (as amended to commence on 1 July 2020). Officers seek Councillors consideration and endorsement of a submission to the proposed changes (refer **Attachment 1**).
2. DELWP is proposing updates to Victoria's land-use planning system to bring it in line with the new environment protection framework which comes into effect on 1 July 2020.
3. The proposed updates will ensure that the EP Act and its subordinate instruments functions at commencement and that effective interaction between the environment protection framework and the planning system is maintained. This includes amendments that will integrate updated requirements for the management of potentially contaminated land within the planning system.

**Why were changes made to the *Environment Protection Act 2017*?**

4. The purpose of the reforms to the EP Act was to create a pre-emptive legislative framework allowing the elimination or reduction of risk to human health before the consequences of the hazard and exposure are realised. It is noted a series of catastrophic events initiated the environmental legislative reform, including the Hazelwood Mine fire in February-March 2014, and the Parliamentary 'Inquiry into CFA training facility at Fiskville' which led to the Andrew's government Independent Inquiry into the Environment Protection Authority (Independent Inquiry).

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**OCM.057/20 Submission - Integrating Environment Protection Reform into Land Use Planning**

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5. The Independent Inquiry commenced in June 2015 and concluded in March 2016 resulting in 48 recommendations. The legislative reform to the EPA implements the Independent Inquiry's recommendations. The Independent Inquiry identified waste and contaminated environments as core threats to the human health of Victoria's community. Together with pollution incidents and the expansion into mining and extractive industries these form the primary targets of the preventative and risk based legislative reform.
6. The existing legislation is responsive to specific outcomes, which continues to expose the Victorian community to health hazards and financial liability of clean up and ongoing management, including the increasing prevalence of waste stockpiling, storage and fires.
7. The most challenging matters for Government (Federal, State and local) and some corporations will continue to be legacy contamination and poor historical practices, which will be confronting and costly to examine and address.
8. From 1 July 2020, a new environment protection framework will come into effect in Victoria, led by the Environment Protection Authority. To support the new framework, these proposed changes will better integrate the new environment protection framework with the land use planning system. These reforms are introduced as part of the government response to recommendation 10.3 &14.2 of the Independent Inquiry.

**Discussion**

What are the changes proposed?

9. To give effect to environment protection framework changes in the EP Act, corresponding updates to the land use planning provisions are required. This includes updates to operational material including the Planning Practice Note and Ministerial Directions that accommodate newer approaches, and address known operational issues, including:
10. Amended State Planning Policy 13.04-1S to:
  - a. Require applicants to provide adequate information on the potential for contamination to have adverse effects on the future land use if the subject land is potentially contaminated land.
  - b. Require an assessment confirming that the environmental conditions of the site are suitable for a proposed use and development.
  - c. Impose conditions as necessary to ensure contamination is managed so that the site is suitable for a proposed use and development.
  - d. Facilitate the remediation of contaminated land, particularly on sites with potential for development for a residential use, child care centre, kindergarten, pre-school centre, primary school, secondary school and children's playground, even if ancillary to another use.
11. Amended Environmental Audit Overlay (EAO). Updates are proposed to clarify, improve and strengthen the requirements when an Environmental Audit Overlay (EAO) applies to land. Key changes proposed are:

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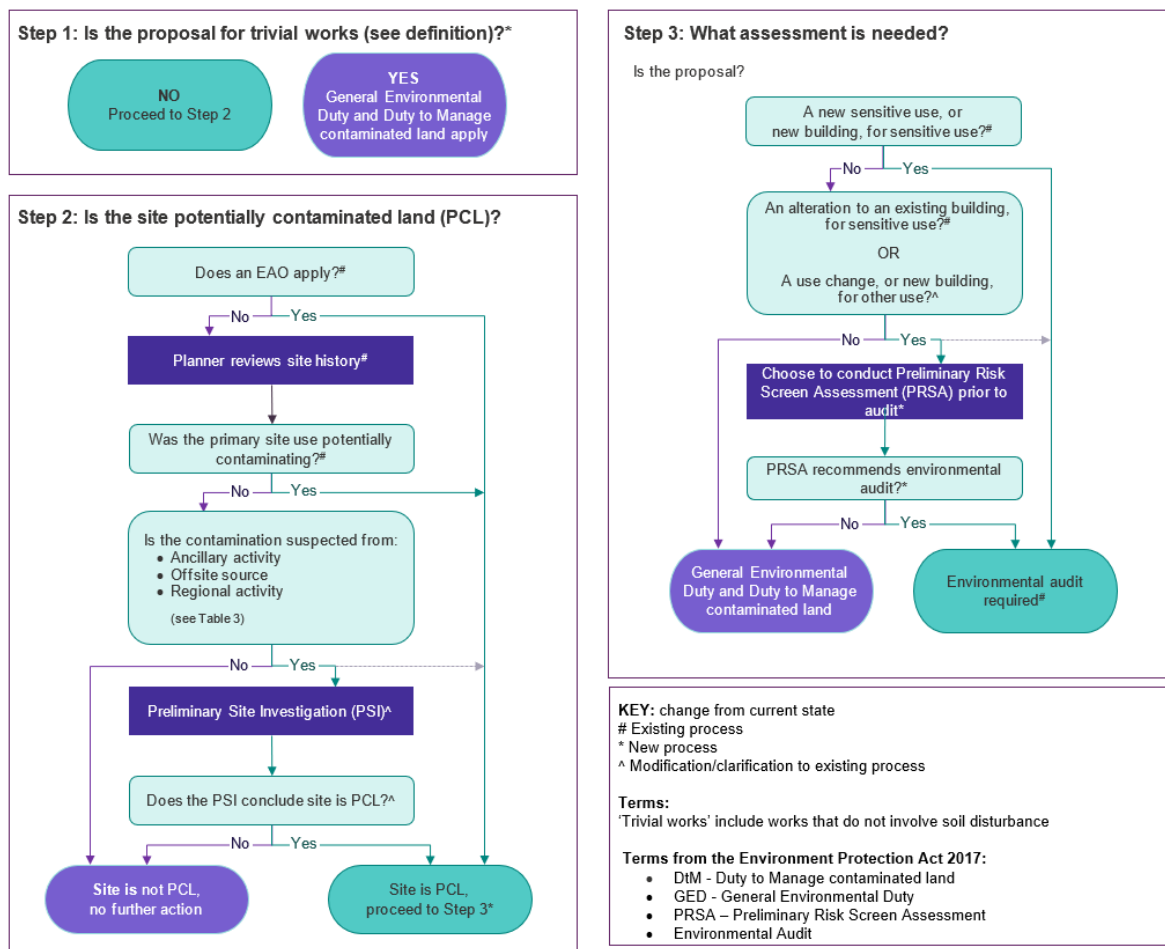
**OCM.057/20 Submission - Integrating Environment Protection Reform into Land Use Planning**

