

Inquiry into Protections within the Victorian Planning Framework

Legislative Council - Environmental and Planning Committee Inquiry, consideration and report (by June 2022) on the adequacy of the Planning & Environment Act 1987 and the Victorian Planning Framework in relation to planning and heritage protection.

Submission: Nillumbik Shire Council

14 December 2021 (Adoption)

Table of Contents

1.0	Introduction.....	4
2.0	The High Cost of Housing	6
2.1	Housing affordability and Land Use Planning and Victorian Planning Provisions	8
3.0	Environmental sustainability and vegetation protection	10
3.1	Application of the P&E Act and environmental sustainability and vegetation protection.....	10
3.2	Impact of 10/30 and 10/50 exemptions.....	11
3.3	Regional planning and collaboration.....	12
3.4	P&E Act enabling local community responses to climate change.....	12
4.0	Protecting heritage in Victoria	14
4.1	Council and heritage protection.....	14
4.2	Tree removal, compliance and fines	14
5.0	Delivering certainty and fairness in planning decisions for communities.....	17
5.1	Protecting Green Wedges	17
5.2	Regional ‘Growth’ Issues and impacts on Green Wedges.....	18
5.4	Ensuring residential zones are delivering the type of housing that communities want	19

Acknowledgement of Country

Nillumbik Shire Council respectfully acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners of the Country on which Nillumbik is located, and we value the significance of the Wurundjeri people's history as essential to the unique character of the shire. We pay tribute to all First Nations People living in Nillumbik, give respect to Elders past, present and future, and extend that respect to all First Nations People.

We respect the enduring strength of the Wurundjeri Woi-wurrung and acknowledge the ongoing impacts of past trauma and injustices from European invasion, massacres and genocide committed against First Nations People. We acknowledge that sovereignty was never ceded.

Wurundjeri Woi-wurrung people hold a deep and ongoing connection to this place. We value the distinctive place of our First Nations People in both Nillumbik and Australia's identity; from their cultural heritage and care of the land and waterways, to their ongoing contributions in many fields including academia, agriculture, art, economics, law, sport and politics.

If you require this document in another format, email nillumbik@nillumbik.vic.gov.au or phone 9433 3111.

1.0 Introduction

- Council welcomes the opportunity to provide a submission to the Legislative Council Environment and Planning Committee in regard to its inquiry (the Inquiry) into the adequacy of the Planning & Environment Act 1987, and the Victorian Planning Framework in relation to planning and heritage protection. Council specifically notes the Terms of Reference (TOR) for the Inquiry and note that each section of this submission broadly addresses theme(s) (where relevant to Council) of the TOR:
 1. *The high cost of housing, including but not limited to:*
 - (a) *provision of social housing;*
 - (b) *access for first home buyers;*
 - (c) *the cost of rental accommodation;*
 - (d) *population policy, state and local;*
 - (e) *factors encouraging housing as an investment vehicle;*
 - (f) *mandatory affordable housing in new housing developments;*
 2. *Environmental sustainability and vegetation protection;*
 3. *Delivering certainty and fairness in planning decisions for communities, including but not limited to:*
 - (a) *mandatory height limits and minimum apartment sizes;*
 - (b) *protecting Green Wedges and the urban growth boundary;*
 - (c) *community concerns about VCAT appeal processes;*
 - (d) *protecting third party appeal rights;*
 - (e) *the role of Ministerial call-ins;*
 4. *Protecting heritage in Victoria, including but not limited to:*
 - (a) *the adequacy of current criteria and processes for heritage protection;*
 - (b) *possible federal involvement in heritage protection;*
 - (c) *separating heritage protection from the planning administration;*
 - (d) *establishing a heritage tribunal to hear heritage appeals;*
 - (e) *the appointment of independent local and state heritage advisers;*
 - (f) *the role of Councils in heritage protection;*
 - (g) *penalties for illegal demolitions and tree removals;*
 5. *Ensuring residential zones are delivering the type of housing that communities want; and*
 6. *Any other matter the Committee considers relevant.*
- Council note that there has been this year (2021) a call from State government to an extensive number of consultations on reform matters. This has placed significant pressure on local governments given preparation of submissions is very resource intensive, requires cross-departmental coordination (internally), needs to be adopted by Councils and therefore needs briefing/reporting to be prepared in regard to the matter, and is always in a required timeframe that does not consider Council reporting workflows and lead times. Therefore these submissions are prepared as 'urgent matters' with compressed timeframe, and this is all in addition to delivery of programmed projects, policy and operations of Council.
- Council strongly recommend that the State government is more strategic in its consultation being transparent around timing of upcoming consultation to allow local governments to better resources and respond to upcoming submissions AND that State government consider the timeframes associated with consultation, and at a minimum allow for time for officers to prepare a submission, brief Councillors to request feedback and then seek formal adoption at a Council meeting.
- Notwithstanding this, timeframes also do not allow for community consultation in regard to proposed reforms by Councils and this results in frustration within the community in regard to a lack of transparency and opportunity to have their local representative hear and consider their views on matters that will impact them.

