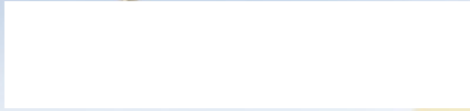


# Nillumbik PALs - Pro Active Landowners



Regulation of Australian Agriculture  
Productivity Commission Draft Report July 2016  
Due Date: 18 August 2016  
Submission from:  
Nillumbik Pro Active Landowners (PALS)

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## Terms of Reference Addressed

This submission responds to particular elements in the terms of reference to the Productivity Commission Inquiry and Draft Report into the Regulation of Agriculture in Australia. The draft report specifically highlights the opportunity for better national outcomes in regard to, *inter alia*, environmental protection and native vegetation management. In this submission we will address the following terms of reference:

- Streamlined and less burdensome regulation including -
  - Removal of cross-jurisdictional confusion for farmers so they can better understand regulatory requirements and better assess the risks and cost of doing business,
  - More consistency across disciplines and jurisdiction in regard to native vegetation and biodiversity conservation regulations, and
  - Removal of duplicative and unnecessary information gathering regarding water management;
- Integrated and transparent consideration of economic and social factors in decision-making;
- Better support for landholders to understand environmental regulations;
- State level requirements that local governments include within core regulations broader exemptions for preventative management or response to extreme events such as fire; and
- The creation of more achievable and relevant regulations through -
  - Early and meaningful consultation during the formulation and amendment of laws in particular at the local level, and
  - Ensuring that good regulator impact assessment processes are used as an analytic tool so as to support quality regulation making, and that such processes are not used as a legitimising tool or compliance exercise.

## The Nillumbik Pro Active Landowners' Association (Nillumbik PALS)

Of particular concern to us is the need for improved engagement practices and regulation in the growing and agriculturally productive peri-urban areas of Australia. Though we identify ourselves as rural, these areas are neither truly rural nor urban and are at the crossroads of significant change. These regions are an expanding element of the Australian rural landscape and face a particular challenge. Their longstanding rural industries are frequently over-burdened by regulation and under-represented in decision-making forums. This is often due to the structure of local government, where local councils and their staff are by majority urban dwellers from the inner area of the jurisdiction and as a consequence have a poor understanding of the machinations and demands of rural living and enterprise. The various planning and regulatory requirements placed upon peri-urban residents and businesses are out of step with their vision of a sustainable and productive landscape. Nillumbik Pro Active Landowners (PALs) was formed to support and represent one such rural community in peri-urban Victoria.

Nillumbik PALs is a group of 2,000 residents and landowners in the rural Shire of Nillumbik. Nillumbik PALs represents about 2,500 adult voters and 30 per cent of all rural properties in rural Nillumbik.

The rural Nillumbik area takes up approximately 91% of the whole land mass of the Nillumbik Local Government Area. Approximately 79% of rural Nillumbik is owned privately and includes over 6000 properties and families. According to Council, privately owned rural Nillumbik is made up of:

- Almost half the land area is rural residential and hobby farms and
- 20% of the area is dedicated to Agriculture.

The peri-urban area of Melbourne extends about 160km from the urban growth boundary to the outer rural boundary.<sup>1</sup> Growth rates in these areas are predicted at 1.8 per cent to the year 2031.<sup>2</sup> Rural Nillumbik is well within this area, located 30km north east of the Melbourne Central Business District outside the Urban Growth Boundary. The area is adjacent to the North East Growth Corridor to the north west, and Warrandyte to the south east.

The rural Nillumbik area is one of the twelve dedicated green wedges of outer Melbourne. It contains Sugarloaf Reservoir and so land management planning locally does need to consider maintaining the water purity of one of metropolitan Melbourne's main drinking water holding reservoirs. Rural Nillumbik is particularly susceptible to bush fire. This is in part because of the large public landholdings of bushland locally that surround us. These include the Kinglake National Park, Warrandyte State Park and Sugarloaf Dam. There are also large areas of bushland reserves across the area. Typically these areas are heavily wooded, have significant ground cover and are not as prepared and maintained, or as easily defensible, as most private landholdings locally. Rural Nillumbik does not have availability of sewerage and town water across most of the area. This has implications for agriculture and hobby farming locally.

The greater Melbourne region in Victoria in which Nillumbik is situated has experienced an increase in "intensive high capital forms of agricultural production".<sup>3</sup> According to Nillumbik Council reports, the agriculture sector locally is scenic but not sustainable with 200 businesses supporting 150 jobs and for the most part operates as businesses supplemented by off farm employment or other income. It includes:

- Orchards
- Vineyards
- Cattle grazing (and sheep)
- Egg farms (fewer since the 2009 bushfires) and others.

