

Extraordinary Meeting of Future Nillumbik Committee

held virtually
on Monday 24 September 2020 commenced at 7.01pm.

Minutes

Carl Cowie
Chief Executive Officer

Thursday 21 September 2020

Distribution: Public

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Extraordinary Meeting of Future Nillumbik Committee Minutes 21 September 2020
Nillumbik Shire Council

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Nillumbik Shire Council

Minutes of the Extraordinary Meeting of Future Nillumbik Committee held Monday 21 September 2020. The meeting commenced at 7.01pm.

Councillors present:

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

Officers in attendance:

Carl Cowie	Chief Executive Officer
Vince Lombardi	Chief Financial Officer
Blaga Naumoski	Executive Manager Governance, Communications and Engagement
Jeremy Livingston	Executive Manager Business Transformation and Performance
Rosa Zouzoulas	Executive Manager Planning and Community Safety
Renae Ahern	Manager Planning Services
Katrina Ross	Statutory Planning Coordinator
Eddie Cheng	Manager Information Technology
Nik Mistriotis	Lead Systems Architect
Katia Croce	Governance Lead

1. Welcome by the Chair

2. Reconciliation statement

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

3 Apologies

Nil

4 Confirmation of minutes

Confirmation of minutes of the Future Nillumbik Committee Meeting held on Tuesday 8 September 2020.

Committee Resolution

MOVED: Cr Peter Perkins

SECONDED: Cr Peter Clarke

That the minutes of the Future Nillumbik Committee Meeting held on Tuesday 8 September 2020 be confirmed.

CARRIED

5 Disclosure of conflicts of interest

Nil

6. Officers' reports

FN.032/20 **Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham**

Portfolio: **Planning**

Distribution: **Public**

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

Author: **Tyson McAdie, Principal Planner**

Application summary

Address of the land	26 Warringah Crescent, Eltham
Site area	4,129m²
Proposal	Three (3) lot subdivision, removal of native vegetation and buildings and works to construct a driveway
Application number	153/2020/14P
Date lodged	22 April 2020
Applicant	Webster Surveying
Zoning	Neighbourhood Residential Zone (Schedule 1)
Overlay(s)	Significant Landscape Overlay (Schedule 2) Environmental Significance Overlay (Schedule 1)
Reason for being reported	Called in by Ward Councillor
Number of objections	10 (ten)
Key issues	<ul style="list-style-type: none"> • Strategic Location; • Neighborhood Character; • Vegetation removal and vegetation impacts; • Response to Clause 52.17 (Native Vegetation) and the Environmental Significance Overlay (Schedule 1) • Compliance with Clause 56 (ResCode); • Private Open Space Contribution; and • Bushfire.

6. Officers' Report

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

Location map



6. Officers' Report

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

The following people addressed the Committee with respect to this item:

1. Wendy Morris – (read by CEO)
2. Emily Donaldson – (read by CEO)
3. Evan Webster (Webster Survey Group) – (read by CEO)
4. Shy Meaden – (read by CEO)
5. Julie Fink – (read by CEO)

Recommendation

That the Committee (under delegation from Council) issue a Notice of Decision to Grant a Permit to the land located at 26 Warringah Crescent, Eltham, for the Three (3) lot subdivision and the removal of native vegetation, in accordance with the submitted plans and subject to the following conditions:

1. Before the plan of subdivision is certified under the Subdivision Act 1988, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans prepared by Whiteman Property Group, but modified to show:
 - a) Dimensioned Tree Protection Zones for tree no's. 24, 51, 61, 64 & 68.
 - b) A notation that the intrusion of any works, including earthworks and retaining walls, into the Tree Protection Zone of Tree no. 61 will not exceed 15%.
 - c) A notation that the intrusion of any works into the Tree Protection Zone of Trees no's. 64 & 68 will not exceed 10%.
 - d) The provision of a Tree Management Plan in accordance with conditions of this permit.
 - e) The provision of Tree Protection Fencing in accordance a condition of this permit.
 - f) Provision of vegetation offsets in accordance with Conditions of this permit.
 - g) The deletion of the proposed crossover to Lot 2.
 - h) The provision of a common property area over the existing driveway to be located in proposed Lot 1 to provide vehicle access to Lots 1 & 2 to the satisfaction of the Responsible Authority
 - i) The provision of a driveway envelope for Lot 2 which does not intrude into the Tree Protection Zones of Tree no. 61 by more than 15% and Tree no's. 64 and 68 by more than 10%.
 - j) The location of all trenches services.
2. The subdivision as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.