- Council note recently submissions have been called by DELWP to proposed Rescode Reforms (as a recommendation of the Red Tape Commissioners review into Planning & Building Approvals Process Review) and also the Cooling and Greening project which responds to Plan Melbourne (Action 91 of Plan Melbourne's Implementation Plan) to engage in a '*whole of government approach to cooling and greening*'.
- Council note we are still awaiting outcomes/detailed implementation from DELWP around submissions called to other proposed reforms though out this year including *Planning for Melbourne's Green Wedges and Agricultural Land Consultation Paper, 10 Year Affordable Housing Strategy, Melbourne's Land Use Framework Plans* and *ESD Roadmap*.
- At the same time, this Parliamentary Inquiry into Protections within the Victorian Planning Framework has been released for submissions, noting the Environment and Planning Committee will consider and report on, by June 2022, the adequacy of the Planning & Environment Act 1987 and the Victorian planning framework in relation to planning and heritage protection.
- Council question why such an Inquiry is underway with submissions called, given the number of planning reforms being consulted on, advanced and implemented via DELWP and other State departments, noting the Inquiry will report back in June 2022, when feasibly much of the work DELWP/State government is doing now in regard to planning reform will be either implemented or significantly advanced to implementation.
- If the State government is truly interested in 'the adequacy of the Planning & Environment Act 1987 and the Victorian planning framework in relation to planning and heritage protection' then undertaking this Inquiry now (after reforms are significantly advanced or implemented) does not allow for true consideration of key issues.
- Council note current key State planning documents/strategies/initiatives that are in draft but significantly advanced that Council has provided submissions to over the last year(s), and have informed Councils submission to this Inquiry and note that the Inquiry should have regard to these documents/strategies/initiatives in forming a view:
 - a. *10 Year Social and Affordable Housing Strategy Discussion Paper February 2021 (Homes Victoria – Department of Health and Human Services)*
 - b. *The Planning for Melbourne's Green Wedge and Agricultural Land Consultation Paper May 2020 (DELWP)*
 - c. *Open Space for Everyone: Open Space Strategy for Metropolitan Melbourne 2020*
 - d. *Protecting Victoria's Environment – Biodiversity 2037*
 - e. *Melbourne's Future Planning Framework Plans (DELWP)*
 - f. *Environmentally Sustainable Development of Building & Subdivisions – A Roadmap for Victoria's Planning System (DELWP)*
- We also note a number of submissions on the same or other relevant matters by the Municipal Association of Victoria (MAV) which the Inquiry should have regard to given the TOR:
[Submissions | MAV website](http://www.mav.asn.au/news-resources/publications/submissions)¹

¹ www.mav.asn.au/news-resources/publications/submissions

2.0 The High Cost of Housing

- (a) provision of social housing;*
- (b) access for first home buyers;*
- (c) the cost of rental accommodation;*
- (d) population policy, state and local;*
- (e) factors encouraging housing as an investment vehicle;*
- (f) mandatory affordable housing in new housing developments.*

- The TOR issues listed above are broadly responded to below. An adequate supply of social and affordable housing together with housing support and homelessness services, is considered by Council the best means of preventing homelessness and central to enhancing the quality of life of our community.
- Please refer to [Council's submission](#)ⁱ to the 10 Year Social and Affordable Housing Strategy Discussion Paper February 2021 (Homes Victoria – Department of Health and Human Services) for further detail in regard to Councils views below.
- Council note that in 2018 the Planning and Environment Act 1987 (the Act) was amended to include a new objective to 'facilitate the provision of affordable housing in Victoria', and to include a definition of affordable housing. These amendments to the Act also included changes to clarify that Councils can enter into voluntary Section 173 agreements with developers for the provision of affordable housing. This 'elevation' of affordable housing implemented into planning policy through the Victorian Planning Provisions (VPP) has been an important step in acknowledging housing security as a major issue in Victoria.
- Council note that the primary responsibility for the provision of social and affordable housing, matched with funding capability, lies with Federal and State Governments. However, Council also acknowledges that it has an important, although more limited role to play facilitating sustainable housing options for our community that are affordable, appropriate and available.
- To ensure the supply of affordable housing better meets the demand, all levels of government, working with the private and not for profit sector will need to play a role. While planning mechanisms are imperative, effective solutions require a multifaceted approach and a suite of mechanisms at each level of government.
- Council note that the housing market responds to consumer needs and wants, and it is shaped by Federal, State and local regulations relating to building regulation, taxation, urban policy, zoning and social policy. For instance, housing markets must respond to Commonwealth government policies on taxation and population, and to State government policies on taxation, transport, urban consolidation, and the provision of social housing.
- Any interventions in the housing market that Council seeks to make occur within this wider setting. The primary role of local government in relation to the supply of housing is to regulate development approvals via the Planning Scheme. Councils determine where housing goes via the zoning of land (albeit this must align to State policy and identified growth as determined by the State) and it can influence local siting and design of housing via local policies and design controls.
- The State government's metropolitan strategy ([Plan Melbourne](#)) seeks to provide housing choices in locations close to jobs and services, and to increase the delivery of affordable housing. It also seeks to create inclusive, vibrant and healthy neighbourhoods where people can access their daily needs (the '20 minute neighbourhood').
- In Nillumbik, this means that the Eltham and Diamond Creek Major Activity Centres, and to a much lesser extent Hurstbridge (as a Neighbourhood Activity Centre), are the focus for implementing these outcomes.

- The State government’s [Homes for Victorians](#)² plan also includes a range of initiatives that include:
 - a. Increasing the supply of housing through faster planning;
 - b. Supporting people to buy their own home;
 - c. Increasing and renewing social housing stock; and
 - d. Promoting stability and affordability for renters.

- There are also some factors that are unique to the Nillumbik context of housing that require consideration to ensure that new housing responds to these:
 - a. Almost every suburb and several townships have a direct interface with the Urban Growth Boundary (UGB);
 - b. The commuter culture, with many residents working outside the Shire;
 - c. The generous provision of open space leading to Nillumbik being known as the “Green Wedge Shire”, and which also contributes to the for higher leisure participation rates in the municipality compared to state and national trends;
 - d. The local impacts of climate change, with the [Nillumbik Climate Change Action Plan 2016-2020](#) listing the following challenges:
 - i. the accommodation of increased population while minimising the impact on the natural environment;
 - ii. an ageing population;
 - iii. increasing expectations of community facilities (size, quality, automation, temperature control);
 - iv. increasing utilisation of facilities;
 - v. cost pressures of energy and water supplies and waste disposal;
 - vi. engaging our community to undertake change;
 - vii. limited public transport;
 - viii. development pressure from urban growth corridors to the west of the Shire;
 - ix. consideration of embodied energy and the supply chain;
 - x. aged building stock of Council and the community;
 - xi. the lifestyle of our residents in terms of land use and social activity; and
 - xii. importantly, finite Council resources.

