

26th May 2020

The Hon. Richard Wynne MP
Minister for Planning
Level 20
1 Spring Street
MELBOURNE VIC 3000

Dear Minister

RE: Vegetation Clearance Implications for Nillumbik Shire through Application of Clause 52.12 (Bushfire Protection: Exemptions)

Council support the empowering of residents to prepare their properties for appropriate bushfire protection. It is noted however, as in our correspondence to you in 2015, 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 Centre’s.

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’.

Managing bushfire risk under both the planning and building systems was strengthened with the provision of exemptions from the need to obtain approval for the removal of vegetation around residential buildings. The legal, as-of-right removal of vegetation allows residents to reduce fuel loads and create ‘defendable space’, thereby mitigating fire risk on their property. It is noted these exemptions were implemented into all planning schemes across Victoria via clause 52.48 in 2011, and following the restructuring of the Victoria Planning Provisions and all planning schemes on 31 July 2018, the provisions (slightly amended) are now located in and set out in clause 52.12 (Bushfire Protection: Exemptions). The exemptions apply regardless of whether a permit is required to remove vegetation under any other provision of the planning scheme (e.g. clause 52.17: Native Vegetation, Vegetation Protection Overlay, Environmental Significance Overlay or the like). That is, the exemptions trump all other planning permit triggers, meaning that Council does not have the power to prevent the removal of vegetation covered by the exemptions. Nillumbik’s Major Activity Centres of Eltham and Diamond Creek are located in the Bushfire Prone Area mapping and are not located in the BMO and the 10/30 rule applies.

Recent preparation of Council's Green Wedge Management Plan, and structure plans for our Major Activity Centres, has highlighted the community's concern about the loss of vegetation and associated impact on the valued character of particularly Nillumbik's urban areas. Part of this concern (which is shared by Council officers) is the trend in 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.

VCAT decisions continue to demonstrate the inadequacies of the exemptions in dealing with 'mischief' in regard to application of the exemptions. An example is *Nillumbik SC v Potter [2010] VCAT 669* in which the Tribunal:

32. ... acknowledged there would be circumstances in which vegetation may be removed, destroyed or lopped for a 'development advantage' and not for 'bushfire protection', but that clause 52.43 cannot be interpreted '... to require proof of subjective intent by landowners who remove vegetation under the exemption ...'.

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 particularly local policy at Clause 22.12 that identifies that:

'development in residential areas needs to respond to the particular built form and natural environment elements that make up the neighbourhood character of Nillumbik. The extent of the predominately native and indigenous vegetation cover is a particular characteristic of Nillumbik that makes it distinctive from other areas of Melbourne'.

The importance of vegetation within the Shire is also recognised by several key adopted strategies, including the Council Plan 2017 -2021 and the adopted Green Wedge Management Plan 2019 that identifies among other matters that:

'Nillumbik's green wedge will be protected and enhanced through continued application of the urban growth boundary, and decision making will reflect the green wedge as a place for environment and biodiversity conservation, agriculture, recreation, tourism and rural living...ensure that the rural character, values, landscapes, townships, natural environments and lifestyles that are so cherished, are identified, preserved and enhanced'.

Council's adopted Biodiversity Strategy 2012 identifies that residential development and '*subdivision of existing residential blocks is a key threat to biodiversity*'. Increased pressure of subdivision is identified as resulting in loss of remnant vegetation and increased pressure on native flora and fauna through increased weeds, modification of hydrology, the introduction of exotic pest animals and implementation of land management required to reduce fire threats. The Biodiversity Strategy identifies that these pressures result in a loss of suitable habitat for many species including threatened and endangered species.

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 species¹.

Plan Melbourne 2017 – 2050 at Outcome 6 identifies the need for Melbourne to be a more 'sustainable and resilient city' citing Direction 6.4 in making Melbourne cooler and greener through implementation of policy 6.4.1 'support a cooler Melbourne by greening urban areas, buildings, transport corridors and open spaces to create and urban forest'.

Recent work undertaken by DELWP in 2018/2019² has identified in analysis of vegetation coverage, urban heat and heat vulnerability across Melbourne, that the northern region of Melbourne, in 2018 had tree canopy coverage of only 12.1% (6,886 ha) with much of this tree canopy being located on private residential land (46.3%) where impacts of bushfire vegetation clearance exemptions are most observant.

In the context of Nillumbik Shire, DELWP's own research in the area of tree canopy coverage demonstrates the importance the Shire has in providing substantial tree coverage for the northern region (and indeed the broader Melbourne area) where Nillumbik has the highest tree canopy cover by local government area of any local government area in Metropolitan Melbourne. Given 91% of the Shire is Green Wedge this figure is not surprising, however this acknowledgement of Nillumbik's importance in assisting with the 'heat island effect' across Melbourne, does not take into consideration the loss of vegetation across Nillumbik's urban areas, predominantly located in the south of the Shire.

Advocacy in regard to the impacts of vegetation removal, pursuant to the bushfire clearance exemptions is also supported by the Municipal Association of Victoria (MAV). In May 2018, MAV made a State council resolution in regard to this matter:

That the MAV lobbies the Minister for Planning to undertake a review of the Bushfire Protection vegetation clearance exemptions in Clause 52.48 of the

¹ Nillumbik Biodiversity Strategy 2012

² Cooling and greening Melbourne presentation Bronwyn Fry Planning Implementation 2019

Planning Scheme to consider the relevance of these exemptions to urban and township areas across the State and identify opportunities for a more targeted approach.

Council also understand that the Victorian Auditor-General's Office (VAGO) is also undertaking work in this financial year, to '*determine whether the management of native vegetation clearing is protecting state and nationally significant native vegetation in the extended urban growth boundary areas*'.

Some of these concerns were also addressed by the 2009 Victorian Bushfires Royal Commission, particularly those concerning biodiversity. The Commission identified concerns that the 10/30 rule was not a 'one-size-fits-all solution, and there is concern about whether the rule could be used to permit widespread clearing to the detriment of important environmental or landscape values'³.

Other local government areas including Mornington Peninsula Shire and Frankston City Council have confirmed their advocacy in this space experiencing similar issues to Nillumbik Shire in regard to vegetation loss and the impacts on the character of their urban areas.

Council appreciate this is a complex area or policy, given considerations of the real threat of bushfire and the impacts of such on life and property. Council are not advocating to make a specific change to the current provisions, rather we support a review of the impacts of current exemptions for clearance of vegetation to manage the threat of bushfire on particularly urban areas including Major Activity Centres, with consideration by the Minister of the most suitable changes to provisions to prevent vegetation loss within urban areas only.

It is considered there is an argument that the impacts of a blanket approach to vegetation clearance exemptions to manage bushfire risks are having impacts in urban environs where the risk of bushfire is the least prevalent.

I would value the opportunity to discuss this matter further.

Yours sincerely,

Rosa Zouzoulas
Executive Manager
Planning and Community Safety

³ Teague, McLeod & Pascoe, 2009 Victorian Bushfires Royal Commission final report, Volume II: Fire Preparation, Response and Recovery, 2009, p.243