6. Officers' Report

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

3. The tree removal as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
4. Only trees marked "tree to be removed" on the endorsed plans are permitted to be removed, to the satisfaction of the Responsible Authority.
5. No vegetation on-site, unless specified on the endorsed plans, shall be removed, destroyed, felled, lopped, ringbarked, uprooted or otherwise damaged except with the prior written consent of the Responsible Authority.
6. Any tree that is shown on the endorsed plan as being pruned, must be pruned under the supervision of a qualified arborist, to the satisfaction of the Responsible Authority.
7. Prior to any subdivisional works commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the following must be provided to the satisfaction of the Responsible Authority:
 - a) The trees number 24, 51, 61, 64 & 68 marked on the endorsed plans as being retained must have a Tree Protection Zone to the satisfaction of the Responsible Authority. The fencing associated with this Tree Protection Zone must meet the following requirements:
 - i) Extent

The tree protection fencing is to be provided to the extent of the identified Tree Protection Zone.

If works are shown on any endorsed plan of this permit within the confines of the calculated Tree Protection Zone, then the Tree Protection Fencing must be taken in to only the minimum amount necessary to allow the works to be completed.
 - ii) Fencing

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

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

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

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

6. Officers' Report

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

v) Provision of Services

All services (including water, electricity, gas and telephone) should be installed underground, and located outside of any Tree Protection Zone, wherever practically possible. If underground services are to be routed within an established Tree Protection Zone, they must be installed by directional boring with the top of the bore to be a minimum depth of 600mm below the existing grade, to the satisfaction of the Responsible Authority.

Bore pits must be located outside of the Tree Protection Zone or manually excavated without damage to roots, to the satisfaction of the Responsible Authority.

vi) Access to Tree Protection Zone

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

- b) A Tree Protection Plan (drawing) and Tree Management Plan (report) must be submitted to and be endorsed by the Responsible Authority. The Tree Management and Protection Plans must be specific to tree numbers 24, 51, 61, 64 & 68. The Tree Management and Protection Plans must be in accordance with AS4970-2009, prepared by a suitably qualified arborist and provide details of tree protection measures that will be utilised to ensure all trees to be protected remain viable post-construction.

The Tree Protection Plan (drawing) must be drawn to scale, appropriately notated and reference the Tree Management Plan (report) and provide details of:

- i. The Tree Protection Zone and Structural Root Zone for tree numbers 24, 51, 61, 64 & 68, calculated in accordance with AS4970-2009, for all trees to be retained on site and on neighbouring properties where the Tree Protection Zone falls partially within the subject site.
 - ii. Tree protection fencing, or ground protection where required, provided in accordance with AS4970-2009.
 - iii. Any other specific measures such as site access points or material storage areas as required in the Tree Management Plan (report)
- c) The Tree Management plan (report) must be prepared by a suitably qualified arborist, reference the Tree Protection Plan (drawing) and provide details of:
- i. Any non-destructive root investigation previously undertaken or as directed as a condition of this permit in accordance with AS4970-2009 to determine the location and distribution of roots of trees nominated on the Tree Protection Plan.