- According to iD Consultants (profile.id.com.au/nillumbik³), and notwithstanding recent implications introduced by the COVID pandemic, 5.7% of households within the municipality were experiencing housing stress in 2016 (this is defined as households in the lowest 40% of incomes that are required to spend more than 30% of their usual gross weekly income on housing costs).

- The rise in property prices across the metropolitan region has resulted in substantial increases in housing stress since the 2016 Census. Whilst more recent data on housing stress levels in Nillumbik is not currently available, it is quite likely that the percentage of households experiencing housing stress within the municipality will have increased since 2016.

- In Councils view, Federal and State governments will need to continue their role in the housing system predominantly facilitating (and innovating) in the areas of:
 - i. Financial assistance (pensions, rent assistance, etc.)
 - ii. Social housing provision (Victorian Housing Register waiting list)
 - iii. Tenancy law
 - iv. Taxation system
 - v. Industry incentives
 - vi. Victorian Planning Provisions (VPP)
 - vii. Building Law
 - viii. Services (homelessness, health, education, jobs and other)

² Homes for Victorians | Housing.vic.gov.au

³ [Home | Nillumbik Shire | Community profile \(id.com.au\)](http://Home | Nillumbik Shire | Community profile (id.com.au))

- Local government needs to continue its role with acknowledgment of the significant funding gaps that are required in delivering services & infrastructure to support our community (in a rate-cap environment) by allocating shire resources. Nillumbik Shire are active in accessing grant funding or other subsidies to assist in delivering key community infrastructure and services, some of which support those parts of the community with housing vulnerability. Key local government functions in this space include:
 1. Facilitating community safety and wellbeing through provision of local support services, facilities and coordination/connection to external services;
 2. Land use planning; and
 3. Advocacy and alliances.
- Local government particularly needs to advocate for equitable reforms and resourcing of the public housing, welfare, financial, taxation, residential tenancy, foreign investment, government surplus land, land use planning and building systems to bring affordable, appropriate and available housing to Nillumbik Shire.
- The land use planning system (through housing strategies) needs to adequately plan for at least a 15 year supply of housing, including land for affordable housing, and negotiate developer contributions when the planning scheme is amended or there are significant applications to increase residential density. Facilitating policy within planning schemes around affordable housing however requires funding to provide the strategic justification for such. Often smaller rate base Councils – particularly non-growth Councils such as Nillumbik Shire, do not have the financial resources to undertake such strategic justification.
- Apart from the limited actions Nillumbik Shire Council and other local governments can undertake to support implementation of social housing, local governments can seek to partner with established social housing providers who have connections to disability services.
- Council note that for our community, currently people access social housing through the Department of Housing - a large government department that is difficult for people (especially vulnerable people) to navigate. Taking the bureaucracy out of the process would help with access. It would be helpful for housing to be made a part of broader service delivery, specifically health service delivery.
- Council consider that housing could be viewed (particularly for at risk community members) and delivered through a health lens, as lack of secure housing is a social determinant of health. People who are more vulnerable and need social housing are likely accessing health services. Housing is an issue that would come up in conversations with clinicians and workers with clients. It is an important part of a person's health and wellbeing status.
- Other health issues need to be considered in the context of insecure housing and the need for social and affordable housing. For example, people experiencing housing stress, unsafe or insecure housing will find it much more difficult to address mental health problems. Often these issues are addressed separately when in reality they are interrelated.
- Council note that price, location, security of tenure, access to transport/amenity, connection to support services are all important, one is not more important than the other. It is important to add 'connection to social support networks' as well as 'support services'. For example, having cheap rent in an area that does not have accessible transport or employment opportunities will not provide effective outcomes and access for people as well as if that housing was in a location that was close to transport and job opportunities. These areas need to be considered as a whole, not individually.

2.1 Housing affordability and Land Use Planning and Victorian Planning Provisions

- Council strongly supports the view that funding to implement affordable housing policy and outcomes should not rest with local government. Nillumbik Shire supports the initiatives and recommendations of the [Municipal Association of Victoria's \(MAV's\) Submission to Affordable Housing October 2019⁴](#), particularly where affordable housing models should be implemented

⁴ [MAV Submission Affordable Housing MAC](#)

through the creation of State provisions within the VPPs for Affordable Housing. Council particularly supports the identified requirement that any provisions should:

- a. *'Provide certainty and consistency, while allowing some flexibility to enable councils to respond to the specific needs of their community – an Overlay and Schedule to the Overlay could achieve this;*
- b. *Clearly set out the way in which the affordable housing contribution will be calculated, allowing developers to work out and build the cost into their development feasibility and enabling planners to calculate the affordable housing contribution;*
- c. *Articulate who pays for the affordable housing – moving beyond a discussion about number of dwellings to certainty about the quantum of the overall affordable housing contribution; and*
- d. *Other aspects that will also need to be in place are:*
 - i. *A process to collect and distribute cash-in-lieu contributions, noting councils preference for contributions that come from their community to be invested within their community; and*
 - ii. *Mechanisms to secure the benefit of the affordable housing in the community, recognising that a requirement for a specific building to remain used as affordable housing in perpetuity will make management of that property unfeasible for any asset owner who will need to ability to divest of assets (and reinvest in other assets) as part of their long term asset management strategy'.*
- Further Council strongly support the MAV recommendation of the same submission, specifically that:
 - e. *'A suite of Affordable Housing Planning Provisions is created that can be used by councils to seek affordable housing contributions for example:*
 - i. *Affordable Housing Planning Policy Framework (distinct from housing affordability PPF): and*
 - ii. *Affordable Housing Overlay, with the ability to create a Schedule to the Overlay 2.*
 - f. *The Provisions include mandatory (rather than discretionary) requirements so that there is certainty and clarity for landowners, developers, and planners.*
 - g. *The Provisions provide for land, dwelling, and/or cash affordable housing contributions and allows councils to specify the preferred form the contribution will take.*
 - h. *If the affordable housing contribution is to be delivered through the sale of dwellings, the Provisions clearly set out who will pay for the affordable housing (and at what discount) to provide certainty about the quantum of the affordable housing contribution.*
 - i. *That any requirements in the Provisions that set out the time for which a property will remain affordable housing, take into account the financial impact on the end owner of the affordable housing so that it does not create a burden on the community housing sector.*
 - j. *The State Government maximise the delivery of affordable housing on their existing land assets'*