The agriculture sector locally is under significant pressure due to the small scale of operations, the limitation of land to enable growth, land prices being relatively high because of the proximity to Melbourne, and relatively poor soil quality across most of the local area. Reduced viability of agricultural activities in this area is likely to lead over time to a range of negative effects. These include a reduction in food security at a local and regional scale, and a loss of natural resource management knowledge.<sup>4</sup> One of the major pressures for the sector locally is the significant regulatory burden imposed by all levels of government, and in particular local government. This burden takes time away from farm employment and secondary employment, takes time away from families and livestock. It is totally unproductive from a business management and family perspective and significantly impacts upon the quality of life of farmers (and all property owners) in rural Nillumbik.

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<sup>1</sup> Buxton, Alvarez, Butt, Farrell, Pelikan, Densley and O'Neill. (2011) *Scenario Planning for Melbourne's Peri-Urban Region*, Melbourne RMIT.

<sup>2</sup> Department of Planning and Community Development (DPCD), (2012) *The Victorian Government's Official Population and Household Projections 2011-2031*.

<sup>3</sup> Choy, Sutherland, Gleeson, Sipe and Dodson (2008) *Change and Continuity in Peri-Urban Australia: Peri-Urban Futures and Sustainable Development*. Funded by Land and Water Australia and the Department of Environment and Heritage (Cth).

<sup>4</sup> Llausas, Buxton and Beilin (2016) "Spatial planning and changing landscapes: a failure of policy in peri-urban Victoria, Australia." *Journal of Environmental Planning and Management* 59(7).

The Council has recently (June-Aug 2016 Nillumbik News p3) showcased the new branding of “Artisan Hills” purporting to showcasing restaurants and cafes/shopping, boutique wineries, heritage sites, arts, parks/reserves/trails, accommodation. There has also been an app development to check out what’s on. This is contradictory to the restrictions proposed by the proposed overlays.

## **Nillumbik Council Objectives and Proposed Planning Amendments**

### **C81 and C101**

This submission has a particular focus on local government regulation specifically Nillumbik Council proposed planning amendments C81 and C101, land planning controls in the form of Significant Landscape Overlays and Environmental Significance Overlays. Planning in the peri-urban areas of Australia tends to be ad hoc and inconsistent. Notwithstanding the Department of Environment and Heritage (Cth) funding of a study ten years ago aimed to help redress the lack of attention given to peri-urban areas, very little policy attention has been here directed.<sup>5</sup>

The process of peri-urbanisation is poorly understood and policy and planning initiatives are not underpinned with a solid theoretical basis. In the Nillumbik area this lack of theoretical understanding is compounded by a reluctance to meaningfully consult with the community. Council action borders on the negligent in its pursuit of an ideology which is based heavily on its own personal desires for this peri-urban area to remain unchanged in their image of it as a rural oasis for wildlife and tourists. These desires need to be balanced with the needs and aspirations of the residential and agricultural community who are the true day-to-day custodians of this land, as well as in reference to the inherent high fire danger of the area.

Nillumbik Council’s stated objectives include  
(from the Nillumbik Green Wedge Management Plan Part 2):

- The rectification of the cumulative and negative effects of Clause 52.43 interim measures for bushfire protection;
- The restriction and discouragement of development in the Green Wedge and encouraging land consolidation;
- Conserve biodiversity and natural values as the priority for the Nillumbik Green Wedge Management Plan;
- Explore the expansion of environmental living zones; and
- The removal of local private water sources including dams over time.

In every particular Nillumbik Council prioritises the environment over the lives, homes and livelihoods of local residents, landowners and farmers. Council objectives have significant implications for farmers and local agricultural businesses, many of whom have farmed locally over many generations. These objectives also have significant implications for issues such as fire season preparedness. Nillumbik and surrounds are one of the most bushfire prone areas in the world.<sup>6</sup>

Most recently Nillumbik Council has proceeded with the implementation of actions that will achieve their objectives through the development of planning scheme proposals, specifically proposed planning amendments C81 and C101.

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<sup>5</sup> Choy, Sutherland, Gleeson, Sipe and Dodson (2008) Change and Continuity in Peri-Urban Australia: Peri-Urban Futures and Sustainable Development. Funded by Land and Water Australia and the Department of Environment and Heritage (Cth).

<sup>6</sup> Buxton and Haynes (2009) “To Plan or Perish: preventative Planning for Bushfire Risk.” *Planning News* 35.

