

*Planning and Environment Act 1987*

## **NILLUMBIK PLANNING SCHEME**

### **AMENDMENT C126**

#### **EXPLANATORY REPORT**

##### **Who is the planning authority?**

This amendment has been prepared by the Nillumbik Shire Council, which is the planning authority for this amendment.

The Amendment has been made at the request of Nillumbik Shire Council.

##### **Land affected by the Amendment**

The Amendment applies to the following land:

1. Eastern end of John Street, Eltham
2. Eastern end of Bridge Street, Eltham

A mapping reference table is attached at Attachment 1 to this Explanatory Report.

##### **What the amendment does**

The Amendment proposes to:

1. Partially rezone the eastern end of John Street, Eltham from Neighbourhood Residential Zone Schedule 1 to Public Park and Recreation Zone.
2. Partially rezone the eastern end of Bridge Street, Eltham from Neighbourhood Residential Zone Schedule 1 to Public Park and Recreation Zone.

##### **Strategic assessment of the Amendment**

##### **Why is the Amendment required?**

The amendment is required to implement the findings of a review of this Council owned land that is currently serving a public open space function, but not appropriately zoned.

The Amendment is required to apply the Public Park and Recreation Zone to Council owned land to ensure council's open space assets are correctly zoned in applying orderly planning to reflect their open space purpose. The primary purpose of the Zone is to recognise areas for public recreation and open space and to protect and conserve the natural environment. Pursuant to Planning Practice Note 2 (Public Land Zones), the Amendment also allows Council as the public land manager to undertake works and ongoing maintenance without the need for a planning permit in provision of and upkeep of these open spaces.

The Amendment is supported by the *Nillumbik Council Plan 2017-2021* reflected in the following objectives:

- 2.1 Provide a range of infrastructure that encourages people of all ages to participate in a variety of active and passive opportunities.
- 2.2 Create active places and spaces that have good connectivity, provide needed infrastructure and promote social interaction.

This amendment will apply the appropriate zone to ensure the land use is consistently and appropriately recognised for meeting the open space requirements of the local community. This is particularly relevant in urban areas including the Major Activity Centre of Eltham and surrounds,

where increasing urban density is impacting the provision of private open space. These 'pocket parks' play an important role for communities by providing:

- Localised opportunity, both informal and formal for recreational activities.
- Social cohesion and community connectedness.
- Environmental benefits.

Council's *Open Space Strategy 2005* defines Council's vision and strategic direction for the development and management of open space. The Strategy states that in urban areas, the open space system needs to provide a broad range of recreational facilities and open space areas which are in close proximity to residential areas.

The importance of small scale green open spaces and the localised opportunity for lifetime play is recognised in the *Nillumbik Lifetime Play Strategy, 2018*.

The *Nillumbik Health and Wellbeing Plan 2017-2021* includes the key strategy 'Encourage Active Living', which identifies the objective to:

- Design, develop and promote the development of built infrastructure and the natural environments that support active transport, improved walkability and active recreation.

#### **How does the Amendment implement the objectives of planning in Victoria?**

The Amendment implements the following objectives as set out in Section 4 of the *Planning and Environment Act 1987*:

- Section 4(1) (a) To provide for the fair, orderly, economic and sustainable use and development of land.
- Section 4(1) (b) To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.
- Section 4(1) (c) To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.
- Section 4(1) (g) To balance the present and future interests of all Victorians.

#### **How does the Amendment address any environmental, social and economic effects?**

- The amendment is expected to have positive environmental effects and economic and social benefits as it will confirm the intended status and management of land as public open space.
- The social interactions and community building that public open spaces bring enhances community connectivity and community capital.
- Retention of the open space assists in maintaining the attractiveness and amenity of the public realm.
- Retention of the open space will continue to provide habitat for flora and fauna within the predominantly urban environment.
- Pockets of planted open space help connect larger patches of bushland, and allow freedom of movement for wildlife.

#### **Does the Amendment address relevant bushfire risk?**

The proposed amendment will not result in any increased bushfire risk.