3.0 Environmental sustainability and vegetation protection

- There are significant areas of relatively intact biodiversity particularly in north east Nillumbik, across public and private land. DELWP's own mapping shows that the high biodiversity Warrandyte to Kinglake habitat corridor, which extends far beyond is significant and worthy of long term biodiversity conservation investment. There are also a large number of nationally significant threatened species located within Nillumbik, including but not limited to the Eltham Copper Butterfly (FFG/EPBC listed), threatened orchids such as the Wine-lipped Spider-orchid, and threatened animals including the Brush-tailed Phascogale, Lace Monitor, Long-nosed Bandicoot, Swift Parrot and Powerful Owl.
- The Planning and Environment Act (the P&E Act) itself as an enabler is quite strong when it comes to environmental sustainability and vegetation protection. However, the implementation of the P&E Act under the Victorian Planning Framework in addressing vegetation protection in practice is lacking. There is opportunity for the Victorian Planning Framework to better facilitate the objectives of the P&E Act.
- Council note there should be a strong alignment between the Planning & Environment Act and the Flora and Fauna Guarantee (FFG) Act which protects Victorian biodiversity and its significant species on public land. In Council's view, the P&E Act should enable the application of the FFG Act on private land.
- Effective regional planning in protecting biodiversity is also required (as discussed below).

3.1 Application of the P&E Act and environmental sustainability and vegetation protection

- Development, particularly in Nillumbik, is often as-of-right so there is limited opportunity for the application of the objectives of the P&E Act including providing for sustainable development; providing for the protection of natural and man-made resources; and maintenance of ecological processes and genetic diversity.
- The P&E Act and Planning Policy Framework also offers environmental protection through zoning. In Nillumbik the Rural Conservation Zone is critical to minimising habitat impacts through development and it is a powerful tool for Council to place conditions on future management of the land. Likewise the Special Use Zone protects critical habitat in the Bend of Islands. However overlays play a significant role in securing environmentally appropriate outcomes.
- Together with planning overlays within the Nillumbik Planning Scheme, Victorian Planning Provision Clause 52.17 is designed to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. The ability to protect and consider loss of vegetation under Clause 52.17 and local overlays is a very positive part of the Planning Framework.
- However, this is limited to areas over 0.4ha in size. Therefore, without local overlays, there is very little remaining in the Planning Framework to allow for the consideration and protection of native vegetation in blocks smaller than this size. Anecdotally the cumulative impact of (at times substantial) vegetation removal from individual properties poses a significant threat to the highly valued 'treed' character of Nillumbik Shire's activity centres as well as the integrity of Nillumbik Shire's biodiversity, including native flora and fauna.
- Although the *Guidelines for the Removal, Destruction, or Lopping of Native Vegetation 2017* require a proponent to account for past losses on their properties, there still needs to be a thoughtful consideration of cumulative impacts, including of past developments, which may lead to a continuation in the decline of biodiversity, particularly threatened species or communities. Environmental offsetting should only be used as a last resort with genuine effort made by a proponent to avoid or mitigate impacts as a matter of priority. If residual impacts cannot be avoided or mitigated, approval should only be given once a suitable offset has been identified and secured prior to an impact occurring.
- Trading the protection of a species or ecological community for its removal elsewhere will not halt the decline of that species or community, but if it is done with rigor and costed correctly, it will hopefully slow that decline and avoid total loss. Offsets need to be calculated and

accounted for correctly. Adequate comparison of losses and gains is prudent in ensuring that the loss of biodiversity is compensated for in offsets, and gains should be higher than losses.

- Council supports the legislative intent that genuine effort be made by a proponent to avoid or mitigate impacts as a matter of priority and approval should only be given once a suitable offset has been identified and secured prior to an impact occurring if residual impacts cannot be avoided or mitigated.
- Offsets need to be calculated and accounted for correctly with adequate comparison of losses and gains to ensure that biodiversity loss is compensated for, and gains should be higher than losses.
- As noted Significant Landscape Overlays play an important role in more urban settings. While the primary objective of the SLO is tree protection for amenity purposes, this also affords some level of biodiversity protection in otherwise heavily modified landscapes.
- While the P&E Act provides the tools for native vegetation protection on private land, councils may be limited in their capability to apply native vegetation protections. With the extent of native vegetation in Nillumbik for example there is a significant cost to Council to both implement and update effective planning scheme overlays that would protect biodiversity and vegetation. Robust strategic justification is required to prepare evidence to support such overlays, and particularly for smaller rate base Council's this work is often cost prohibitive.
- Consideration also needs to be given to the fact that biodiversity does not stop at local government boundaries – and often a regional approach is required to secure appropriate outcomes for biodiversity corridors. The outcome with regard to protecting significant habitat or species on private land is that Councils may allocate funds to prepare strategic justification for application of bespoke overlays, however due to resourcing constraints, cost, and political/local will, these may not eventuate into tools within the planning scheme, if the work is undertaken at all, and will not acknowledge or effectively protect regional linkages.