Proposed Planning Amendment C81 seeks to place a Significant Landscape Overlay over all 6000 properties in rural Nillumbik. The overlay seeks primarily to protect the views and vistas for people passing through rural Nillumbik.

The overlay has significant negative consequences and implications for all people and properties in rural Nillumbik, including our local farmers, further compromising the viability of farming operations in an already altered peri-urban landscape.

Proposed Planning Amendment C101 seeks to place environmental significance protection overlays over Nillumbik including:

- ESO1 Core Habitat
- ESO2 Buffer Habitat
- ESO3 Overlay for residential and township zones and
- ESO4 Waterways.

They follow an unfortunate trend in Melbourne's peri-urban areas where planning through overlay controls are poorly matched to land characteristics (Buxton 2010).

### **Negative Impacts of Proposed Planning Amendments C81 and C101**

Nillumbik Council objectives and proposed planning amendments negatively impact on all people and properties in rural Nillumbik, including farming and agricultural enterprises.

Council objective implications for landowners and farmers include:

- Reduction in available farming land locally as council seeks to lock away land for environmental purposes;
- Reduction in fire preparedness and irrigation capability as council seeks to remove private water sources over time;
- Reduce family land disbursement options in retirement and end of life planning as council limits the ability of farmers to sub-divide landholdings to distribute around family members;
- Threat of continual disruption and uncertainty as council policy does not support landholders in trying to develop and maintain sustainable business models (which adds to operational burdens particularly since landholding sizes make sustainability marginal in the first instance);
- Stifled innovation, which is needed to make smaller landholdings sustainable, because of the ongoing land use conflicts between actual agricultural use and council preferred environmental lock-up use.

Proposed planning scheme amendments provide no acknowledgement of the importance of continual agricultural activity in rural Nillumbik (going back over 150 years) and the cultural and heritage benefits of these activities to the rural area. Moreover, farmers, residents and landowners in rural Nillumbik have not been consulted or engaged in the development of council objectives. The fact is that most of us live here because we have a connection to the environment and want to see it thrive. What we do not want are our properties and agricultural businesses micro-managed through an intensive and costly permit system administered by unelected Council staff.

Council priorities and objectives will have significant negative impacts on rural farmers, resident and landowners. Specific implications for landowners and farmers include:

- **Increased regulatory burden**
  - A significant increase will occur in the number of property management and maintenance activities that will require a planning permit. These include bush fire preparation activities and routine farming maintenance activities.
  - High administrative costs will accompany the planning permit application process due to an extensive list of required accompanying documentation for many property management and maintenance activities (these may require a raft of professional reports from surveyors, planners, ecologists, arborists and others). This will impose unnecessary administrative costs on businesses as well as discouraging innovation. These additional regulatory burdens provide no benefit to the landowner nor any palpable benefit to the community at large.
  - The placement of prohibitive permit requirements takes time away from the business of managing the business. Included in additional permit requirements are activities which have previously been considered bush fire preparation and routine farming maintenance.
  
- **Duplication and contradiction of existing rules**
  - Nillumbik Council proposes to place a waterway environmental significance overlay over all roads, gullies, indentations, seasonal creeks and dams in rural Nillumbik contradicts State regulation. Victorian state government waterway planning identifies that protection of the Yarra River<sup>7</sup> may include consideration of the imposition of environmental significance overlays on any landholding up to 1 km from the Yarra River between the metropolitan suburbs of Richmond and Warrandyte and between 250-750m from the Yarra River in the Warrandyte and North Warrandyte planning area (Sub areas 3 and 4). Rural Nillumbik falls outside of the urban growth boundary, and most of the area falls outside of the Sub areas 3 and 4 considered for this state government plan. Nillumbik Council waterway environmental significance overlays are not at all consistent with state planning.
  
- **Unnecessary delays**
  - These amendments and the associated requirements will create significant delays in property management and maintenance scheduling (including bush fire preparation and routine maintenance) whilst awaiting the preparation of planning permit application forms and once submitted awaiting the outcome of considerations.
  - They create more significant delays in property management and maintenance scheduling, in particular when planning permit applications are refused and appeals need to be lodged and followed through with the relevant appeals board VCAT (Victorian Civil and Administrative Tribunal).