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- a. Clarifying the purpose of the provision is to apply to potentially contaminated land proposed to be used for a sensitive use, agriculture or public open space.
  - b. Clarifying that the provision applies whether or not a permit is required.
  - c. Expanding the definition 'sensitive uses' to also include secondary schools and children's playgrounds, even if ancillary to another use.
  - d. Updating environmental audit requirements to bring them in line with the *Environment Protection Act 2017* (as amended to commence on 1 July 2020).
  - e. Clarifying exemptions from the requirement for an environmental audit, including use of a preliminary risk screen assessment for an existing sensitive use on the land and exemptions for works not associated with a change in land use and not involving soil disturbance.
12. Amended definition of 'potentially contaminated land'. This is a land use planning term, as opposed to the definition of 'contaminated land' under the EP Act. The EP Act definition is based on knowledge that contaminant levels exceed criteria (e.g. based on sampling data). In contrast, the planning definition is about identifying where contamination may be probable based on-site history, prior to any field investigation. The current definition is being slightly broadened to include new potentially contaminating activities or sources.
13. Amended Ministerial Direction No.1- Potentially contaminated land; and
14. Amended Planning Practice Note 30 (PPN30) – Potentially contaminated land. PPN30 applies to both potentially contaminated and contaminated land. It is designed to provide guidance for planners and applicants about:
- a. How to identify potentially contaminated land.
  - b. Contaminated land and the planning system.
  - c. The requirements of proponents and permit applicants.
  - d. The appropriate level of assessment of contamination in different circumstances.
  - e. Appropriate conditions on planning permits.
  - f. Circumstances where the Environmental Audit Overlay (EAO) should be applied or removed.
15. The PPN30 identifies a decision making framework (aligned to the reforms within the EP Act) that provide more effective guidance to Councils in regard to the assessment pathway:

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16. The PPN also details various assessment tools that can be used for determining contamination. Desktop analysis, preliminary site investigation and a preliminary risk screen assessment are all now tools that can be used in 'graduating' decision making to the need for an Environmental Audit (which can be both an expensive and time consuming requirement). This enables Council's to form a view based on predominantly suitably qualified professionals and/or environmental auditors opinion of contamination matters, and a recommendation if the next level of assessment is required. See below for an outline of the assessment tools as detailed in the PPN:

	Desktop Study	Preliminary Site Investigation	Preliminary Risk Screen Assessment	Environmental audit
<b>Purpose</b>	Gather further evidence on the historical uses of the land	Gather further evidence on if the site is potentially contaminated where it is unclear	To determine whether an environmental audit is required	Determining the sites suitability for the proposed use and management/mitigation requirements

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	Desktop Study	Preliminary Site Investigation	Preliminary Risk Screen Assessment	Environmental audit
<b>Rec. prepared by</b>	Responsible, planning authority, or suitably qualified professionals	Suitably Qualified Professional	Environmental Auditor	Environmental Auditor
<b>Method</b>	Desktop investigation of evidence of historical land uses	<ul style="list-style-type: none"> <li>• Desktop investigation</li> <li>• May include limited field investigations and soil sampling</li> <li>• Should be conducted to the standard established under NEPM</li> <li>• Not regulated by EPA</li> </ul>	<ul style="list-style-type: none"> <li>• Desktop investigation and field investigation</li> <li>• Review by an independent auditor appointment by EPA to confirm the reliability of the information</li> <li>• Conducted in accordance with NEPM and EPA standards and guidance</li> <li>• Regulated by EPA</li> </ul>	<ul style="list-style-type: none"> <li>• Desktop investigation and field investigation</li> <li>• Third party review by an independent auditor appointment by EPA to confirm the reliability of the information</li> <li>• Conducted in accordance with NEPM and EPA standards and guidance</li> <li>• Regulated by EPA</li> </ul>
<b>Outcome</b>	List or timeline of the historical land uses at and near the site.	Outcomes can vary, however can include: <ul style="list-style-type: none"> <li>○ Opinion on the potential for a site to be contaminated</li> <li>○ Recommendation on whether an environmental audit is required</li> <li>○ Recommendations for further assessment</li> </ul>	Preliminary Risk Screen Statement which informs: <ul style="list-style-type: none"> <li>○ The likelihood of the presence of contaminated land</li> <li>○ The need for an environmental audit</li> <li>○ If an environmental audit is required, to recommend a scope for the environmental audit</li> </ul>	<ul style="list-style-type: none"> <li>• Audit report that is made available to Council, EPA and published on EPA's website.</li> <li>• Statement of Environmental Audit providing an opinion on the site's suitability for use and any recommendations to control the use.</li> </ul>
<b>Distribution and transparency</b>	No	No	<ul style="list-style-type: none"> <li>• Audit report that is made available to Council, EPA and published on EPA's website.</li> </ul>	<ul style="list-style-type: none"> <li>• Audit report that is made available to Council, EPA and published on EPA's website.</li> </ul>

17. The also PPN indicates a recommended assessment level, based on proposed land use and current or historic land uses or activities carried out on the land and the statutory requirements to assist Council in understanding contamination risk.