3.2 Impact of 10/30 and 10/50 exemptions

- Clarity and greater ability for compliance on illegal vegetation clearance and taking threatened flora or fauna from private land should be pursued under the P& E Act in a more effective manner. The P&E Act needs to be strong and enforceable with sufficient associated resources to enable effectiveness. In particular, compliance and enforcement needs to adequately occur in situations of vegetation clearance. This may be in the form of increased penalties to create a greater deterrent. This is explored further at point 4 in regard to illegal vegetation removal, compliance and fines.
- Council supports empowering residents to prepare their properties for appropriate bushfire protection. Council has noted however, that a 'blanket' approach to bushfire protection exemptions is continuing to result in significant loss of vegetation with associated negative impacts on the valued character of Nillumbik's urban areas, particularly our Major Activity Centres.
- The rules allow landowners, in locations identified as Bushfire Prone Areas and where a Bushfire Management Overlay applies, to remove vegetation as-of-right so residents can make their properties safer in the event of a bushfire. The rules were introduced following the 2009 ('Black Saturday') Victorian Bushfires Royal Commission and only apply to buildings used for accommodation that were constructed or approved before 10 September 2009.
- Councillors and the community have acknowledged the impacts that exemptions to clear vegetation are having (anecdotally) on neighbourhood character particularly in the urban areas of Nillumbik. Known as the 10/30 and 10/50 rules – these 'rules' allow vegetation removal to occur without the need for a planning permit. There is ongoing concern that these exemptions are having a detrimental impact on local vegetation, biodiversity and neighbourhood character on the Nillumbik Shire.
- Council has requested a review of the impacts of current exemptions for clearance of vegetation. Nillumbik Council recently advocated to the Victorian Planning Minister regarding the 10/30 and 10/50 rules which are planning permit exemptions specified in Clause 52.12-1: Bushfire Protection Exemptions of the Victoria Planning Provisions. Although the allowance

for exemptions under the Planning Framework reduces red tape and can provide landowners with an easier way to manage their land, there is unintended consequences of applying planning permit exemptions for tree removal for bushfire mitigation in an essentially urban area further contributing to biodiversity loss.

- The concern relates to a trend in suburban property owners and developers taking advantage of the exemptions to maximise developable yield as opposed to mitigate genuine bushfire risk. This is also apparent in application of the exemptions to maximise views or other development outcomes that may be impeded by the location of existing trees.
- The ability to provide local protection of our local environment by using overlays like the Environmental Significance overlay or Vegetation protection overlay is a positive part of the Victorian Planning Framework. However, there is an increased level of complexity behind developing and adopting bespoke ESOs within the Planning Scheme to protect vegetation, habitats or threatened species, as they are costly and difficult to apply or update. The Environmental Significance Overlays (ESO) which cover 55% of Nillumbik Shire recognise the value of native vegetation, specifically, *Identification, protection and enhancement of the environmentally significant sites and strengthening of connecting habitat links will assist in the maintenance of biodiversity within the Shire and surrounding areas*. However, the main ESO that covers some areas of Nillumbik only provides a level of protection for fauna species and their habitats. Therefore there is a gap in protecting flora species in the Shire, particularly in areas that are less than 0.4ha in size.
- A clear mechanism for major infrastructure projects to fund nearby enhancement vegetation planting and nearby key vegetation protection works as part of their mitigation programs would assist with providing ongoing local habitat, e.g., associated with Yan Yean Road upgrade.

3.3 Regional planning and collaboration

- Planning at a regional level is an opportunity for state and local governments to work together to manage long-term growth and change across Melbourne. It is important in Councils view that existing and future regional initiatives should guide regional planning and collaboration vertically (between state and local government) and horizontally (across local councils in partnership with other stakeholders, including Traditional Owners).
- Council support the importance of 'inter-regional' planning noting planning issues and influences do not stop at local government boundaries or 'lines drawn on a map'.
- An inter-regional approach would hopefully result in stronger policy direction and clarity, and reduce the politics (particularly) around green wedge areas. It would facilitate greater discussion and action between adjacent municipalities to ensure coherent planning across shared boundaries.
- Nillumbik Shire note land divestment policies of State Government and Authorities do not always facilitate appropriate planning that provides for the directions and outcomes envisaged by State and local policy. Such divestment legislation necessitate the Department or Authority to divest land for its highest and best use, and this at times may be at odds with the environmentally sustainable outcomes and net community benefit. For example land that has high environmental values is often divested within minimal if any planning provisions that recognise and protect said environmental values, leaving such a debate to occur at the planning permit stage which is often too late to protect and enhance such values.

3.4 P&E Act enabling local community responses to climate change

- There is a need for the P&E Act to consider the effects of and contributors to climate change and to mitigate the environmental, social and economic effects of climate change and any emerging planning issues, such as defining appropriate locations for future development. For example, protecting land in open catchments from inappropriate development which may compromise harvested water quantity and quality and managing urban areas to minimise water demands are just two issues arising from climate change.
- It is important that climate change is addressed at State level and at local level and there is a clear need to acknowledge climate change within the planning system.

- Notably planning and decisions made in regard to the built environment only represent a small part of the overall response required to climate change, however it is an important role.
- There is a distinct disconnect between policy objectives in the Planning Policy Framework in regard to climate change, and actual implementation tools within planning schemes.
- Facilitation of effective content in regard to principally ESD outcomes in the Planning Scheme is important in allowing matters to be considered by decision-makers. Its application is frequently the primary influence on outcomes, particularly on lot, subdivision and built form outcomes.
- There is a need for strong State government leadership in regard to this matter, particularly given the limited resources of some Council's in facilitating change into individual planning schemes, and undertaking the strategic work to justify municipal level planning scheme amendments, particularly given the overarching policy intents within the Victorian Planning Provisions. A disconnect is evident between State policy objectives, and actual implementation tools within planning schemes.
- Council acknowledge the work of the *Climate Change and Planning Advocacy Group*, principally led by the *Council Alliance for Sustainable Built Environment (CASBE)* in regard to drawing attention to the need for reform of planning schemes in a number of key areas to support climate change adaption and mitigation. Key areas that the *Climate Change and Planning Advocacy Group* have identified, that Council support include:
 - a. The need for the Victorian Planning provisions and planning schemes to consider climate change, and not only sustainability.
 - b. Filling clear policy gaps.
 - c. Introducing mandatory development standards in targeted areas.
 - d. Ensuring that planning schemes and specific controls are consistent with scientific evidence base and best practice – again an area that individual Councils are not equipped to facilitate.