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<sup>7</sup> Middle Yarra Corridor Study Draft Recommendations December 2014, Department of Transport, Planning and Local Infrastructure, Planisphere (2014)

- **Heightened fire risk**

- The amendments re-introduce the requirement to obtain a permit to remove Burgan (*Kunzea ericoides*) colloquially known as petrol bush. Burgan is a highly flammable native tea-tree which Parks Victoria have actively cleared since before 2000. Burgan is a highly invasive and flammable plant, Parks Victoria describe it as “an extremely adaptable, colonising species that comes in and competes with everything else in the landscape”.<sup>8</sup> It is designated it a “native weed” and has spread well beyond it’s endemic range. It needs to be aggressively managed and maintained particularly in paddock areas.
- No acknowledgement of the bush fire risk that exists in the rural Nillumbik area is provided, nor is any consideration given to the need for fire preparation of private landholdings in rural Nillumbik beyond that of the minimum standards outlined in the 10-30 provisions.
- The amendments require waterways on rural properties to be fenced off over time so they are not easily accessible, and require fenced areas to be returned to virgin bushland. This will inevitably increase ground fuel and bush fire risk on rural Nillumbik private landholdings, and this risk will continue to escalate over time. This will also mean that stock watering activities will alter, which may be appropriate however it will mean farmers need to make additional investment in alternative stock watering for no benefit (if previous watering included a private dam).
- They aim to remove static water sources on private landholdings altogether, and so people without town water will be limited to tank water supplies to respond to fire threats, irrigate crops and provide water to stock. Seasonal rainfall variability makes this high risk.
- They imply that there may be restrictions on granting of future permits to re-build properties in the event that they are lost to bush fire. This increases the likelihood of death, as residents are placed in an impossible situation of having to choose between losing their homes and experiencing severe financial and economic hardship if they are not able to re-build, or staying and defending their homes to protect their financial security at enormous personal risk to their safety.

The majority of the lives lost at the Black Saturday Bushfires of 7 February 2009 were in the Murrindindi and Nillumbik Shires. These Shires seek to balance urban and regional development and population pressures with concerns regarding the loss of biodiversity, natural resource use, water supply, agricultural production and a series of other human and social factors. In the face of climate change an anticipatory policy approach needs to be taken for both hazard risk and biodiversity conservation. Nillumbik Shire has however all but ignored the need to manage the area in terms of its high fire risk.

A sudden and catastrophic event is characterised in policy formation terms as a non-linear change. Planning – typically predictable, market driven, reactive and gradual – is ill equipped to deal with such non-linear change. However in an area such as rural Nillumbik the increased probability of sudden change due to a fire event has important policy implications. Much research has been done about sub-division and land use planning.<sup>9</sup> Of equal importance is ensuring flexibility in the on-

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<sup>8</sup> Parks Victoria, News Release *New trial reduces fire fuel loads at Mt Lofty*. (Tuesday 16 February 2016).

<sup>9</sup> Buxton, Hanes, Mercer and Butt (2010) “Vulnerability to Bushfire risk at Melbourne’s Urban Fringe: The Failure of Regulatory Land Use Planning” *Geographical Research* 7

ground management of properties, this is hampered by micro-controls imposed on clearing occasional vegetation and water storage capacity in dams that are utilised for fire fighting purposes. Councils that apply bio-diversity conservation over and above these other considerations do so at their own peril. It both endangers property and citizens as well as ignoring the impact of this non-linear extreme event on the very bio-diversity they claim to be protecting. The Wilderness Society states that the Black Saturday bushfires have “potentially devastated some of Victoria’s most endangered animals and plants, raising major concerns for their survival in the future.”

Difficulties arise for policy makers in that such non-linear change contains a high level of uncertainty. It is complex and can lead to “sudden, irreversible and fundamental change”. The policy making approach required is acknowledged as a hyper-complex problem.<sup>10</sup> It is however, one that needs to be tackled. A stronger emphasis on land-use planning as a fire mitigation tool is needed.<sup>11</sup>

## **PALS Activity To Date**

Since becoming aware that Nillumbik Council objectives and proposals would have the effect of placing the lives and livelihoods of rural Nillumbik communities at risk, negatively impact on our ongoing bush fire preparedness, and impose significant administrative and regulatory compliance costs and burdens on us with no benefit, residents have voiced their opposition to the Council Amendments. Many in the community have actively sought to stop proposed planning Amendments C81 and C101, influence Nillumbik Council, and begin significant revision of the Nillumbik Green Wedge Management Plan. Our goal is to have our lives and livelihoods prioritised over short-term ill-considered bio-diversity conservation or visual landscape priorities. In the last 3 months we have:

1. Started Nillumbik Pro Active Landowners (PALS) – currently about 2,000 rural members
2. Conducted a media and public relations campaign that received significant television and radio coverage on all major networks
3. Assisted residents and landowners in writing letters of objection to Nillumbik Council on proposed planning Amendment C101
4. Presented verbally to council objecting to and opposing proposed planning Amendment C101
5. Prepared a Social, Economic and Environmental Impact Assessment detailing the likely impacts and consequences of proposed planning Amendments C81 and C101 including the likely increase in the frequency and severity of bush fire events and the significant increase in the risk to rural residents (council failed to fulfil this planning requirement) (Attachment 1)
6. Written to the Minister for Planning requesting he abandon proposed planning Amendments C81 and C101, and provided a comprehensive briefing in support of this case (Attachment 2)
7. Requested a meeting with the Minister for Planning – three times, and we are hopeful of achieving a meeting with the Minister soon
8. Held two town hall meetings locally where more than 500 farmers, residents and landowners have received information that we have prepared about the proposed planning amendments (which despite council’s communications campaign seems to have failed to reach 70% of rural Nillumbik residents and landowners)

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<sup>10</sup> Lodge (2009) “The public management of risk: the case for deliberating among worldviews.”  
*Review of Policy Research* 26

<sup>11</sup> Council of Australian Governments (COAG) 2005 *report of the National Inquiry on Bushfire Mitigation and Management*, Kelly (2010) “PIA Policy response to the Victorian Bushfires of February 2009” *Australian Planner* 47,



9. Raised funds to support legal fees and expert witnesses to promote the abandonment of proposed planning Amendments C81 and C101 – to date we have raised more than 30 thousand dollars
10. Commissioned protest signs to attach to fences across rural Nillumbik – more than 500 farming and hobby farming properties are currently publicly opposing amendments with these signs
11. Lodged a case against the process used by council for proposed planning Amendment C101 with VCAT. The hearing is scheduled for October 17<sup>th</sup>.
12. Written to the Minister for Local Government requesting she appoint a commissioner to investigate Nillumbik Council process and procedure. We have also requested a meeting with the Minister, which she is now considering.
13. Prepared a submission to the Local Government Act Reform program outlining the electoral and process issues in Nillumbik and how reform of the Act needs to consider the needs and experiences in rural Nillumbik communities
14. Requested meetings with all local Members of Parliament at State and Federal level. We are particularly grateful to the Honourable Cindy McLeish MP (Member for Eildon) and the Honourable Ryan Smith MP (Member for Warrandyte), both of whom have provided assistance and support to us, our situation and our cause
15. We are in the process of identifying candidates to put themselves forward to be supported by Nillumbik PALS in the upcoming council elections, including the Nillumbik PALS founder, Karen Egan, some members of the PALS working group and others in the community
16. We have made a submission to the Victorian Parliament Fire Season Preparedness Inquiry a copy of which is appended, including links to other addenda.
17. We are making this submission to the Productivity Commission inquiry into the regulation of Australian Agriculture

At this time our actions have not had the effect of influencing Nillumbik Council to prioritise our extensive agricultural history, farming livelihoods and human life over the environmental amenity and abandon proposed planning Amendments C81 and C101. We do not believe that the choice must be made between conserving bio-diversity and providing a liveable environment for Nillumbik rural citizens, but rather consider these to be parallel long-term goals that need a more adaptive policy approach than the Council's regulation heavy Amendments.

Our collective resolve and commitment remains strong, having mind to the needs of farmers, landowners and families including our values, priorities, and properties appropriately acknowledged by Nillumbik Council.

## **Actions Requested from the Productivity Commission Inquiry**

We ask that the Regulation of Australian Agriculture Productivity Commission Inquiry give consideration to the following actions:

**PROVIDE** greater clarity to areas of environmental protection covered by local government and in particular require local government to undertake comprehensive social, economic and environmental impact assessments of any and all proposals so that their complete impact on private landowners including farmers is clearly understood.

**ENSURE** the cumulative effects of altered regulations are costed (at all levels of government including local government) so that the impact of additional regulations is clear within the context of

the burden and benefit upon private rural landholdings including farmers. Case studies should be included in regard to what circumstances different conditions will apply,

**MANDATE** that regulatory activity proposed by local government specifically outline all compliance administrative activities and estimated costs, as well as including how these activities duplicate or enhance other regulation at Commonwealth or state level.

**REQUIRE** that local government land tenure and use regulation are consistent with federal and state government regulation so as to avoid complexity or contradiction. A case study of inconsistency is shown in the application of Nillumbik Council's proposed waterway environmental significance overlays as described above.