6. Officers' Report**FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham**

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- ii. Proposed footings and construction methods for any buildings or structures (including but not limited to, driveways, paths retaining walls or other hard infrastructure) within the Tree Protection Zones nominated on the Tree Protection Plan.
 - iii. Details of suitable driveway materials and construction methods (i.e. permeable paving above grade) and the timing of works within the tree protection zones.
 - iv. How excavation impacts, including soil level changes, within the Tree Protection Zones of trees to be retained will be managed or minimised.
 - v. Stages of development at which inspections are required to ensure tree protection measures are adhered to must be specified.
 - vi. Appropriate methods of certification by a suitably qualified Arborist of the required tree protection measures during the development including details of site visits, actions and photographic evidence
 - vii. Appropriate signage on any tree protection fencing
 - viii. Ongoing maintenance during construction of the tree protection measures.
 - ix. Any pruning to be undertaken being in accordance with AS4373-2007- Pruning of Amenity Trees
 - x. How the canopy of trees nominated on the Tree Protection Plan will be protected or managed;
 - xi. Any other measures required to demonstrate the successful ongoing retention and viability post-construction of any trees nominated on the Tree Protection Plan;
 - xii. Plans to show the Tree Number; the Structural Root Zone (SRZ) radius and the Tree Protection Zone radius, for tree numbers 24, 51, 61, 64 and 68 as detailed and calculated within the arborist report by Stem Arboriculture dated 18 December 2019; and
 - xiii. Plans to demonstrate that the drainage infrastructure can be installed without impacting tree numbers 61, 64 and 68, and be in accordance with the submitted Tree Protection Plan to the satisfaction of the Responsible Authority.
8. Prior to the commencement of the approved works (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the erected tree protection fences must be inspected and approved by the Responsible Authority.

6. Officers' Report**FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham**

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

9. The following actions must not be undertaken in any tree protection zone as identified in this permit, to the satisfaction of the Responsible Authority:
- a) Materials or equipment stored within the zone;
 - b) Servicing and refuelling of equipment and vehicles;
 - c) Storage of fuel, oil dumps or chemicals;
 - d) Attachment of any device to any tree (including temporary service wires, nails, screws or any other fixing device);
 - e) Open cut trenching or excavation works (whether or not for laying of services);
 - f) Changes to the soil grade level;
 - g) Temporary buildings and works; and
 - h) Unauthorised entry by any person, vehicle or machinery.
10. Prior to a Statement of Compliance being issued for any stage of the subdivision under the *Subdivision Act 1988* the following must be completed to the satisfaction of the Responsible Authority:
- a) Before the statement of compliance is issued under the Subdivision Act 1988 the owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. The owner agrees that unless with the prior written consent of the Responsible Authority, the agreement must provide:
 - i. No native vegetation located outside of the approved building and driveway envelopes is to be removed, lopped or destroyed unless with the prior written consent of the Responsible Authority.
 - ii. No building or works are to occur outside of the approved building and driveway envelopes unless with the prior written consent of the Responsible Authority.
 - iii. Any future development applications on Lots 2 and 3 must be accompanied by a Landscape Plan utilising indigenous species, prepared to the satisfaction of the Responsible Authority.
 - iv. Any demolition, tree removal and future development of the lots must be carried out in accordance with the Tree Management Plan endorsed with this planning permit.

Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the same Act prior to the commencement of the development and/or use.

6. Officers' Report

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

b) To offset the removal of 0.352 hectares of native vegetation and three large trees the permit holder must secure a native vegetation offset, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017) as specified below:

- A general offset of 0.066 general habitat units: located within the Port Phillip & Westernport Catchment Management Authority boundary or Shire of Nillumbik municipal district with a minimum strategic biodiversity value of at least 0.208.
- The offset(s) secured must provide protection of at least 3 large trees.

The offset provided must be to the satisfaction of the Responsible Authority.

c) Before the Statement of Compliance for the subdivision is issued, evidence that the required offset has been secured must be provided to the satisfaction of Council. This evidence is one or both of the following:

- An established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site and/or
- Credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

d) In the event that a security agreement is entered into, the applicant must provide the annual offset site report to the Responsible Authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of the Responsible Authority.

e) The owner must pay to Council a 2% cash-in-lieu open space contribution in respect to all of the land in the subdivision *or any stage* pursuant to Section 18 of the *Subdivision Act 1988*

f) Vehicular access and egress to each lot from the roadway must be by way of a vehicle crossing constructed to the requirements of the Responsible Authority, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an *Infrastructure Works permit*.

The width of the driveway at the property boundary must match the width of the vehicle crossing.

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- g) An on-site detention device must be installed for each lot on the plan of subdivision, at no cost to Council, to restrict the property storm water discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority (Nillumbik Shire). The on-site detention system outlet for each lot on the plan of subdivision must be connected to the agreed point of storm water discharge for each lot

Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and specifications and under an Infrastructure Works permit.