4.0 Protecting heritage in Victoria

Protecting heritage in Victoria, including but not limited to:

- (a) the adequacy of current criteria and processes for heritage protection;*
- (b) possible federal involvement in heritage protection;*
- (c) separating heritage protection from the planning administration;*
- (d) establishing a heritage tribunal to hear heritage appeals;*
- (e) the appointment of independent local and state heritage advisers;*
- (f) the role of Councils in heritage protection;*
- (g) penalties for illegal demolitions and tree removals;*

4.1 Council and heritage protection

- Victoria's identity is strongly connected with its cultural environment of which heritage is a major contributor and provides many community benefits (social, environmental and economic). Not all these benefits can be quantified in terms of dollar value, and many contribute to neighbourhood character and sense of belonging. Also the maintenance and conservation of heritage buildings helps to achieve sustainable urban environments, where maintenance and conservation of existing buildings significantly reduce demolition and new construction waste. Nillumbik Shire has a tradition of mud brick building with the Heritage Overlay applied to some of those mud brick and pise (rammed earth) houses within the Shire.
- For local government Heritage Overlays (under the Victoria Planning Provisions) continue to be the main tool used by local government to protect heritage places in their municipality notwithstanding the Aboriginal Heritage Act 2006 acts primarily to provide for the protection of Aboriginal cultural heritage in Victoria.
- Prior to inclusion in a Heritage Overlay, the identification of historic heritage places is usually undertaken as part of a local heritage study to provide strategic justification for any future application of the Heritage Overlay through the planning scheme amendment process. There is a consistency in Victoria in the use of heritage criteria and these both align with the criteria of the Australian Heritage Council. The amendment process usually involves extensive public notice procedures that invite submissions and application of the Heritage Overlay does not prohibit demolition or development but requires that a planning permit first be obtained.
- Unfortunately for a significant number of councils, particularly those with lower rate bases it is difficult to fund the necessary heritage reviews that need to be prepared by suitably qualified heritage input to provide the strategic justification to apply the heritage overlay through the planning scheme amendment process. As a result, local governments may take many years (if at all) to undertake this strategic work to seek to protect identified heritage places. This means that many heritage places are vulnerable to be lost through demolition forever. This is particularly a problem for outbuildings, gardens, fences and trees that may have heritage value – not just buildings themselves.
- In Councils experience there are a limited number of appropriately qualified and experienced heritage professionals and those offering this service as a consultancy service to local governments are highly sought after and often very expensive in terms of the scope of work that is produced through heritage reviews (in comparison to other types of land use studies).

4.2 Tree removal, compliance and fines

- It is unclear if tree removal in the context of the TOR in regard to heritage is in regard to heritage trees or the wider issues of loss of substantial trees and tree canopy. Notwithstanding this, Councils views articulated in this section can also be considered a response to the TOR in regard to '*Environmental sustainability and vegetation protection*'.
- The importance of vegetation (particularly native vegetation) is well established in State Planning Policy. However, changes brought about by the 2009 'Black Saturday' Victorian Bushfires Royal Commission saw a distinct and significant shift in the prioritisation of competing policy objectives with the introduction of (clause 13.02-1S: Bushfire planning) which declares that 'the protection of human life takes precedence over all other policy considerations'.
- The cumulative impact of (at times) substantive vegetation removal from individual properties poses a significant threat to the highly valued 'treed' character of Nillumbik Shire's activity

centres as well as the integrity of Nillumbik Shire's biodiversity, including native flora and fauna. The value of vegetation, both as a defining element of township character and key component of Nillumbik's biodiversity and the associated need for its protection and enhancement is specifically recognised by the many policies and provisions of the Nillumbik Planning Scheme.

- Vegetation loss impacts are also compounded by the impacts of climate change. With higher temperatures and reduced rainfall predicted in climate change models, climate change is predicted to have a marked impact on biodiversity through many factors such as changes in vegetation structure including a decrease in foliage quality, and reduction in range for the majority of vertebrate species⁵.
- Council has advocated for the review of, and amendment to the *Planning & Environment Act 1987* (the Act) to provide for greater powers to authorised officers to cause cessation of unauthorised clearing of vegetation and for increased fines for such activities.
- The issue of unauthorised vegetation removal results in poor outcomes for both our environment and community, and is also a costly and time consuming matter for Council. Council are often left with no other avenue than to engage in legal action against the owner of the property, under Section 126 at Magistrates Court through contravention of the Act.
- It is noted that any person who uses or develops land in contravention of, or fails to comply with, a planning scheme, a planning permit, or an agreement with the owner of land under section 173 of the Planning Act, is guilty of an offence. There are a range of enforcement options available to a Responsible Authority, including negotiation, warnings, infringement notices, injunctions and prosecution.
- It is noted that some councils also have local laws to protect trees on private and public land and they introduce these laws as an added protection mechanism where trees are important to the character of the area. These laws can supplement planning regulations. However given Nillumbik Shire is bushfire prone, such laws cannot be used as an additional deterrence to vegetation clearing.
- Penalties for breaches are administered through infringement notices and minor penalties, with larger fines for breaches of court orders. This regime has come under criticism however because the largest fines only occur once it has come to the attention of authorities that damage or destruction has taken place and an order has been made, in other words, "after the horse has bolted".
- Council contend that the State government should consider whether the value of the fines are adequate for the purposes of deterring illegal works, and whether the State government should play a role rather than leaving the action to local authorities to prosecute. Nillumbik Shire Council urge you review the value of infringements to ensure they sufficiently deter illegal works.
- As an example, a recent Nillumbik Shire Council prosecution for illegal tree removal under the Act resulted in a fine of \$30,000. Council noted that 'removing significant trees is something that this Council takes very seriously and the message is clear—if [residents] remove trees without a permit we will take action'.
- However even where Council are successful in achieving Court penalties for an offence against the Nillumbik Planning Scheme, the fines often remain unpaid and are handed down to Fines Victoria (as is the case for this example).
- The deterrence effect given the value of these fines clearly does not work. Unfortunately in this example, Council are now having to take legal action a second time for subsequent clearing of vegetation with the same plaintiff, and we will again have to pursue prosecution at Magistrates Court, at significant time and expense to our ratepayers given the deterrence of the still unpaid fines in the first instance has not been effective.