**REVIEW** the management of water resources such that significant overlap between the Commonwealth, the state through the Department of Transport Planning and Local Infrastructure, Department of Environment Land Water Planning, Melbourne Water and local government is clarified and where possible simplified. Reduce duplicative and unnecessary information gathering regarding water management.

**IMPROVE** consultation and engagement practices to better support landholders to understand environmental regulations and recommend the introduction at a State level for some degree of legislated recourse for citizens against Councils who fail in their community engagement obligations.

**ACKNOWLEDGE** that bio-diversity conservation and fire management are linked objectives in the rural area, and that those best positioned to determine and implement policies and management in relation hereto are the day-to-day custodians of the land.

**DIRECT** that land use regulation includes consideration of local bush fire risk and how this risk may best be managed, possibly including exemptions from regulatory permitting processes.

**RECOMMEND** that the Regional Fire and Emergency Management Committee (regional area committees under Victorian Emergency Services governance) become a mandatory endorsement body for any and all local government planning provisions in areas covered by a Bushfire Management Overlay so as to enhance the long-term local fire safety of rural areas.

**INSTIGATE** possible policy and planning options available to areas with a high likelihood of having a landscape shaped by non-linear events such as fire.

**REQUIRE** local regulation to be consistent and sympathetic towards recovery of local landowners and farmers from catastrophic and unforeseen natural events (including flood, fire and storm).

**OBLIGE** that all regulations and accompanying plans, policies, strategies and planning proposals and provisions include the prioritisation and protection of human life as the overriding priority and objective of council (as per the Black Saturday Royal Commission Recommendations), and that this is able to be demonstrated.

*This is in particular reference to Nillumbik Council.*

**INSTRUCT** the Nillumbik Council to abandon proposed planning Amendments C81 and C101 and complete a revision of the Nillumbik Green Wedge Management Plan that includes a plan that more appropriately and accurately reflects the needs, preferences, priorities and

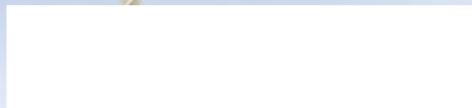
values of farmers and other residents and landowners in the Nillumbik Green Wedge.  
*This is in particular reference to Nillumbik Council.*

We commend this submission to the Inquiry for its consideration with the optimism that Nillumbik's and surrounding districts' level of local government regulation will be carefully considered and moderated and substantially enhanced as a result.  
We thank the inquiry for the opportunity to present our submission.

**Damian Crock**  
**Chair**  
**Working Group**  
**Nillumbik PALs**  
**Thursday 18 August 2016**

***Addendum: Nillumbik PALS submission to the Victorian Fire Season Preparedness Inquiry  
dated 29 July 2016***

# Nillumbik PALs - Pro Active Landowners



Victorian Inquiry Into Fire Season Preparedness  
Chair: The Honourable David Davis, MLC  
Southern Metropolitan Region,  
Shadow Minister for Planning & Local Government.  
Due Date 29 July 2016  
Submission from: Nillumbik Pro Active Landowners  
("PALs")

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## About Us

Nillumbik Pro Active Landowners ("PALs") is a group of 2,000 residents and landowners in rural Nillumbik. PALs represents about 2,500 adult voters and approximately 30 per cent of all rural properties in rural Nillumbik.

The rural Nillumbik Green Wedge is one of the highest bush fire danger areas in Australia. It is located 30km north east of the Melbourne Central Business District outside the Urban Growth Boundary. The area is adjacent to the North East Growth Corridor to the north west, and Warrandyte to the south east. Our area is home to approximately 6000 properties and families.

For the most part rural Nillumbik families, residents and landowners are fully aware of our local bush fire risk and our need to prepare and maintain our rural landholdings in anticipation of the annual fire season. The season starts in about November each year and runs through to April (six months each year).

## CFA Partnership and Collaboration

For the most part we are active partners with our local Country Fire Authority stations in our annual fire season preparations. Our local Country Fire Authority stations are predominantly staffed by volunteers, most of whom are local community residents and landowners. Our role in this partnership is to responsibly prepare and maintain our properties to be bush fire ready, attend local Country Fire Authority briefings and information sessions, listen to our Country Fire Authority station messages, and make plans and decisions for high fire danger days, where we need to leave early or have our properties appropriately prepared to stay and defend. Our Country Fire Authority role in this partnership is to make all efforts to protect our lives and properties, and they are best able to do this effectively if our properties are responsibly managed and maintained with bush fire risk in mind.