**Does the Amendment comply with the requirements of any Minister’s Direction applicable to the amendment?**

The Amendment complies with the requirements of the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Planning and Environment Act 1987. The Amendment complies with the Minister’s Directions under Section 11 – Strategic Assessment of Amendments. This Amendment supports the following directions and policy set out in Plan Melbourne 2017 - 2050, the State’s current metropolitan planning strategy:

- Direction 5.4 Deliver local parks and green neighbourhoods in collaboration with communities.
- Direction 6.4 Make Melbourne cooler and greener.
- Direction 6.5 Protect and restore natural habitats.

**How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy**

This Amendment supports the objective of Clause 19.02 Open Space to establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community. Specifically, the amendment supports the following strategy set out in Clause 19.02 6S:

- Ensure that urban open space provides for nature conservation, recreation and play, formal and informal sport, social interaction, opportunities to connect with nature and peace and solitude.

The *Victorian Health and Wellbeing Plan 2019-2023*, outlines the government’s key priorities to improve the health and wellbeing of Victorians. Priorities supported by the Amendment include increasing active living by increasing easy access to parks, open spaces and public spaces with opportunities for physical activity where appropriate.

**How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The Amendment supports the implementation of the LPPF. Specifically, the proposed Amendment conforms to the following local planning policies.

Clause 21.05 Infrastructure includes Objective 4 that seeks to provide equitable local recreational facilities and public open spaces to meet local community needs including to:

- Encourage, particularly through structure plans and strategies, the formation of open spaces and opportunities to link areas of public open space;
- View open space as an environmental resource and as a means of protecting significant habitat;
- Rezoning the proposed properties to a Public Park and Recreation Zone will ensure that the open space needs of a growing population are met.

**Does the Amendment make proper use of the Victoria Planning Provisions?**

The amendment seeks to ensure that the Victorian Planning Provisions are correctly applied through the correct application of zones and reflects the current and future intended use of the land.

**How does the Amendment address the views of any relevant agency?**

The views of relevant agencies will be sought during the public exhibition process.

**Does the Amendment address relevant requirements of the Transport Integration Act 2010?**

The Transport Integration Act 2010 requires that a planning authority have regard to transport system objectives and decision-making principles where a planning scheme amendment is likely to have a 'significant impact on the transport system'. The effect of this amendment is consistent with the transport system objectives outlined in the Act. A planning authority must also have regard to any statement of policy principles which have been issued under section 22 of the Transport Integration Act. There are no statements of policy principles relevant to the amendment.

## **Resource and administrative costs**

### **What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

The amendment reduces the number of unnecessary planning permit applications and the workload of planning staff.

### **Where you may inspect this Amendment**

The amendment can be inspected free of charge at the Nillumbik Shire Council's website at [www.participate.nillumbik.vic.gov.au/](http://www.participate.nillumbik.vic.gov.au/)

And/or

The Amendment is available for public inspection, free of charge, during office hours at the following places:

Nillumbik Shire Council Offices  
Civic Drive  
Greensborough 3088

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at [www.planning.vic.gov.au/schemes-and-amendments/amending-a-planning-scheme/planning-documents-on-exhibition](http://www.planning.vic.gov.au/schemes-and-amendments/amending-a-planning-scheme/planning-documents-on-exhibition)

## **Submissions**

Any person who may be affected by the amendment may make a submission to the planning authority. Submissions about the amendment must be received by **[insert submissions due date]**.

A submission must be sent to: Nillumbik Shire Council

Civic Drive (PO Box 476)  
Greensborough 3088

Council's offices will be closed during the Covid-19 State of Emergency. If you require a hard copy, or if you have difficulty accessing the documents please contact the Strategic Planning team via [strategic.planning@nillumbik.vic.gov.au](mailto:strategic.planning@nillumbik.vic.gov.au).

## **Panel hearing dates**

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: To commence in week of **(to be confirmed once authorisation is received)**.
- panel hearing: To commence in the week of **(to be pre-set once authorisation is received)**.