⁵ Nillumbik Biodiversity Strategy 2012

- Fines are very important in deterrence, however greater powers to authorized officers to cause cessation of unauthorised clearing of vegetation is also considered integral, particularly considering the limited ability for authorized officers to ensure the cessation of unauthorized activities whilst on-site with offenders.
- Current powers allow them to enter into discussions with the offender to ask them to cease unauthorized clearing. Officers are then required to call the Police where necessary to enforce an outcome should the need arise. Given the significant impact to the environment and landscape and the destruction that can occur post a site visit should the offender choose to continue unauthorized activities, it is imperative that changes be made to enable greater powers to cease unauthorized activities.
- The example provided above in Nillumbik has seen the clearing of the majority of substantial trees on a site many of which were removed post authorized officers attending the site, advising the offender of the breach of the planning scheme, and asking the offender to cease work.

5.0 Delivering certainty and fairness in planning decisions for communities

- (a) *mandatory height limits and minimum apartment sizes;*
- (b) *protecting Green Wedges and the urban growth boundary;*
- (c) *community concerns about VCAT appeal processes;*
- (d) *protecting third party appeal rights;*
- (e) *the role of Ministerial call-ins;*

- Notably Melbourne is growing, and the State government directs all metropolitan Councils to share in accommodating some of this growth. Nillumbik is predicted to be the lowest growth municipality in metropolitan Melbourne however, both in terms of the proportion of growth and the absolute numbers, with 0.4% annual population growth (6,140 additional people between 2016 and 2036). This compares to a city-wide average annual growth rate of 1.6%.
- The majority of land within Nillumbik is rural land located within the Metropolitan Green Wedge. This area comprises a mixture of farmland and bushland that is protected from future urban development under State planning legislation. Any growth within the rural townships will be contained within the existing township boundaries, as legislative Urban Growth Boundaries apply to these locations.
- The remaining area of Nillumbik is urban land located within the metropolitan Urban Growth Boundary. Almost every suburb and several townships have a direct interface with the Urban Growth Boundary and the unique neighbourhood character and 'tree'd' environment' is both unique and particularly strongly loved by the Nillumbik community. This unique environment offers certain constraints in consideration of growth and built form outcomes for the Shire.
- Council recently adopted in 2020 new structure plans for each of its Major Activity Centre's at Eltham and Diamond Creek which advance State policy and objectives for activity centre planning, and optimise access by the community (within walking distance) to amenity, services and public transport. Notably heights within these Major Activity Centres are controlled through a schedule to the Activity Centre Zone with some discretionary height controls, but a mandatory maximum height of 5 storeys is in place. The ability to apply mandatory controls, particularly within areas with unique environmental or character elements is crucial in ensuring the most effective outcomes in planning. A 'one-size-fits-all' approach is not considered suitable. One Major Activity Centre may be very different to another depending on location, access to infrastructure, population growth and environmental/landscape setting. Council would not support any consideration of removal of mandatory height controls within planning schemes, it is considered the outcomes for particularly peri-urban environs would be detrimental.

5.1 Protecting Green Wedges

- In consideration of Outcome 6 of Plan Melbourne – *'Melbourne is a sustainable and resilient city'* it is noted that Green Wedges are places of regional significance. The Nillumbik Green Wedge is of high recreational and biodiversity value particularly within the context of northern metropolitan Green Wedges.
- Council supports that Green Wedge planning warrants specific address particularly in regard to regional planning. Green wedges also have very specific and important roles particularly in the context of climate change, biodiversity, food security and minimising the length of supply chains. Council support Direction 4.5 of Plan Melbourne *'Plan for Melbourne's green wedges and peri-urban areas'* particularly policy at 4.5.1 to *'strengthen protection and management of green wedge land'* and particularly identify the importance of the continued use of key planning tools that manage Green Wedge land specifically:
 - a. regulations requiring ratification by both Houses of Parliament for planning scheme amendments that alter the urban growth boundary or green wedge subdivision controls;
 - b. Core Planning Provisions for Metropolitan Green Wedge Land (Clause 57), which set out prohibited land uses and subdivision provisions;
 - c. green wedge zones, which primarily include the Green Wedge Zone, the Green Wedge A Zone and the Rural Conservation Zone; and

- d. Green Wedge Management Plans, which are council-adopted strategies that identify a vision, objectives and actions for the sustainable use and development of each green wedge.
- It is considered food security is a very important issue in regard to Green Wedge planning that has not been elevated within the VPP's. Nillumbik's draft Health and Wellbeing Plan, the draft Climate Action Plan as well as the Green Wedge Management Plan recognise the importance of strengthening the food system and the need for sustainable food production locally (e.g. regenerative agriculture).

5.2 Regional 'Growth' Issues and impacts on Green Wedges

- Impacts of regional growth on Green Wedges as an implication growth (as identified in Plan Melbourne and Draft Regional Land Use Framework Plans) and the proximity of peri-urban Green Wedges to such – is an area of constant tension. Council notes that except for the City of Hume's Green Wedge Zone, no permit is required for proposals to move and deposit soil on a site as a primary land use, unless the proposal has specific environmental impacts (e.g. changing the rate of flow of water). In some areas, overlays can provide limited control, however the issue of filling is secondary to the key requirements of the overlays. While existing planning and environmental legislation can be employed to address some of these issues, resolving the broader issue of soil and earth storage in our planning system would benefit from a regional approach.
- Nillumbik Shire is being impacted increasingly by the practice of soil dumping in our significant Green Wedge areas. Without proper control and/or the ability to carefully consider this activity, the dumping may result in irreversible damage and/or time consuming and costly rectification exercises, which affect our green wedge values. Of particular concern is the risk of potential damage being made to existing and future land used for food production, waterways and ecosystems. Nillumbik's proximity to the Northern Region Growth Corridor and future expansion of such compounds the issue of illegal soil dumping where ease of access makes the Green Wedge attractive when disposing of site fill from proximate growth areas.
- Council have advocated for the introduction of controls across all planning schemes to deal with the significant impacts on Green Wedges caused by the issue of illegal soil dumping, with the Municipal Association of Victoria (MAV) also in its submission to DELWP's *Planning for Melbourne's Green Wedges and Agricultural Land: February 2021*⁶ identifying the ongoing issue of illegal soil dumping on Green Wedge and peri-urban council's and noting in regard to the consultation paper disappointment *'that the issue of soil dumping has been considered out of scope. A consistent state-wide approach is preferable to each council needing to address this individually. The MAV and councils have advocated for such an approach for some time'*.