We recognise that this is most important in our local area, certainly more than in many areas, because of the large public landholdings of bushland locally that surround us. These include the Kinglake National Park, Warrandyte State Park and Sugarloaf Dam. There are also large areas of bushland reserves across the area. Typically these areas are heavily wooded, have significant ground cover and are not as prepared and maintained or as easily defendable as most private landholdings locally. It is also important because in our area, unlike many other suburban areas within the urban growth boundary and other areas in Yarra Ranges, we do not have the benefit of town water supplies in many suburbs, and so fire preparedness includes consideration of the availability of appropriate water supplies in the event they are needed.

Our bush fire preparation for this season, and future seasons, has been thrown into chaos by Nillumbik Shire Council ("NSC") and their insistence of promoting the protection of the environment as their overwhelming priority over and above the lives, properties and livelihoods of rural Nillumbik residents and landowners.

## **Nillumbik Shire Council (“NSC”) Stated Objectives and Proposed *Planning Scheme Amendments C81 and C101***

NSC’s stated objectives include (from the ***Nillumbik Green Wedge Management Plan Part 2***):

- The rectification of the negative effects of cumulative and negative effects of Clause 52.43 interim measures for bushfire protection.
- The restriction and discouragement of development in the Green Wedge and encouraging land consolidation (81% of all landholdings in the Green Wedge are smaller than their zoning which states landholdings for development should be sized between 8 hectares and 40 hectares depending on their location).
- Conserving biodiversity and natural values is the priority for the Nillumbik Green Wedge Management Plan.
- Discouragement of Hobby Farms (and smaller acreage lots covered in native vegetation) which makes up 47% of all of the Nillumbik Green Wedge because it threatens the environment and the landscape.
- Exploring the expansion of environmental living zones.
- Planning to remove local private water sources including dams over time.

In every particular NSC prioritises the environment over the lives, homes and livelihoods of local residents and landowners. These objectives have significant implications for fire season preparedness. Their priorities fly in the face of the recommendations made by the ***2009 Victorian Bushfires Royal Commission***, recommendations described by its chairperson ***The Hon. Bernard Teague AO*** in offering them ***“to the Governor of Victoria and to the people of Victoria “ as “giv(ing) priority to protecting human life, and they are designed to reflect the shared responsibility that governments, fire agencies, communities and individuals have for minimising the prospect of a tragedy of this scale ever happening again.***

Most recently NSC has proceeded with the implementation of actions that will achieve NSC’s objectives through the development of planning scheme amendment proposals, specifically proposed Planning Scheme Amendments C81 and C101.

Proposed ***Planning Scheme Amendment C81*** seeks to place highly restrictive ***Significant Landscape Overlays*** over **all 6000 properties in rural Nillumbik**. The overlays seek to protect the views and vistas for people passing through rural Nillumbik. The overlays have significant negative consequences and implications for people and properties in rural Nillumbik, and our ability to prepare for the annual fire season.

Proposed ***Planning Scheme Amendment C101*** seeks to place equally draconian environmental significance protection overlays over approximately 65% of Nillumbik properties including:

- ESO1 Core Habitat
- ESO2 Buffer Habitat
- ESO3 Overlay for residential and township zones and
- ESO4 Waterways

These overlays also have significant negative consequences and implications for people and properties in rural Nillumbik, and our ability to prepare for the annual fire season.

## **What is wrong with NSC Objectives and Proposed Planning Scheme Amendments C81 and C101**

NSC objectives and proposed Planning Scheme Amendments C81 and C101 negatively impact on rural landholding fire preparedness in a number of ways. Some of these include:

- They significantly increase the number of property management and maintenance activities, including bush fire preparation activities, that will be subject to the **requirement to obtain a Planning Permit**
- They place **prohibitive Planning Permit requirements and costs** on the permit application process for most property management and maintenance activities, **including bush fire preparation activities**
- They create significant delays in property management and maintenance scheduling **including bush fire season preparation** whilst awaiting the preparation of **Planning Permit** application requirements and forms (which require an onerous and exhaustive raft of professional reports from surveyors, planners, ecologists, arborists, flora and fauna survey report writers and others) and once submitted, then in awaiting the outcome of council planning officer considerations
- They create more significant delays in property management and maintenance scheduling where permit applications are refused and appeals are lodged and followed through with VCAT
- They re-introduce the requirement to obtain a **permit to remove Burgan (petrol bush)**, a highly invasive and flammable plant that needs to be aggressively managed and maintained
- They provide **no acknowledgement of the bush fire risk that exists in the rural Nillumbik area, or provide any consideration of the need for fire preparation of private landholdings in rural Nillumbik** to exceed the minimum standards outlined in the 10-30 provisions.
- They require water ways on rural properties to be fenced off over time so they are not easily accessible, and **requiring fenced areas to be returned to virgin bushland, which will inevitably increase ground fuel and bush fire risk on rural Nillumbik private landholdings and this risk will continue to escalate over time.**
- They aim to eventually remove static water sources on private landholdings altogether, and so **people without town water will be limited to tank water supplies to respond to fire threats.**
- They imply that there may be restrictions on granting of future permits to re-build properties in the event that they are lost to bush fire. This **increases the likelihood of death, as residents are placed in an impossible situation of having to choose between losing their homes and experiencing severe financial and economic hardship if they are not able to re-build, or staying and defending their homes to protect their financial security at enormous personal risk to their safety.**