ATTACHMENT 1 - Mapping reference table

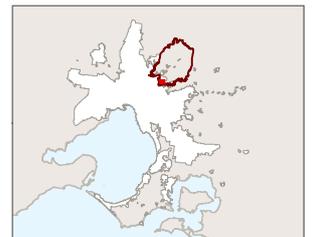
Location	Land /Area Affected	Mapping Reference
Eltham	Eastern end of John Street and Bridge Street, Eltham	Nillumbik C126nill 001znMap13 Exhibition

# NILLUMBIK PLANNING SCHEME - LOCAL PROVISION AMENDMENT C126nill



### LEGEND

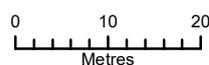
-  PPRZ - Public Park and Recreation Zone
-  Local Government Area



Part of Planning Scheme Map 13

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Planning Group  
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 Amendment Version: 2



Environment,  
 Land, Water  
 and Planning

Planning and Environment Act 1987

## NILLUMBIK PLANNING SCHEME

### AMENDMENT C129

#### EXPLANATORY REPORT

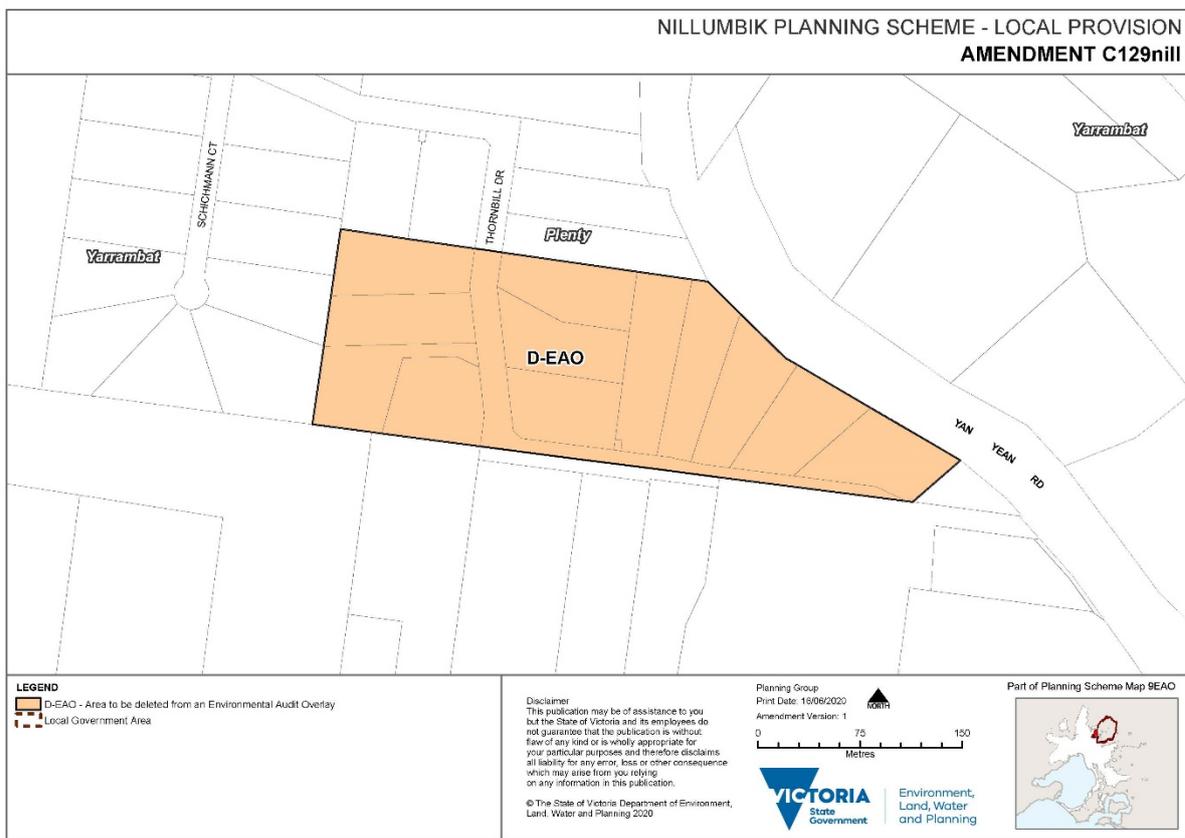
#### Who is the planning authority?

This amendment has been prepared by the Nillumbik Shire Council, which is the planning authority for this amendment.

The Amendment has been made at the request of Nillumbik Shire Council.

#### Land affected by the Amendment

The Amendment applies to 323 – 325 Yan Yean Road, Plenty.



A mapping reference table is attached at Attachment 1 to this Explanatory Report.