Each lot shown on the plan of subdivision shall be drained in accordance with the plans and specifications endorsed by the Responsible Authority.

Prior to issuing a Statement of Compliance the drainage works must be completed to the satisfaction of the Responsible Authority.

11. A legal point of Stormwater discharge is to be provided for each lot on the Plan of Subdivision (submitted with the application) created. This may require a drainage easement in favour of the existing dwelling to be created through either lot 2 or 3 in favour of lot 1. This can be determined by a suitably qualified engineer.

For each lot created, including the existing dwelling, an on-site detention device must be created, based on the assumption that the building envelope will be covered by an impervious surface.

12. The on-site detention devices shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval (prior to the commencement of the development unless with the prior written consent of the responsible authority).

The engineer that is designing the on-site detention device must obtain tc and tso figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event.

Such plans must be designed to minimise damage to existing vegetation required to be retained on-site, and the construction work must be carried out in accordance with the approved plans.

Each lot shown on the plan of subdivision shall be drained in accordance with the plans and specifications endorsed by the Responsible Authority.

Telecommunication Conditions

13. The owner of the land must enter into an agreement with:
- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media

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Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

14. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

APT Conditions

15. Easements in favor of "Australian Gas Networks (VIC) Pty Ltd" must be created on the plan to the satisfaction of APT.
16. The plan of subdivision submitted for certification must be referred to APT O&M Services Pty Ltd, in accordance with Section 8 of the Subdivision Act 1988.

Yarra Valley Water Conditions

17. The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of water services.
18. The owner of the land must enter into an agreement with Yarra Valley Water for the provision of sewerage services.

AusNet Condition

19. The plan of subdivision submitted for certification must be referred to AusNet Electricity Services Pty Ltd in accordance with Section 8 of the subdivision Act 1988.
20. The applicant must –
- Enter into an agreement with AusNet Electricity Services Pty Ltd for the extension, upgrading or rearrangement of the electricity supply to lots on the plan of subdivision. A payment to cover the cost of such work will be required.
 - Provide electricity easements internal and external to the subdivision in favour of AusNet Electricity Services Pty Ltd to service the lots on the plan of subdivision and/or abutting lands as required by AusNet Electricity Services Pty Ltd. The provision of reserves for electricity substations may also be required.

Expiry Condition

21. This permit will expire if one of the following circumstances applies:
- a) A plan of subdivision is not certified within two years of the issue date of this permit; or

6. Officers' Report

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

- b) A plan of subdivision is not registered at Land Victoria within five years of the original certification date.

The Responsible Authority may extend the permit if a request is made in writing prior to expiry of the permit or within six months afterwards.

Notes:

During the course of the approved construction work, a copy of this permit and the endorsed plan(s) must be kept on-site and made available for inspection by Council officers.

Failure to undertake the requisite tree protection fencing in accordance with the conditions of this permit will result in the issuing of Planning Infringement Notices to the land owner, occupant (if this is a different person), and the person or company undertaking the works on-site. The minimum penalty on the Planning Infringement Notice for land owners and occupants will be \$826 for the land owner and occupant, and \$1652 for any company which may be undertaking works on-site.

Prior to tree removal a suitably qualified and experienced wildlife handler should assess the trees to be removed and to relocate any fauna present. They should also be present during works to minimise impacts on wildlife.

Motion

MOVED: Cr John Dumaresq

SECONDED: Cr Peter Clarke

That the Committee (acting under delegation from Council) issue a Notice of Decision to Refuse to Grant a permit to the land located at 26 Warringah Crescent, Eltham for the subdivision of land into three (3) lots on the following grounds:

1. The proposed subdivision layout and the density of the lots is not consistent with the pattern of subdivision in the area as required by Clause 32.09 (Neighbourhood Residential Zone (Schedule 1) of the Nillumbik Planning Scheme.
2. The proposed lot sizes are not in keeping with the preferred neighbourhood character of the area or the existing pattern of subdivision and development. The extent of future built form across the lots will provide insufficient spacing to provide a preferred neighbourhood character outcome whereby buildings are subordinate to the vegetative landscape as required by Clause 22.12 (Neighbourhood Character Policy) and Clause 42.03 (Significant Landscape Overlay – Schedule 2) of the Nillumbik Planning Scheme.
3. The proposed subdivision and removal of native vegetation from the site fails to protect and enhance the faunal and habitat significance of the site as required by Clause 42.01 (Environmental Significance Overlay – Schedule 1) of the Nillumbik Planning Scheme.
4. The proposed removal of native vegetation from the site has failed to avoid or minimise the loss of native vegetation as required by the three step approach in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017) and Clause 52.17 – Native Vegetation of the Nillumbik Planning Scheme.

6. Officers' Report**FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham**

5. The proposal is not consistent with the subdivisional pattern of the locality as the proposed subdivision layout and lot size is not reflective of that of the locality required by Clause 65.02 (Approval of an Application to Subdivide Land) of the Nillumbik Planning Scheme.

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

Committee Resolution

MOVED: Cr John Dumaresq

SECONDED: Cr Peter Clarke

That the Committee (acting under delegation from Council) issue a Notice of Decision to Refuse to Grant a permit to the land located at 26 Warringah Crescent, Eltham for the subdivision of land into three (3) lots on the following grounds:

1. The proposed subdivision layout and the density of the lots is not consistent with the pattern of subdivision in the area as required by Clause 32.09 (Neighbourhood Residential Zone (Schedule 1) of the Nillumbik Planning Scheme.
2. The proposed lot sizes are not in keeping with the preferred neighbourhood character of the area or the existing pattern of subdivision and development. The extent of future built form across the lots will provide insufficient spacing to provide a preferred neighbourhood character outcome whereby buildings are subordinate to the vegetative landscape as required by Clause 22.12 (Neighbourhood Character Policy) and Clause 42.03 (Significant Landscape Overlay – Schedule 2) of the Nillumbik Planning Scheme.
3. The proposed subdivision and removal of native vegetation from the site fails to protect and enhance the faunal and habitat significance of the site as required by Clause 42.01 (Environmental Significance Overlay – Schedule 1) of the Nillumbik Planning Scheme.
4. The proposed removal of native vegetation from the site has failed to avoid or minimise the loss of native vegetation as required by the three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) and Clause 52.17 – Native Vegetation of the Nillumbik Planning Scheme.
5. The proposal is not consistent with the subdivisional pattern of the locality as the proposed subdivision layout and lot size is not reflective of that of the locality required by Clause 65.02 (Approval of an Application to Subdivide Land) of the Nillumbik Planning Scheme.

CARRIED UNANIMOUSLY

6. Officers' reports

FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

Portfolio: Planning**Distribution:** Public**Manager:** Rosa Zouzoulas, Executive Manager Planning and Community Safety**Author:** Briana Barnes, Statutory Planner**Application summary**

Address of the land	8 Bird Street, Eltham
Site area	1,733 square metres
Proposal	Two (2) lot subdivision
Application number	218/2020/14P
Date lodged	19 May 2020
Applicant	Fotini Georgakopoulos
Zoning	Neighbourhood Residential Zone (Schedule 1)
Overlay(s)	Significant Landscape Overlay (Schedule 2)
Reason for being reported	Called in by Ward Councillor
Number of objections	Nine (9)
Key issues	<ul style="list-style-type: none"> • Strategic location • Neighbourhood Character • Compliance with Clause 56 (Residential Subdivision) • Car parking • Tree impacts • Public Open Space Contribution

6. Officers' Report

FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

Location map



6. Officers' Report

FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

The following people addressed the Committee with respect to this item:

1. Carlota Quinlan on behalf Nerida Kirov
2. Carlota Quinlan on behalf of Eltham Community Action Group
3. Maree Ward
4. Adrienne Newman
5. Alan Murfett – (read by CEO – Inadvertently included for this item when in fact was relating to previous item FN.032.20)
6. Virginia Jackson – Harlock Jackson Pty Ltd (read by CEO)

Recommendation

That the Committee (under delegation from Council) issue a Notice of Decision to Grant a Permit to the land located at 8 Bird Street, Eltham, for the subdivision of land into two (2) lots, in accordance with the submitted plans and subject to the following conditions:

1. Before the plan of subdivision is certified under the Subdivision Act 1988, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans prepared by J&M Designs, but modified to show:
 - a) The building envelope for lot 2 deleted.
 - b) The three trees proposed in the proposed easement deleted.
 - c) All reference to proposed paling fence to be deleted.
 - d) The proposed street tree to be deleted.
 - e) A landscape plan per Condition 2.
 - f) Building exclusion zones as per Condition 2 j).
 - g) A notation that all services that are to be located in proposed easement E-1 and located within a Tree Protection Zone of any third-party trees, must be installed by directional boring with the top of bore to have a minimum depth of 600mm.
 - h) Easement E-1 be vested in favour of Nillumbik Shire Council.
2. Before the plan of subdivision is certified under the Subdivision Act 1988, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The plan must show:
 - a) A survey of all existing vegetation and natural features;
 - b) The area or areas set aside for landscaping on each lot;

6. Officers' Report**FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham**

- c) A schedule of all proposed trees, shrubs/small trees and ground cover. This schedule shall include a mixture of exotic plants and plants selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing;
- d) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material;
- e) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill;
- f) Appropriate irrigation systems;
- g) The provision of two indigenous Eucalypt species canopy trees with a minimum mature growth height of 10 metres within the frontage of proposed lot 1;
- h) The provision of one indigenous Eucalypt species canopy tree with a minimum mature growth height of 6 metres within the rear of proposed lot 1.
- i) The provision of three indigenous Eucalypt species canopy trees with a minimum mature growth height of 10 metres within proposed lot 2;
- j) Building exclusion zones shown around the three proposed trees for lot 2 within a minimum radius of 2 metres from the base of the tree.

3. The subdivision as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.

4. Prior to the issue of a Statement of Compliance, the landscaping in accordance with Condition 2 must be carried out, completed and maintained thereafter, to the satisfaction of the Responsible Authority.

5. Prior to the issue of a Statement of Compliance, the owner must enter into an agreement with the Responsible Authority in accordance with Section 173 Agreement of the Planning and Environment Act 1987. The agreement must provide for:

Unless with the prior written consent of the Responsible Authority:

- a) The canopy trees shown on the endorsed plans must not be removed, destroyed or lopped.
- b) Building exclusion zones established around the three (3) canopy trees to be planted on lot 2, with a minimum radius of 2 metres from the base of the tree.
- c) No buildings and works are to occur within any of the approved building exclusion zones as shown on the endorsed plans.
- d) Prior to the commencement of any future buildings and works on lot 2:
 - i. Trees located within any Building Exclusion Zone must be provided with Tree Protection Fencing to the extent of the approved Building Exclusion Zone, to the satisfaction of the Responsible Authority.
 - ii. The tree protection fencing must be erected to the satisfaction of the Responsible Authority in accordance with the approved Building Exclusion Zone. The tree protection fencing shall be maintained in good

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condition until the completion of the construction works on the site, to the satisfaction of the Responsible Authority.

- iii. Each tree protection fence shall be constructed of temporary fencing approved by the Responsible Authority and erected to a height of 1.5 metres above ground level around the Tree Protection Zone and clearly signed "Building Exclusion Zone – No Entry" on all sides, to the satisfaction of the Responsible Authority.
- iv. Once the Tree Protection Fencing is erected the permit holder/landowner provide a report and photographic evidence to Council stating the fences comply. Once erected to the required standard, the tree protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority.
- v. The following actions must not be undertaken in any Building Exclusion Zone as identified on the endorsed plan, to the satisfaction of the Responsible Authority:
 - Materials or equipment stored within the zone;
 - Attachment of anything to any tree (including temporary service wires, nails, screws or any other fixing device);
 - Open cut trenching or excavation works (whether or not for laying of services) undertaken within the zone;
 - Changes to the soil/surface level within the zone.
- vi. The area within the Tree Protection Zone and Tree Protection Fencing must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.
- vii. Any works entailing the use of excavation equipment wheeled or tracked must be supervised by the project arborist where it occurs within the Tree Protection Zones of the trees to be retained to the satisfaction of the Responsible Authority.
- viii. Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the same Act prior to the issue of the Statement of Compliance.