18. The PPN also identifies the availability of a new resource 'Victoria Unearthed' which is a database tool that brings together existing information about potential land and

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groundwater contamination, historical business listings, and more held by the Environment Protection Authority. Victoria Unearthed is not a definitive source of information about current contamination but can be a useful starting point for finding out more about a piece of land or area. Information sources include;

- a. Victorian Landfill Register
- b. Environmental Audit Overlay
- c. EPA environmental audits
- d. Groundwater quality restricted use zones (GQRUZ)
- e. Historical business listings - some information from Victoria's Sands & McDougall business directories from 1896, 1925 and 1974

**Issues**

19. The proposed changes, particularly in regard to the EAO provide greater clarity and guidance for Council and applicants. The new assessment tools, including the Preliminary Risk Assessment are helpful additions and will provide a more effective 'graduated' pathway in assessment of subdivision and development for contamination.
20. Although this graduated pathway assists in decision making around contamination and the Responsible Authorities 'satisfaction' that potential contamination has been effectively dealt with, officers raise concerns in regard to situations where agreement with consultant recommendations cannot be made. As with all disciplines that underpin professional consultant input, there can be variation in assessment and therefore recommendations from one provider to another. It is noted that the assessment tools provide a reasonable expectation that a certain level of assessment will be undertaken (as prescribed by the EP Act in the case of the Preliminary Risk Screen Assessment and Environmental Audit), but the PPN is silent on any type of review mechanisms, i.e. a potential peer review by another qualified consultant. Where Council's need to satisfy themselves that recommendations are correct, they may seek review by another suitably qualified professional to review assumptions and recommendations. This is something that can occur reasonably frequently, particularly in regard to engineering/geotechnical advice given the significant risks that are associated with such advice. It is considered reasonable that the PPN address this issue to avoid a cost onus to Council in having to engage consultants to undertake this work. Where there is reasonable uncertainty, there should be a mechanism to require further clarification from another qualified consultant to review the findings but not as a cost to Council's or other agencies.
21. It is noted that the inclusion of the 'Victoria Unearthed' database tool is a good start towards providing access to effective information for Council, landowners and other agencies to assess if potential contamination of land exists, however it is noted that Nillumbik Shire has advocated to DELWP and the EPA for a detailed State-wide database to be facilitated that would remove the onus from local governments in identifying sites across various databases (that are often not up to date or incomplete), and also provide certainty to existing and potential land owners as to the contamination of land. It is noted that recommendation 14.1 of the Independent Inquiry identified that DELWP 'develop a comprehensive State-wide database of sites that pose a high risk



**12. Officers' reports**

**OCM.057/20 Submission - Integrating Environment Protection Reform into Land Use Planning**

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*to the community because of their past use, which should link to other relevant government data sources including information held by the EPA'. It is considered that this recommendation should still be implemented.*

22. It is also noted the requirement for a Certificate of Environmental Audit has been removed from the EAO provision and from the PPN where it was required as part of both the Overlay and PPN previously. The assessment framework identified within the PPN now appears to put onus on the preparation of an Environmental Audit with no requirement for the subsequent Certificate. It is assumed that a Certificate of Environmental Audit is no longer required. Clarification is sought from DELWP in regard to this. This is a significant additional step which has often caused concern and a level of 'discretion' that was confusing to many land owners and to Council.

**Policy context**

23. This report directly supports the achievement of Council Plan 2017-2021 strategy:
- Prepare and develop an improved and holistic approach to strategic planning.

**Budget implications**

24. There are no known budget implications to councils in regard to this matter.

**Conclusion**

25. The closing date for submissions is 5 May 2020.
26. With consideration of submissions, the proposed reforms will be implemented through a future Ministerial amendment, effectively implementing changes to all planning schemes within Victoria.

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12. Officers' reports

**OCM.058/20 Update on the State Government's Hurstbridge Railway Duplication Project: Stage 2**

**Distribution: Public**

**Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety**

**Author: Paul Fyffe, Senior Strategic Planner**  
**Lawrence Seyers, Lead Transport Planner**  
**Leigh Northwood, Strategic Planning Lead**

**Summary**

This report provides an update on developments and issues regarding the State Government's Hurstbridge Line Upgrade Project – Stage 2 (rail duplication project).

The project primarily proposes to duplicate the railway line in parts of Nillumbik and Banyule and to conduct major redevelopments of the stations at Montmorency and Greensborough. The project is being managed by the Level Crossing Removal Project (LXRP) and planning for the project is well underway.

The primary developments and issues detailed in this report include:

- A continued lack of response from the LXRP to significant shortcomings, highlighted by Council, in the scope of the project.
- Two variations proposed by the LXRP in the scope of the project, one of which puts into question the capacity of the project to provide additional services to Nillumbik and the other which could potentially have impacts on properties abutting the railway corridor between Sherbourne Road and Silver Street, Eltham.
- The LXRP has advised it will seek planning approval for the project via a new fast-track process, which is available now the State Government has introduced Clause 52.03 into all planning schemes. Officers have concerns with this proposal.

The report recommends a number of actions which respond to issues regarding the above matters.

