

Our Ref: 5011192

5 November 2020

Paul Fyffe
Senior Strategic Planner
Nillumbik Shire Council
34 Civic Drive
GREENSBOROUGH VIC 3088



Dear Paul

RE: PROPOSED PLANNING SCHEME AMENDMENT C129 – REMOVAL OF ENVIRONMENTAL AUDIT OVERLAY

Thank you for the opportunity to provide a response in relation to the proposed planning scheme amendment to remove the Environmental Audit Overlay (EAO) from a number of properties in Plenty, referred to the Environment Protection Authority (EPA) via email on 5 October 2020.

EPA are in receipt of the following documents:

- Referral letter to EPA dated 5 October 2020;
- The draft Explanatory Report for Nillumbik C129; and
- The notice of amendment for Nillumbik C129.

Ministerial Direction 19

Ministerial Direction 19 requires planning authorities to seek early advice from EPA when undertaking strategic planning processes and preparing planning scheme amendments that may significantly impact Victoria's environment, amenity and/or human health due to pollution and waste.

EPA's consideration and advice on relevant planning matters is intended to support decisions made by planning authorities in the early stages of the planning process.

It is in this context that EPA provides the comments below.

Our Understanding of the Proposal

EPA understands the proposed amendment seeks to remove the EAO from a number of properties in Plenty, and comprises nos. 18, 20, 21, 22, 23, 24, 25, 25A, 27, 29, 31, 33 and 1/35 Thornbill Drive, Plenty (the affected land). The land was formerly known as 323-325 Yan Yean Road, Plenty.

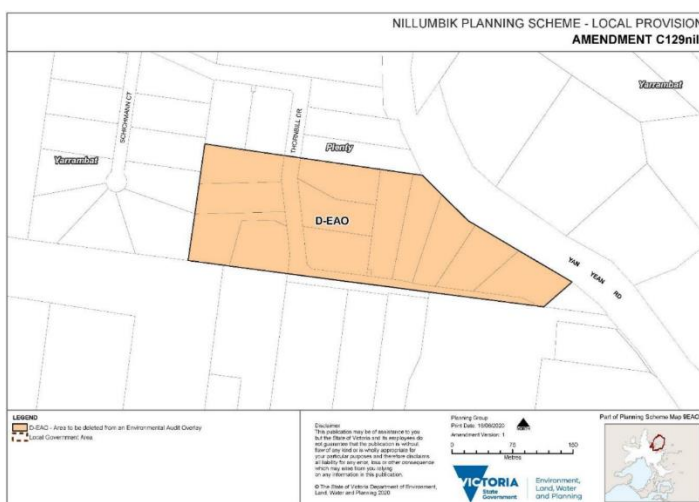


Figure 1 - Nillumbik C129nill 001d-eaoMap09 Exhibition
Source - Draft Explanatory Report

EPA understands that Council is seeking the removal of the EAO from the above-mentioned properties along Thornbill Drive, as it considers that the affected land satisfies the circumstances where it is appropriate to remove the EAO, given:

- *“The location and extent of existing contamination is known, as identified by the 2000 environmental assessment report and subsequent reports.*
- *A Statement of Environmental Audit has been issued which concludes that the affected land is suitable for low-density residential and agricultural use subject to conditions.*
- *Remedial works have been conducted which implement the conditions of the Statement of Environmental Audit to allow low-density residential living.*
- *Council considers the remaining restrictions and conditions of the Statement of Environmental Audit are suitably minor in terms of the effort required for compliance.*
- *A Section 173 Agreement was applied in 2019 to all land formerly known as 323-325 Yan Yean Road. The agreement requires compliance with the conditions of the Statement of Environmental Audit by current and future owners. (This Section 173 Agreement was finalised and was registered on title by Land Use Victoria on 20th September 2019 in dealing number AS541744C)”.*



Figure 2 – The properties along Thornbill Drive proposed to have the EAO removed
Source - VicPlan.

Site History – 323-325 Yan Yean Road, Plenty (formerly Yarrambat)

Council's website indicates that the EAO was applied to the subject land by the new format planning scheme in response to potential contamination from historical gold mining activity. The extent of contamination on the affected land was established by an environmental audit (EPA REF CARMS no: 36194-2) undertaken for 323-325 Yan Yean Road, Plenty in 2000. It is unclear what the trigger for the audit was – it may have been carried out on a voluntary basis. That said, a Statement of Environmental Audit was issued for the land, which concluded that the affected land is *'suitable for low density residential use and for agricultural use subject to four (4) conditions.'*

The four conditions are:

1. *Residential use and any use for growing of food for human consumption must be confined to areas outside the area impacted by mullock heaps and/or contaminated fill as defined in the Statement;*

2. *If any earthworks take place within the area impacted by mullock heaps or contaminated fill as defined in the Statement, any soil moved from the area be tested and disposed of in accordance with EPA guidelines;*
3. *No sensitive use take place (residential, child care or growing of crops for human consumption) in the area impacted by the mullock heaps or contaminated fill as defined in the Statement unless the whole of the impacted area is graded and covered with at least 500mm of clean fill; and*
4. *The area impacted by mullock heaps or contaminated fill as defined in the Statement be maintained such that vegetative cover is sufficient to prevent erosion in the soil so that contaminated soil is not moved off the site.*

Since the completion of the audit in 2000, Council has advised that a planning permit was issued in 2016 for:

Subdivision of the land into 12 lots, removal of vegetation for road construction and rehabilitation of contaminated soil, in accordance with the endorsed plans.