The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.

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6. Prior to Council issuing a Statement of Compliance for the subdivision, the permit holder must pay to Council a 4% cash-in-lieu open space contribution in respect to all of the land in the subdivision pursuant to Section 18 of the Subdivision Act.
7. Unless with the prior written consent of the Responsible Authority, all services that are to be located in proposed easement E-1 and located within a Tree Protection Zone of any third-party trees, must be installed by directional boring with the top of bore to have a minimum depth of 600mm, to the satisfaction of the Responsible Authority.
8. Stormwater drainage works are to be constructed to provide a legal point of stormwater discharge for both lots, at no cost to Council, and must be carried out under Council supervision, in accordance with the approved plans and Council's specifications and must be carried out under Council supervision and an Infrastructure Works permit.
9. On site detention must be provided to the existing dwelling located on Proposed Lot 1. The on-site detention device shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval (prior to the commencement of the development unless with the prior written consent of the Responsible Authority).

The engineer that is designing the on-site detention device must obtain tc and tso figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event. Please note there will be a fee associated with the Plan Checking and Supervision, of 3.25% of the detention drainage system cost.
10. No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property during the construction of the development.

In this regard, sediment fencing and/or pollution/litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.
11. Prior to the issue of a Statement of Compliance, the on-site detention device must be installed, at no cost to Council, to restrict the property storm water discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority (Nillumbik Shire). The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge.

Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and specifications and under an Infrastructure Works permit.
12. Prior to the issue of a Statement of Compliance, vehicular access and egress to the development site from the roadway must be by way of vehicle crossings constructed to the requirements of the Responsible Authority, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible

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Authority. All vehicle crossing works are to be carried out with Council supervision under an *Infrastructure Works* permit.

The width of the driveway at the property boundary must match the width of the vehicle crossing.

13. The owner of the land must enter into an agreement with:

- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

14. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:

- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

15. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.

16. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.

17. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

18. This permit will expire if one of the following circumstances applies:

- a) A plan of subdivision is not certified within two years of the issue date of this permit; or
- b) A plan of subdivision is not registered at Land Victoria within five years of the original certification date.

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The Responsible Authority may extend the permit if a request is made in writing prior to expiry of the permit or within six months afterwards.

Motion

MOVED: Cr John Dumaresq

SECONDED: Cr Peter Clarke

That the Committee (acting under delegation from Council) issue a Notice of Decision to Refuse to Grant a permit to the land located at 8 Bird Street, Eltham for the subdivision of land into two lots on the following grounds:

1. The proposed subdivision is not consistent with the purpose of the Neighbourhood Residential Zone (Schedule 1) or with Clause 65 (Decision Guidelines), as the proposed subdivision layout and the density of the lots is not consistent with the pattern of subdivision in the area.
2. The proposal is contrary to the objectives of Clause 22.12 (Neighbourhood Character Policy), as the proposed lot sizes are not in keeping with the preferred neighbourhood character of the area or the existing pattern of subdivision and development.
3. The proposal is not consistent with the subdivisional pattern of the locality as the proposed subdivision layout and lot size is not reflective of that of the locality required by Clause 65.02 (Approval of an Application to Subdivide Land) of the Nillumbik Planning Scheme.

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

Committee Resolution

MOVED: Cr John Dumaresq

SECONDED: Cr Peter Clarke

That the Committee (acting under delegation from Council) issue a Notice of Decision to Refuse to Grant a permit to the land located at 8 Bird Street, Eltham for the subdivision of land into two lots on the following grounds:

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3. The proposal is not consistent with the subdivisional pattern of the locality as the proposed subdivision layout and lot size is not reflective of that of the locality required by Clause 65.02 (Approval of an Application to Subdivide Land) of the Nillumbik Planning Scheme.

CARRIED UNANIMOUSLY

7. Supplementary and urgent business

Nil

8. Confidential reports

Nil

Close of Meeting

The meeting closed at 8.03pm.

Confirmed: _____

Cr

, Mayor