**Recommendation**

**That Council:**

1. Notes:
  - a) Its submission of 27 February 2020, provided as **Attachment 1**, to the State Government which highlights shortcomings in the scope of the Hurstbridge Line Upgrade Project – Stage 2.
  - b) A letter from the LXRP to Council's CEO, provided as **Attachment 2**, which advises that the LXRP will request planning approval from the Minister for Planning for the Hurstbridge Line Upgrade Project – Stage 2, subject to Clause 52.03 of the Nillumbik Planning Scheme.
2. Writes to the Minister for Major Transport Infrastructure, the Minister for Planning, the LXRP and local members of parliament:

12. Officers' reports

**OCM.058/20 Update on the State Government's Hurstbridge Railway Duplication Project: Stage 2**

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- a) Requesting a response to the shortcomings identified by Council's submission, provided as **Attachment 1**, in the scope of the Hurstbridge Line Upgrade Project – Stage 2.
  - b) Seeking clarification as to whether the Hurstbridge Line Upgrade Project – Stage 2 will, and to what extent, deliver additional trains services within the Shire of Nillumbik.
  - c) Outlining concerns regarding Clause 52.03 of the Nillumbik Planning Scheme and the LXP's proposed use of that clause to provide planning approval for the Hurstbridge duplication project.
  - d) Seeking assurance that feedback from the Nillumbik community and Council on proposed consultation on concept plans for the Hurstbridge Line Upgrade Project – Stage 2 will be considered before the Minister provides planning approval to the project.
3. Notes LXP's proposed extension of the project area from Sherbourne Road to Silver Street, Eltham and responds by:
- a) Seeking clarification from the LXP regarding the proposed extent of buildings and works, particularly vegetation removal, in the proposed extended project area.
  - b) Requesting the LXP directly consult with owners and occupiers abutting the proposed extension regarding the intended buildings and works, including vegetation removal.
  - c) Making a submission to the LXP which advocates that it minimise the extent of vegetation removal and other potential adverse impacts of extending the project area to Silver Street.

**Attachments**

1. Nillumbik Shire Council submission to LXP regarding Stage 2 of the Hurstbridge Railway Line Duplication Project
2. Letter from LXP to Nillumbik CEO dated 7 April 2020
3. Clause 52.03 (Level Crossing Removal Project) of the Nillumbik Planning Scheme

**Background**

1. The Hurstbridge Line Upgrade Project – Stage 2 (rail duplication project) involves:
  - Building a new railway station at Greensborough;
  - A major upgrade to the Montmorency Station;
  - The duplication of three kilometres of track, within Banyule, between Greensborough station and Sherbourne Road (Sherbourne Road is a western boundary of Eltham and a boundary between Banyule and Nillumbik); and

12. Officers' reports

**OCM.058/20 Update on the State Government's Hurstbridge Railway Duplication Project: Stage 2**

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- The duplication of 1.5 kilometres of track in the Shire of Nillumbik between Diamond Creek and Wattle Glen (from the east end of Diamond Creek Station to just before Wattle Glen).
2. It has been stated that the project will provide increased frequency of train services in Banyule and Nillumbik. The increase in Nillumbik comprises a service frequency in the peak hour of:
- every 20 minutes at Hurstbridge, Wattle Glen and Diamond Creek
  - every 10 minutes at Eltham
- (NB: peak hour is defined as arrivals at Jolimont between 7am-8.59am)
3. Off peak services will be similar to the existing frequency. Although, LXRP has indicated there may be the opportunity to provide additional trains from the city during the afternoon peak commute time. This occurring is dependent on whether timetabling constraints can be addressed.
4. The rail duplication project does not involve:
- Level crossing removals at Diamond Street (Eltham) and Main-Hurstbridge Road (Diamond Creek);
  - Any upgrades to Eltham, Diamond Creek, Wattle Glen or Hurstbridge railway stations, even though the project will require an infrequently used platform, Platform 1, at Diamond Creek station to become the platform which will primarily service city bound trains;
  - Any changes to the existing rail stabling at Eltham railway station;
  - Removal, or consolidation of occupational crossings between Diamond Creek and Wattle Glen railway stations;
  - Construction of any pedestrian bridge or underpass at Diamond Creek;
  - Construction of commuter car parking at Eltham, Wattle Glen and Hurstbridge (to be delivered separately by the Department of Transport); and
  - Construction of a shared path along the duplicated line between Greensborough and Sherbourne Road.
5. The project is managed by the LXRP team within the State Government.
6. Council's Ordinary Meetings of 17 December 2019 and 28 January 2020 considered the scope of the project and in summary, resolved to advocate to the State Government that the project's scope should be broadened to:
- a) Provide safe pedestrian crossing points of the duplicated line near schools;
  - b) Enable removal of the Main Hurstbridge Road, Diamond Creek level crossing at a future stage;
- (The January Ordinary Meeting also resolved to express Council's concern at increased traffic congestion at existing Hurstbridge railway line level crossings)

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**OCM.058/20 Update on the State Government's Hurstbridge Railway Duplication Project: Stage 2**

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- c) Deliver upgrades to Diamond Creek station that are required to support the project; and
  - d) Consider low cost, high impact additions to significantly enhance community outcomes, such as a shared trail along the rail corridor between Greensborough and Eltham.
7. A key decision of Council's December Ordinary Meeting was to write to the State Government to advocate for improvements to the rail duplication project. Similarly, a key decision of the January Ordinary Meeting was to advocate on these matters in a submission from Council in response to consultation being conducted by the LXP, at that time, on the project.
8. **Attachment 1** provides a copy of Council's submission to the LXP and within that is a copy of the letter, dated 21 January 2020, which was sent earlier to the State Government, as per the resolution of Council's December Ordinary Meeting.
9. Consistent with Council's resolutions at its last December and January Ordinary Meetings, Nillumbik Council is also advocating for improvements to the Hurstbridge duplication project by:
- The participation of Nillumbik officers in the LXP's Urban Design Advisory Panel (UDAP) process and by Council correspondence to the LXP on that process. A letter from Council to the LXP on this matter, dated 6 February 2020, is contained within **Attachment 1**.
  - Liaising with Banyule City Council, where appropriate, to advocate for improvements to the project.
10. On this last point, Banyule City Council has also expressed concerns to the State Government regarding the scope of the project and the project's lack of attention to optimising community benefits, such as the significant benefit that could be realised by providing a shared trail along the rail corridor between Greensborough and Eltham.

**Policy context**

11. This report directly supports the achievement of Council Plan 2017-2021 strategy:
- Advocate effectively for Nillumbik's interests at a state and national level.