Council have provided the following summary in the explanatory report:

- Connolly Environmental was engaged to conduct soil assessment and remediation prior to subdivision and redevelopment of the affected land for low density residential land use, in accordance with Condition 6 of the planning permit. The following works were carried out:
 - Mullock heaps were removed from the proposed residential lots;
 - Excavation and validation of chemically impacted soil, above the adopted low density residential criteria in the mullock heap area; and
 - Soil deemed to be 'chemically and aesthetically impacted' was retained beneath the proposed roadway.
- In 2018, Connolly Environmental prepared the *Final Environmental Site Assessment Report* to document the outcomes of the assessment and remediation work and advised that:
 - Soil in the proposed residential allotments was considered to be chemically and aesthetically suitable for low density use, consistent with the existing Statement of Environmental Audit, where:
 - The whole of the impacted area was graded and covered with at least 500 mm of clean fill, in accordance with condition 3 of the Statement of Environmental Audit.
 - The impacted soil had been appropriately retained (beneath the proposed roadway) to prevent erosion of the soil so that contaminated soil is not moved off the site, in accordance with condition 4 of the Statement of Environmental Audit.
 - Chemically and aesthetically impacted soil removed from the mullock heap area, was considered to have been suitably retained beneath the proposed roadway. Soil retained beneath the proposed roadway was below the adopted commercial/industrial criteria, where no direct exposure to residential receptors was reasonably expected.

EPA Assessment and Advice

In assessing the environmental condition of the affected land in 2000, the auditor has concluded the condition of the land is detrimental or potentially detrimental to one or more beneficial uses of the site. Accordingly, a Statement of Environmental Audit was issued. This differs from a Certificate of Environmental Audit, which has no limitation on a site's use. A Statement will typically identify uses which are not suitable and will include conditions to be met, sometimes requiring ongoing obligations on the landowner.

The Department of Sustainability and Environment (DSE), General Practice Note: Potentially Contaminated Land, June 2005 (PPN30) states that: *In some circumstances where a Statement of Environmental Audit is issued, it may also be possible to remove the EAO (for example, where there*

are minimum restrictions or conditions on the use of the site, or the conditions have been complied with).

With regards to the proposed planning scheme amendment, the nature of EPA's advice is intended to inform Council, not endorse a particular outcome or 'support' the proposal to remove the EAO. On this basis, EPA wishes to draw Council's attention to the following observations:

- The subsequent remediation and validation of the land as documented by Conolly Environmental does not form part of the statutory environmental audit.
- The subsequent remediation and validation were not carried out with the oversight of an environmental auditor, and consequently does not have the same level of accountability as the assessments undertaken as part of the statutory audit process.
- While the response to remediation on site appears to be consistent with the intent of the Audit recommendations/conditions, Council may wish to undertake its own review of the report to satisfy itself that remediation and validation has been done to an acceptable standard. This assessment should be in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999.
- Whilst the Statement of Environment Audit lists conditions for the remediation of the land, it is noted that some of the remediation measures undertaken deviate from the condition wording, e.g. removal of mullock heaps. Council should be confident that these variations, as outlined in the Section 173 agreement, follow the intended outcome(s) of the Audit recommendations.
- EPA is not able to confirm whether the requirements of the Statement, and the actions undertaken and referred to in the Section 173 agreement would satisfy the environmental auditor.

Summary and recommendations

In forming an opinion of the suitability of removing the EAO, Council should:

- Satisfy themselves that the environmental condition of the land is suitable for a sensitive use, given that the remediation and validation is a largely unregulated form of assessment and does not involve the oversight of an environmental auditor.

Ensure that all conditions listed in the Statement of Environmental Audit have been complied with, or confirm the actions undertaken and referred to in the Section 173 agreement have been carried out in a way that would satisfy the environmental auditor. On the basis that Council are satisfied that these considerations have been addressed, then its decision to proceed with the EAO removal appears consistent with the guidance given in PPN30.

If our assessment is not aligned with your view of the environmental risk, or if the proposal is subsequently amended, please contact Kristen Argus, Senior Planning Officer on 1300 EPA VIC (1300 372 842).

Yours sincerely,



Elita Briggs

Team Leader – Landuse Planning Delivery
Major Projects & Planning
EPA Victoria