#### What the amendment does

The amendment will amend *Map No. 9 EAO* of the Nillumbik Planning Scheme to show the deletion of the Environmental Audit Overlay (EAO) from 323 – 325 Yan Yean Road, Plenty.

#### Why is the Amendment required?

The subject site was part of an earlier amendment in 2019 - C124 to remove the EAO from the subject site. The amendment (part thereof relating to the subject site) was refused by the Department

of Environment Land Water and Planning (DELWP) in February 2020. DELWP provided advice on 3<sup>rd</sup> June 2020 that given there was no Certificate of Environmental Audit issued for the property, it does not meet the relevant tests of Section 20(4) for this amendment pathway in their view. DELWP noted support for the amendment but only where Council undertake a fully exhibited amendment process.

Various environmental assessments and works have been completed on land situated at 323-325 Yan Yean Road in Plenty including an Environmental Audit and remedial and clean up works. This includes:

- In 2000, a Statement of Environmental Audit was issued under section 57AA of the Environment Protection Act 1970 (Environment Act). The Statement, amongst other things, concluded that the Land is *'suitable for low density residential use and for agricultural use subject to four (4) conditions'*.
- In December 2011, an environmental site assessment report was prepared that identified dumped debris and contaminated fill present on the land and advised that some remedial works would need to be undertaken before a residential development could occur on the Land. These remedial works formed part of a condition to a subdivision permit issued by Council which authorised a 12 lot subdivision with *'removal of vegetation for road construction and rehabilitation of contaminated soil, in accordance with the endorsed plans'* (Subdivision Permit). This permit also required that a report be prepared detailing the satisfactory completion of the clean-up works (Subdivision Permit Requirement).
- In January 2018, Connelly Environmental prepared a 'Soil Assessment and Remediation' report in response to the Subdivision Permit Requirement (Connelly Report). In broad terms, Connelly Environmental identifies that the mullock heaps (contaminated with arsenic) referred to in the Statement of Audit have been removed and that conditions 3 and 4 to the Statement have been complied with.

Given an Environmental Audit Certificate has not been issued for the property, Council agreed to undertake an amendment to remove the EAO with the agreement that the owner enter into a section 173 Agreement. The 173 Agreement would record the basis on which Council supports the removal of the EAO which includes, that all conditions of the Environmental Audit must be demonstrably adhered to.

This 173 Agreement was finalised and was registered on title by Land Use Victoria on 20th September 2019 in dealing number AS541744C. This agreement gives ongoing certainty on title for current and future owners, in meeting the conditions of the Environmental Audit.

The removal of the EAO will give existing and future owners certainty around property values and the removal of the EAO will have no bearing on planning permit conditions subject to the S173 Agreement registered on the Certificate of Title.

The amendment will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.

### **How does the Amendment implement the objectives of planning in Victoria?**

The Amendment implements the following objectives as set out in Section 4 of the *Planning and Environment Act 1987*:

- Section 4(1) (a) To provide for the fair, orderly, economic and sustainable use and development of land.
- Section 4(1) (b) To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.
- Section 4(1) (c) To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.

- Section 4(1) (g) To balance the present and future interests of all Victorians.

### **How does the Amendment address any environmental, social and economic effects?**

The Environmental Audit prepared for the subject site, provides an independent review of the environmental condition of the site and allows for an opinion regarding its suitability for intended or potential uses. The resulting subdivision permit for the subject site, and Section 173 Agreement on title that requires compliance with the conditions of the Environmental Audit, removes potential for adverse environmental effects, whilst enabling development of the site.

The continued application of the EAO on the affected properties leaves an unfair legacy on current and future property owners who have bought into the subdivision, where the Section 173 Agreement in place on title provides certainty in regard to contamination mitigation and ongoing containment and gives the Responsible Authority the ability to satisfy itself of ongoing contamination mitigation in assessing any future applications for dwellings or other sensitive uses.

### **Does the Amendment address relevant bushfire risk?**

The proposed amendment will not result in any increased bushfire risk.

### **Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

This Amendment supports Direction 2.4 in facilitating decision-making processes for housing in the right locations particularly with regard to contamination, as set out in *Plan Melbourne 2017 – 2050*.

The Amendment will improve the effectiveness and efficiency of the Nillumbik Planning Scheme and will remove an unnecessary obstacle to the future development of the subject site.

The amendment is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* under section 7(5) of the Act.