**Budget implications**

12. There are no budget implications for Council with this matter.

**Consultation/communication**

13. The following are the expected LXP timelines for the rail duplication project:
- Community consultation in the Shire of Nillumbik in January 2020;
  - Obtain planning approval for the project by May 2020;
  - Conduct public consultation on concept plans for the project in May 2020;
  - A contract is expected to be awarded mid-2020; and
  - Construction is expected to begin late 2020 and be completed late 2022.

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14. Officers understand that past community consultation for the project has comprised:
- A stall at the Rotary Eltham Festival on Saturday 9 November and Sunday 10 November 2019;
  - Drop in sessions at Montmorency Secondary College (focus on 'How do you use Greensborough and Montmorency stations?') on Wednesday 20 November 2019, 5:30pm to 7:30pm and Saturday 23 November 2019, 10:00am to 12 noon;
  - Some request for feedback through the project website; and
  - A request for submissions to the project in January-February 2020.

**Issues/options**

15. There are notable developments since Council last considered the rail duplication project, which was at its January 2020 Ordinary Meeting. These developments particularly include:
- On-going issues with the project's scope, including a lack of response from the LXP to concerns raised by Council regarding this matter; and
  - A proposed new process for granting planning approval to the project.

On-going Issues with the Project's Scope

16. In response to Council's advocacy, outlined above, for improvements to the scope of the project, the LXP has advised at an officer level that no such improvements will occur. In other words, there will be no action to expedite removal of the level crossing, no pedestrian crossing will be provided in close vicinity of the Diamond Creek schools, no upgrades will be made to the Diamond Creek station and no shared trail will be provided alongside the duplicated track between Greensborough and Eltham.
17. It is disappointing that the State Government has not responded favourably to any of Council's requests for improvements to the scope of the project. Officers consider that, as a bare minimum, the project has an obligation to provide a safe crossing point for students in vicinity of the Diamond creek schools and to upgrade the sub-standard Platform 2 at the Diamond Creek station, which will experience significant additional use as a result of the project.
18. Council has, instead, been advised by the State Government of separate variations to the scope of the project, including:
- Extension of the Project Area to Silver Street, Eltham*
19. The LXP has advised Council that it proposes to extend the project area to include the rail corridor between Sherbourne Road and Silver Street, Eltham for the purpose of providing minor additional power and signalling upgrades required by the duplication project. It is stated that these works will predominately be undertaken on the south side of the railway line, within an existing access track, and that some minor vegetation removal will be required to facilitate these additional upgrade works. The LXP has advised Council that it has until 1 May to provide a submission regarding the proposed extension to the project area.

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OCM.058/20 Update on the State Government's Hurstbridge Railway Duplication Project: Stage 2

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20. There are some potential issues with this development, including:
- No plans have been provided to Council of the proposed vegetation removal and further, the relevant section of railway corridor is quite wide at its eastern end and appears to contain a notable level of vegetation.
  - The relevant section of railway corridor abuts approximately 19 residential properties and approximately 7 commercial/industrial properties. It is possible that these properties could be impacted by the proposed extension. For example, some of the vegetation referred to above appears to be between the railway line and a number of residential properties and thus, removal of that vegetation may impact on the amenity of these properties.
  - The LXP has not advised whether it is also consulting with owners and occupiers abutting the proposed extension to the project area.
21. There may, in fact, be limited issues for residents as a consequence of the proposed extension. However, this is not yet clear and this report recommends actions to provide clarity on this matter and for Council to advocate for an appropriate outcome.

*An additional platform is no longer proposed at Greensborough station*

22. Council officers were advised in a project meeting with the LXP that, due to budget constraints, the project no longer proposes to construct an additional platform at Greensborough Station. This development may have particular implications for Nillumbik residents, as it is Council officers' understanding that the additional platform was to be used to assist in increasing the timetabling capacity of the line between Greensborough and Hurstbridge. On hearing of this reduction in the scope of the project, Council officers have been pressing the LXP for clarification as to whether there is any impact on the ability of the duplication to provide additional services into Nillumbik. The LXP has not yet provided an answer to this question.

Process for Planning Approval

23. Prior to 31 January 2020, major rail and road infrastructure projects, such as LXP projects, were commonly approved by a Ministerial amendment pursuant to Section 20 Part 4 of the *Planning and Environment Act 1987* (the Act). A Ministerial amendment does not require public exhibition and has been used to fast-track the placing of an incorporated plan into the relevant planning scheme which, subject to conditions, provided the necessary planning approval for a major transport project. Until recently, the LXP had been advising Council that it would be seeking planning approval for the Hurstbridge duplication project by a Ministerial amendment.
24. There are, however, checks on the use of a Ministerial amendment. For example, the Act specifies it should only be used if the Minister considers that compliance with any of the notification requirements is not warranted, or that the interests of Victoria or any part of Victoria make such an exemption appropriate.
25. On 31 January 2020, without prior consultation with Council, the State Government gazetted Amendment VC170 which introduced Clause 52.03 – Level Crossing Removal Project into all planning schemes. A copy of Clause 52.03 is provided as **Attachment 3**. This clause provides planning approval, subject to conditions, for all future LXP projects declared under certain State legislation. The conditions stated in



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OCM.058/20 Update on the State Government's Hurstbridge Railway Duplication Project: Stage 2

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the clause regard such matters as public consultation, vegetation removal, liaising with public authorities etc.

26. The condition regarding public consultation is stated in the clause as follows:

*Prior to the commencement of the use or development:*

- *Public consultation, and consultation with the relevant municipal council, must be undertaken to the satisfaction of the Minister for Planning.*
- *A report that summarises the feedback provided during consultation and explains how the feedback has been considered and responded to must be prepared to the satisfaction of the Minister for Planning.*

27. However, there are no clear requirements within the clause as to the extent, nature and transparency of the public consultation, nor how the LXP should consider and respond to the consultation.