5.3 Planning reform in the context of the 'Big Build'

- Since the introduction of Smart Planning Reforms, and then the introduction of the Victorian Big Build a series of amendments to the Victoria Planning Provisions (VPP's) and planning schemes have commenced (since 1 December 2020). The changes have been identified by the Minister for Planning to streamline the planning process and support economic recovery through the creation of jobs and the delivery of social and affordable housing. These changes were prompted by the unprecedented \$5.3 billion investment in social and affordable housing under the Victorian government's 'Big Housing Build' program which is set to deliver over 12,000 new dwellings and boost total social housing supply by 10 per cent.
- Amendments such as VC187 and VC190 have created a separate permit process for the development of housing projects (including apartments) by or on behalf of the Director of Housing and a planning permit exemption for projects funded under the Big Housing Build program. This comes as part of a series of other amendment that have been implemented into Planning Schemes to facilitate State government building and infrastructure spending initiatives, including amendment VC194 which sets out a new and significantly streamlined

⁶ https://www.mav.asn.au/data/assets/pdf_file/0005/27239/MAV-Submission-Planning-for-Melbournes-Green-Wedges-and-Agricultural-Land.pdf

approvals pathway for public projects, by introducing two new provisions to all planning schemes:

- a. Clause 52.30 (State projects), which allows the Minister for Planning to exempt defined infrastructure projects from planning scheme requirements; and
 - b. Clause 52.31 (Local Government projects), which allows Councils to progress projects with a value of less than \$10 million without a planning permit.
- There is no obligation set out in Clause 52.30 for the Minister or the Department of Environment, Land, Water and Planning (DELWP) to provide any public notice or confirmation of any particular project obtaining designation as a 'State project'. The effect of the designation of a project is that it will not require a planning permit to be obtained, and will be exempt from any prohibition on use or development of that project.
 - Importantly, the Minister for Planning retains flexibility within the controls to vary (or waive) some or all of the requirements relating to documentation and public consultation. Further, following approval of documentation, amendments to the form of the project can be approved by the Minister for Planning at any time. There is no consultation process explicitly contemplated in relation to the amendment of documents. Similarly, while there are consultation obligations set out in Clause 52.30 required after approval, but prior to commencement of the use or works, these can also be varied, or entirely waived by the Minister.
 - The importance of community consultation and community expectations to have their views considered in planning matters has been significantly eroded by such amendments. Notwithstanding the need for larger infrastructure and building projects to avoid 'red tape', in Councils view the communities views have been effectively removed and this has created both mistrust and contempt in regard to State government projects/initiatives. This lack of consultation is in stark contrast to the requirements of local governments in regard to community consultation introduced through changes to the Victorian Local Government Act in March 2020, where it is mandatory for all councils to have a community engagement policy in place and such policy must identify a commitment to apply deliberative engagement practices as required by legislation. This in itself sets a transparent expectation by the community that they will be given adequate time for consideration of key matters (including planning matters) that may impact them.

5.4 Ensuring residential zones are delivering the type of housing that communities want

- Council note that in regard to any reforms 'one-size-fits-all' approach to zones which apply built form outcomes to all of Victoria (for example the General Residential Zone) where a 3-storey height limit is allowed is not useful in local government areas like Nillumbik where 3-storey development is very rare.
- The universal nature of the VPP provisions contributes to their inability to recognise local difference and achieve adopted strategic objectives.
- Council note that consideration of future reforms to the residential zones to facilitate housing to meet 'community wants' must not only have regard for market pressures, but must also have regard to the importance of tree canopy and urban heat island impacts.
- Canopy trees are a particularly important contributing element to the preferred character for both the Eltham and Diamond Creek Activity Centres, one which reflects both areas' landscape and heritage. Hence, Council's planning provisions for the activity centres strongly support the establishment of canopy trees in redevelopment of each centre, particularly as a means to modify the visual impact of larger buildings, including apartment buildings. It has been Council's experience, however, that it can be extremely hard to impress on applicants the need to adequately plan for canopy trees early in the design of apartments, which can both hinder the planning process and the quality of the final outcome. Too often designs proposed to place landscaping in highly constrained areas of a site, such as narrow side setbacks.
- Consistent with the above discussion, Council supports that residential zoning needs to strongly support landscape standards which aim to strengthen the need for landscaping, particularly canopy trees and to maximise the longevity, quality and benefits of the landscaping.

- Townships in Nillumbik are subject to the same urban heat effects as urban areas in more densely populated areas with the same issues of loss of canopy over time due to increasing urbanisation.
 - There is a fundamental issue where application of Bushfire Prone Area (BPA) mapping and planning scheme exemptions to clear for bushfire, result in constant 'tension' with actions to retain vegetation, given bushfire threat and exemptions. This demonstrates the importance of the continued application of the UGB and green wedge planning and should be a large consideration in the planning context.
 - Key directions in DELWP's draft Northern Land Use Framework Plan at Direction 26 identifies the need to *'increase urban tree canopy across the Northern Metro Region to achieve 27 per cent coverage by 2050'* and further Direction 25 identifies the need to *'increase the network of cool places, particularly in areas with communities vulnerable to urban heat and areas with high urban heat'*. Council support these initiatives however there is a focus on known sites of high urban heat which are a consequence of past decisions and new development. There is no acknowledgement of the ongoing land use decisions and practices which are creating the urban heat sites of the future through incremental subdivision.
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