The amendment complies with Minister's Direction No 11, '*Strategic Assessment of Amendments*'. All requirements to be met under the direction have been considered and met in the preparation of the amendment.

The amendment is consistent with the current Ministerial Direction 1 for "*Potentially Contaminated land*" and the General Practice Note for *Potentially Contaminated Land* where the site has been assessed and a Statement of Environmental Audit has been issued. Consistent with the Practice Note, Council has satisfied itself of continued compliance with the conditions of the Environmental Audit through the use of a Section 173 Agreement applied on title for the resulting subdivision permit issued for the site.

It is noted this approach has also been supported through proposed updates to the *Environment Protection Act 2017* (as amended by the *Environment Protection Amendment Act 2018*) (EP Act) that will take effect from 1 July 2021. Proposed updates to Victoria's land-use planning system in line with the EP Act reforms are also intended to commence at that time.

The Draft Ministers Direction 1 and Planning Practice Note (PPN) 30 *Potentially Contaminated Land*, proposed as part of the amended Victorian Planning Provisions pursuant to changes to the EP Act, identify no requirement for the issue of a Certificate of Environmental Audit to facilitate removal of an EAO. The assessment framework identified within the PPN instead puts onus on the preparation of an Environmental Audit (and any resulting conditions of remediation which can be included in a planning permit through a Section 173 Agreement) with no requirement for the subsequent Certificate.

### **How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy**

The Amendment is consistent with State policy **13.04-1S Use of contaminated and potentially contaminated land** where the objective of this clause is to ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely.

The subject site is affected by an EAO, however the Environmental Audit prepared for the subject site and subsequent technical reports identify effective mitigation works have been undertaken, and restrictions on title pursuant to the relevant Section 173 Agreement in place as part of the permit for subdivision of the subject site, allows Council to effectively require evidence of ongoing mitigation works on application of permit for a dwelling or other sensitive use.

### **How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The Amendment supports the implementation of the LPPF. Specifically, the proposed Amendment advances the following local planning policies.

Clause 21.05-3 Environment, Conservation & Landscapes includes Objective 2 which seeks to ensure land use and development is assessed in the context of its potential effect on the wider catchment and encourages sustainable land management by:

- Encouraging coordinated environmental management of public and private land;
- Protecting the natural systems including land, air and water from pollution and detrimental activities in accordance with relevant State legislation including State Environment Protection Policies, best practice environmental management guidelines and approved catchment strategies; and
- Ensuring land use and development is consistent with identified land capability and environmental constraints and is managed to have minimum adverse impact on neighbouring properties and the catchment.

### **Does the Amendment make proper use of the Victoria Planning Provisions?**

The amendment seeks to ensure that the Victorian Planning Provisions are correctly applied through the correct application of overlays and reflects the current and future intended use of the land. Consistent with the requirements of the General Practice Note for *Potentially Contaminated Land* (June 2005), the Responsible Authority is satisfied that the conditions of the Environmental Audit have been effectively upheld and will continue to apply through a Section 173 Agreement entered into as part of a planning permit for the resulting subdivision of the subject site. This creates certainty that future applicants must demonstrate that the conditions included in the Statement have been or will be met before the use commences.

### **How does the Amendment address the views of any relevant agency?**

The views of relevant agencies will be sought during the public exhibition process.

### **Does the Amendment address relevant requirements of the Transport Integration Act 2010?**

The Transport Integration Act 2010 requires that a planning authority have regard to transport system objectives and decision-making principles where a planning scheme amendment is likely to have a 'significant impact on the transport system'. There are no statements of policy principles relevant to the amendment.

**What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

The amendment will have limited impact on the Responsible Authorities resource and administrative costs as it will only clarify future planning requirements.