28. A further concern with Clause 52.03 is that it appears to remove a level of rigour and justification in determining whether the State Government should fast-track approval of its own LXP's projects. For example, whereas the use of a Ministerial amendment is subject to a condition in the Act which ties use of that fast-tracked process to situations where the Minister has an appropriate level of justification, this condition either does not exist, or at the very least, appears far less clearly stated within Clause 52.03.

29. With regards to the Hurstbridge railway duplication project, the LXP wrote to the Nillumbik CEO on 7 April 2020 (**Attachment 2**) and principally advised that:

- a) LXP will lodge a request with the Minister for Planning to approve the Hurstbridge duplication project under the requirements of Clause 52.03.
- b) LXP will continue to consult with the community throughout the delivery of this project.

30. Relevant to the letter from LXP, in an associated meeting between Council and State Government officers on the letter's topic, Council officers were advised of the following:

- LXP's report to the Minister for Planning on public consultation for the project, required by Clause 52.03, will not be made public.
- Satisfying the public consultation requirements of Clause 52.03 is not considered to be reliant on the LXP first conducting and then considering its proposed public consultation in May on the concept plans for the duplication project.

31. This advice on the proposed use of Clause 52.03 is concerning for the following reasons:

- There appears to be no particular requirement for the LXP to have regard for and respond to what Council officers consider will be a fundamental round of public engagement for the project, which is the LXP's proposed round of public consultation in May on concept plans for the project.
- Council and the public will have no opportunity to see whether the LXP has properly captured and responded to any issues it has with the project.

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**OCM.058/20 Update on the State Government's Hurstbridge Railway Duplication Project: Stage 2**

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32. Concern over the last dot point is supported by the fact that it is has recently become apparent to officers that the LXP's consultation to date has not properly captured a desire within the community for a pedestrian crossing in vicinity of Diamond Creek East Primary School and the abutting high school. Whilst officers will liaise in this case with the LXP to rectify this gap in the results of its consultation, the situation does raise doubt over the rigour and effectiveness of the consultation required by Clause 52.03.
33. The planning matters raised above point to fundamental issues with the new Clause 52.03 and more specifically, the proposed use of this clause to grant planning approval to the Hurstbridge duplication project.
34. Relevant to these concerns, Banyule City Council has formally raised issued with Amendment VC170 and its introduction of Clause 52.03 into the Banyule Planning Scheme. On this matter, on 24 February 2020, Banyule Council resolved to write to the Minister for Planning, Minister for Transport Infrastructure and local members of parliament to:
- Express Banyule City Council's disappointment in firstly, not being informed of the development of Amendment VC170 prior to its gazettal and secondly, in losing the opportunity for the Council and the Banyule community to provide submissions to the planning scheme amendment process for Hurstbridge Rail Duplication Stage 2.
  - Seek assurance that feedback from the Banyule community and Banyule City Council consultation, as required in Amendment VC170, will be incorporated into the project design.

**Conclusion**

35. This report has outlined that the scope of the Hurstbridge Line Upgrade – Stage 2 has retained significant shortcomings. Further, there are now additional concerns and issues regarding the project, such as issues in how the State Government proposes to provide planning approval to the project. The officer recommendation suggests actions which respond to all these issues.

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OCM.060/20 March Quarter Financial Report

**Distribution:** Public

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

**Author:** Melika Sukunda, Finance Manager

**Summary**

This report outlines Council’s financial performance and financial position for the period ended 31 March 2020.

The Income Statement shows an overall favourable year to date (YTD) variance of \$347,564 representing 2.15 per cent of YTD Budget. This reflects the combined result of higher than budgeted operating income of \$84.952 million and higher than budgeted operating expenses of \$68.458 million.

Council’s overall financial position at the end of this quarter is sound. The impacts of the state of emergency due to the coronavirus pandemic will require ongoing monitoring.

**Recommendation**

**That** Council receives and notes the Financial Report for the period ended 31 March 2020 (**Attachment 1**).

**Attachments**

1. Financial Report - March 2020 Quarter

**Background**

1. In May 2019, Council adopted the 2019-2020 Budget.
2. Budgeted surplus reflects the amount by which operating revenue exceeds operating expenses, in accordance with relevant accounting standards.
3. Operating expenditure excludes non-operating transactions such as capital works and investments, which are separately detailed in the report.
4. The report compares actual performance to budgeted targets at this stage of the financial year.

**Policy context**

5. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Ensure responsible and efficient management of Council’s financial resources.

**Budget implications**

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

**Consultation/communication**

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

**Issues/options**

8. The detailed Financial Report for the period ended 31 March 2020 is provided in **Attachment 1**. This report is an analysis of Council's financial performance and

**12. Officers' reports**

**OCM.060/20 March Quarter Financial Report**

financial position as at 31 March 2020. The report also includes an analysis of budget variances.

**Income statement**

9. Council closed the period ending 31 March 2020 with a favourable YTD variance of \$347,564 based on actual operating revenue, costs and commitments. This represents 2.15 per cent of the YTD Budget.
10. The overall variance is made up of the following:
  - Income – \$1.525 million (1.83 percent) favourable variance. This includes new/additional grant funding \$1.143 million and contributions \$491,814 (refer to page 6 in **Attachment 1**).
  - Expenditure – \$1.178 million (2.01 percent) unfavourable, mainly attributed to higher than anticipated costs relating to financial year projects (\$400,190), external contracts (\$594,884) and materials and related costs (\$842,713) and offset by a favourable variance in employee benefits of \$617,273. Additional details on variances are located on page 8 in **Attachment 1**.

**Balance sheet**

11. The balance sheet reflects Council's financial position at 31 March 2020 and is prepared in compliance with the Australian Accounting Standards.
12. Council's balance sheet (page 4 in **Attachment 1**) continues to show a strong net position. This is represented by \$1.019 billion of assets which is largely made up of Council's Property, Plant and Equipment. Council's total liabilities are \$37.167 million, which results in net assets of \$981.881 million.