**Where you may inspect this Amendment**

The amendment can be inspected free of charge at the Nillumbik Shire Council’s website at <https://participate.nillumbik.vic.gov.au/>

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**Panel hearing dates**

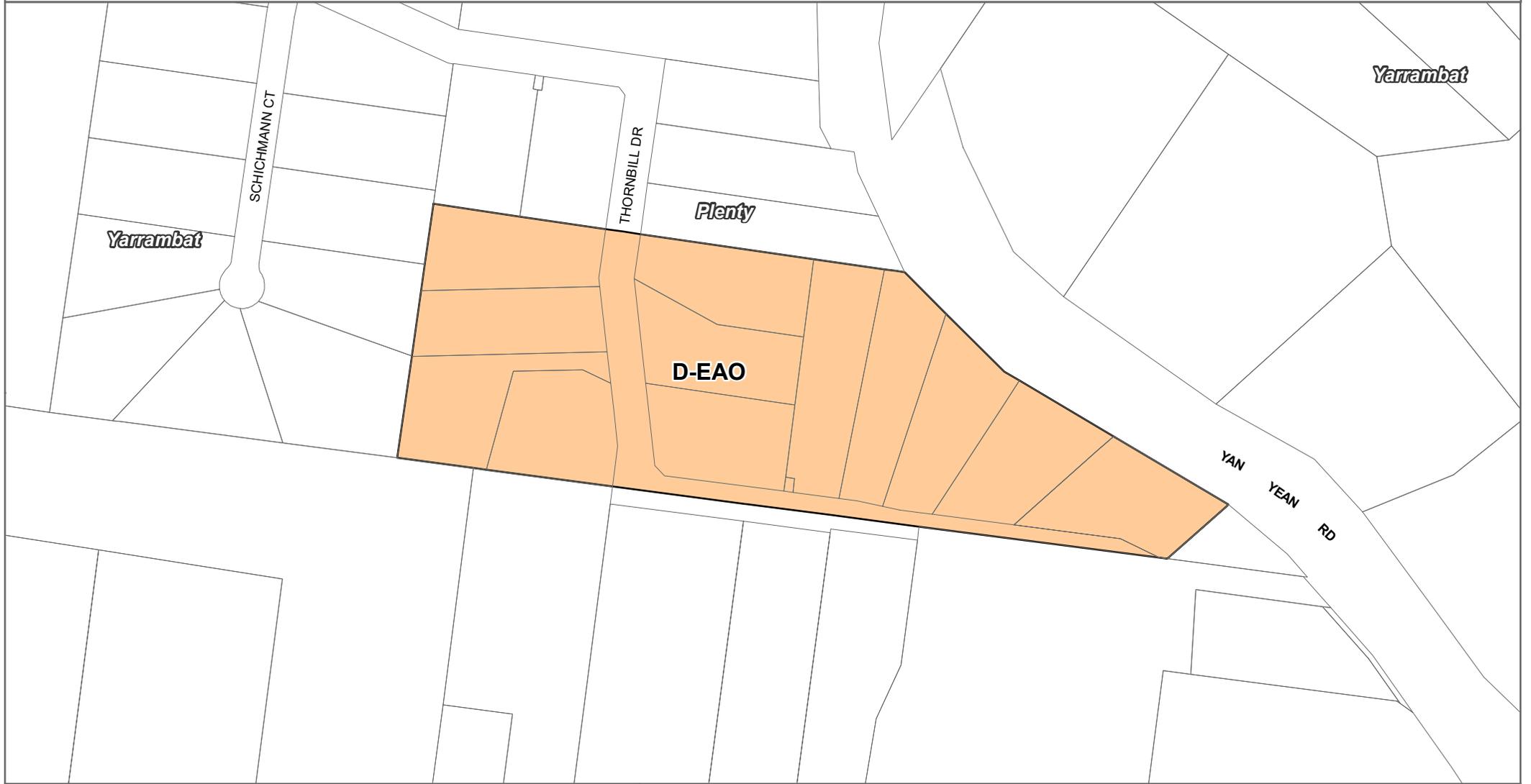
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**ATTACHMENT 1 - Mapping reference table**

<b>Location</b>	<b>Land /Area Affected</b>	<b>Mapping Reference</b>
Plenty	323 – 325 Yan Yean Road	Nillumbik C129nill 001d-eaoMap09 Exhibition

# NILLUMBIK PLANNING SCHEME - LOCAL PROVISION AMENDMENT C129nill



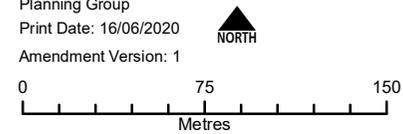
**LEGEND**

-  D-EAO - Area to be deleted from an Environmental Audit Overlay
-  Local Government Area

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Part of Planning Scheme Map 9EAO