**Statement of cash flows**

13. The statement of cash flows (page 5 in **Attachment 1**) captures Council's actual cash transactions for the period.
14. Council is showing a cash position of \$43.655 million after all cash transactions for the period to date.
15. The \$43.655 million includes \$37.500 million held in investments as detailed on page 10 of **Attachment 1**.

**Capital works**

16. The capital works report detailing YTD spend by asset class is on page 9 of **Attachment 1**.
17. This shows an unfavourable variance of \$2.597 million relative to YTD budget, largely driven by new (unbudgeted) externally funded projects and commitments raised for upcoming works.

**Conclusion**

18. Council's overall financial position at the end of March 2020 is considered sound.
19. The impacts of the state of emergency due to the coronavirus pandemic will require ongoing monitoring.

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OCM.061/20 Assembly of Councillors

**Distribution:** Public

**Manager:** Blaga Naumoski, Executive Manager Governance, Communications and Engagement

**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 24 March 2020.

An Assembly of Councillors record was kept for:

- Positive Ageing Advisory Committee – 13 March 2020;
- Councillor Briefing – 17 March 2020;
- Pre-meeting to Ordinary Council Meeting – 24 March 2020;
- Councillor Briefing – 7 April 2020; and
- Arts and Cultural Advisory Committee – 20 April 2020.

<b>Recommendation</b>
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**That** Council, in accordance with section 80A(2) of the *Local Government Act 1989*, receives the records of the assemblies of Councillors held on 13 March 2020, 17 March 2020, 24 March 2020, 7 April 2020 and 20 April 2020 (**Attachment 1**).

**Attachments**

1. Assembly of Councillors reported 28 April 2020

**Background**

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

**Policy context**

2. 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**

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

**Consultation/communication**

4. None required.

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OCM.061/20 Assembly of Councillors

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**Issues/options**

5. An assembly of Councillors is defined in section 76AA of the Act. It is a meeting at which matters are considered that are intended or likely to be the subject of a Council decision or the exercise of delegated authority and which is either of the following:
  - A planned or scheduled meeting that includes at least half the Councillors and at least one Council officer. These assemblies do not include meetings of Councillors and Council staff that are not planned or scheduled.
  - A meeting of an advisory committee where at least one Councillor is present. An advisory committee is any committee established by the Council, other than a special committee, that provides advice to the Council or to a special committee or to a member of Council staff who has been delegated a power or duty or function of the Council.
6. A record must be kept of an assembly of Councillors and include the names of all Councillors and Council staff attending, the matters considered, disclosures of conflict of interest and whether a Councillor left the meeting after making a disclosure.
7. In accordance with section 80A(2) of the Act, Council is required to report as soon as practicable to an Ordinary Council Meeting a record of any assemblies of Councillors held.
8. The recommendation contains the list of assemblies of Councillor forms that have been submitted since the matter was last reported to Council on 24 March 2020.

**Conclusion**

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

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**OCM.062/20    Extension of services under Contract 1718-97 Redevelopment of the Diamond Valley Sport and Fitness Centre Architectural Services**

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**Distribution:    Public**

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

**Author:          Enrique Gutierrez, Manager Capital Works**

**Summary**

This report is an overview of a separate confidential report recommending increasing the amount of Contract 1718-97 Redevelopment of the Diamond Valley Sport and Fitness Centre Architectural Services executed with Henderson+Lodge Pty Ltd.

Works include variations to Henderson+Lodge designs to ensure the proposed building is fit for purpose and compliant with current building legislation.

This project is being funded through the Growing Suburbs Fund grant of \$2.5M, \$8.0M Sport and Recreation Victoria and \$6.0M Council funds.

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 remains confidential.

**Recommendation**

**That** Council notes this report.

**Attachments**

Nil

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**OCM.063/20 Tender Report - Contract 1920-25 Diamond Creek Trail - Design and Construction of Three Trail Bridges**

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**Distribution: Public**

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

**Author: Enrique Gutierrez, Manager Capital Works**

**Steven Blight, Construction Coordinator**

**Lance Clark, Senior Procurement Specialist**

**Summary**

This report is an overview of a separate confidential report recommending awarding Contract 1920-25 for the design and construction of three bridges, for Stage 1 of the Diamond Creek Trail Extension (Diamond Creek to Wattle Glen).

This contract was previously awarded at the January 2020 Ordinary Council Meeting to Brunton Engineering Pty Ltd.

During the process of contract execution, Brunton Engineering advised Council that, due to a recent influx of work, they cannot commence the design and construction of the three bridges before February 2021. As this is beyond the project timeframes, the contract offer has been withdrawn.

The scope of works remain the same, and these include the design, construction and installation of three pedestrian-style bridges capable of accommodating trail users.

Completion of the work remains on track for the fourth quarter of the 2020 calendar year.

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 remains confidential.

**Recommendation**

**That** Council notes this report.

**Attachments**

Nil

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12. Officers' reports

**OCM.064/20 Extension of Design and Construction Services Under Contract 1920-3 For Diamond Creek Regional Playspace**

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**Distribution: Public**

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

**Author: Enrique Gutierrez, Manager Capital Works**

**Paul Usatov, Senior Project Manager**

**Summary**

This report is an overview of a separate confidential report recommending increasing the amount of Contract 1920-3 for the Design and Construction Services for the Diamond Creek Regional Playspace Project with Ace Landscape Services Pty Ltd.

Works include variations to Ace Landscape Services Design and Construction Services to ensure the proposed playspace infrastructure and facilities are accessible, inclusive, functional, fit for purpose and compliant.

This project is being funded through the Growing Suburbs Fund grant of \$2.5M.

The variations are within the grant budget and do not impact current forecast completion of mid-2020.

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 increase the value of the existing contract.

The confidential report associated with this contract contains a recommendation to make public the decision regarding the contract with the detailed contractual financial terms and conditions remaining confidential.

**Recommendation**

**That Council notes this report.**

**Attachments**

Nil

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12. Officers' reports

OCM.065/20 Chief Executive Officer Employment Matters Committee Mid-Year Review

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**Distribution:** Public

**Manager:** Blaga Naumoski, Executive Manager Governance, Communications and Engagement

**Summary**

This report is an overview of a separate confidential report to consider the Chief Executive Officer's (CEO's) mid-year review.

**Recommendation**

That Council notes this report.

**Attachments**

Nil

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12. Officers' reports

OCM.066/20 Review of Instrument of Delegation to the Chief Executive Officer

**Distribution:** Public

**Manager:** Blaga Naumoski, Executive Manager Governance, Communications and Engagement

**Author:** Katia Croce, Governance Lead

**Summary**

Council resolved on 24 March 2020 to amend the Chief Executive Officer (CEO) delegations to increase the financial delegation to \$500,000 or for where any expenditure is approved for in the Council adopted budget.

This report seeks approval from Councillors to amend the delegations conferred upon the CEO by Council resolution on 24 March 2020, to only enable decisions to be made where a quorum of Council cannot be formed to make decisions, and where a state of emergency is declared under the *Public Health and Wellbeing Act 2008* or a state of disaster declared under the *Emergency Management Act 1986*.

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

1. In the exercise of the powers conferred by section 98(1) of the *Local Government Act 1989* (the Act) and the other legislation referred to in the Instrument of Delegation to the Chief Executive Officer (**Attachment 1**), resolves that:
  - a) There be delegated to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the Instrument of Delegation to the Chief Executive Officer, subject to the conditions and limitations specified in that Instrument;
  - b) The Instrument comes into force immediately after the common seal of Council is affixed to the Instrument;
  - c) On the coming into force of the Instrument, all previous delegations to the Chief Executive Officer are revoked;
  - d) The duties and functions set out in the Instrument must be performed, and the powers set out in the Instrument must be executed, in accordance with any guidelines or policies of Council that it may, from time to time, adopt; and
  - e) It is noted that the Instrument includes a power of delegation to members of Council staff in accordance with section 98(3) of the Act.
2. Notes the delegation is limited to be exercised only in the event Council is unable to meet during the State of Emergency declared in Victoria for response to the COVID-19 pandemic.
3. Notes that the Instrument remains in force until the first meeting of Council is held following the lifting of the State of Emergency Declared by the Victorian Government for COVID-19.

**12. Officers' reports**

**OCM.066/20 Review of Instrument of Delegation to the Chief Executive Officer**

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**Attachments**

1. S5 Instrument of Delegation to the Chief Executive Officer

**Background**

1. On 16 March 2020, the Premier of the State of Victoria declared a state of emergency under the *Public Health and Wellbeing Act 2008*.
2. Advice from Local Government Victoria encouraged Councils to review their delegations to maximise the opportunity for business continuity, should Council meetings not be able to proceed because a quorum could not be reached.

**Policy context**

3. This report directly supports the achievement of Council Plan 2017-2021 strategy:
  - Maintain good governance and effective leadership.

**Budget implications**

4. The regular updates of Council's Instruments of Delegation are an administrative function, the cost of which is included within Council's operational budget.

**Consultation/communication**

5. Council's Instruments of Delegation have been developed in conjunction with Council's solicitors, Maddocks, and satisfy current legislative requirements.

**Issues/options**

6. Some matters, primarily relating to capital works delivery may be time sensitive and exceed the financial delegation to the Chief Executive Officer.
7. As a result, on 24 March 2020, Council resolved to amend the instrument of delegation for the CEO dated 28 January 2020 to enable the CEO to award contracts up to the value of \$500,000.
8. Prior to this amendment, the CEO's delegation was limited to \$150,000 for goods and services and \$200,000 for carrying out works.
9. Following subsequent discussions, which indicated that some amendments were desirable, officers are proposing the following limitations to the CEO exercising his instrument of delegation.
10. It is recommended that Council maintain the increase to the financial delegation from \$150,000 for goods and services and \$200,000 for carrying out works to \$500,000, however only to be exercised in the event Council is unable to meet because of circumstances related to the COVID-19 pandemic.
11. Furthermore, it is proposed that the CEO consults with the Mayor and Councillors where practicable, taking into account any views that they express prior to awarding a contract, and having regard to the provisions of the *Local Government Act 1989* in force at the time and Council's Procurement Policy.
12. It is important to note that the limitations outlined in this report will only relate to contract decisions exceeding \$150,000 for goods and services and \$200,000 for carrying out works.



12. Officers' reports

OCM.066/20 Review of Instrument of Delegation to the Chief Executive Officer

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**Conclusion**

13. The instrument of delegation gives power to the CEO to make decisions relating to contracts not exceeding \$500,000, in the limited circumstances set out above and in compliance with the provisions of the *Local Government Act 1989*.
14. The Instrument remains in force until the first meeting of Council is held following the lifting of the State of Emergency Declared by the Victorian Government for COVID-19.
15. It is recommended that the amended Instrument of Delegation to the Chief Executive Officer be adopted by Council.

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13. Notices of Motion

**NOM.004/20 Notice of Rescission**

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Cr Peter Perkins and Cr John Dumaresq advised of their intention to rescind the Council resolution made on 24 March 2020 as follows:

**Motion**

**That** Council rescind the Council resolution made on 24 March 2020 that refers to item “OCM.053/20 Review of Instrument of Delegation to the Chief Executive Officer”.

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- 14. Delegates' reports
- 15. Supplementary and urgent business
- 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.067/20    Extension of services under Contract 1718-97 Redevelopment of the Diamond Valley Sport and Fitness Centre Architectural Services**

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

**OCM.068/20    Tender Report - Contract 1920-25 Diamond Creek Trail - Design and Construction of Three Trail Bridges**

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

**OCM.069/20    Extension of Design and Construction Services Under Contract 1920-3 For Diamond Creek Regional Playspace**

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

**OCM.070/20    Chief Executive Officer Employment Matters Committee Mid-Year Review**

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

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

**Recommendation**

**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 items designated confidential by the Chief Executive Officer.