Residents and landowners in rural Nillumbik have not been sufficiently consulted or engaged in the development of council objectives to date. NSC priorities and objectives have significant negative impacts on rural resident and landowners and importantly **negatively impact on our ability to fulfil our responsibilities to maintain and prepare our properties so that they are able to be defended in the event of bush fire.**



It was encouraging, when on 13 April 2016, NSC's 7 Councillors appeared to have recognised the significant problems and hazards of proposed **Planning Scheme Amendment C101** and **voted 5-2 to abandon C101 in its entirety and for the NSC CEO to notify the Victorian Minister for Planning of its abandonment.**

However, in a highly disturbing and contentious move, which has angered and galvanised the rural landowners of Nillumbik in an unprecedented way, the carried motion was not implemented, instead the NSC CEO sought legal advice which led to the 5-2 vote requiring ratification at the next Ordinary Council meeting, when the same 7 Councillors voted 4-3 to send C101 to Planning Panels Victoria for further consideration. Rather than moving to act in a fashion which would not have further potential for bushfire risk exacerbation, C101 continues today through the planning process.

This is to the horror and anxiety of local landowners, who are concerned for not only Nillumbik residents, but also residents of surrounding districts and shires, all of whom will be at greater risk of bushfire if C81 and C101 are finally implemented. How is it possible that most NSC councillors have forgotten that **the only buffer zone between a raging bush fire and the townships of Diamond Creek, Eltham, Warrandyte and the urban suburbs of north east metropolitan Melbourne are the well maintained bush fire ready properties of rural Nillumbik?**

### What PALs have done about it so far

Since becoming aware that NSC objectives and proposals would have the effect of placing the lives and livelihoods of rural Nillumbik and other communities at risk, and negatively impacting on our ongoing bush fire preparedness, many in the community have activated to seek to stop proposed Planning Scheme Amendments C81 and C101, and to influence NSC to consider the significant revision of the Nillumbik Green Wedge Management Plan. Our goal is to have our lives and livelihoods prioritised over the environment. In the last 3 months we have:

1. Started Nillumbik Pro Active Landowners (PALS) – currently about 2,000 members
2. Conducted a media and public relations campaign that has received and continues to receive significant television, radio and print media coverage via all major networks and publishers
3. Assisted residents and landowners in writing letters of objection to NSC on proposed Planning Scheme Amendment C101
4. Assisted residents and landowners in writing letters of objection to the Minister for Planning on Proposed Planning Scheme Amendments C81 and C101
5. Presented verbally to NSC objecting to and opposing proposed Planning Scheme Amendment C101
6. Prepared a Social, Economic and Environmental Impact Assessment detailing the likely impacts and consequences of proposed Planning Scheme Amendments C81 and C101 including the likely increase in the frequency and severity of bush fire events and the significant increase in the risk to rural residents  
(NSC failed to fulfil this planning requirement) (included in addendum 1)
7. Written to the Minister for Planning requesting that he abandon proposed Planning Scheme Amendments C81 and C101 and providing a comprehensive briefing in support of this case (addendum 1)
8. Requested a meeting with the Minister for Planning – we are optimistic of meeting with him to discuss these critical issues and to encourage him to abandon C81



9. Held two town hall meetings locally where approximately 600 residents and landowners have received information that PALs have prepared about the proposed Planning Scheme Amendments (which despite NSC's communications campaign, seems to have failed to reach over 70% of rural Nillumbik residents and landowners). When polled recently, less than 10% of those present at the public meetings confirmed that they had even heard of C81 more than 12 months ago (much less appreciated its potential dire consequences in terms of bushfire risk), a percentage so low as to bring into serious question the efficacy of the NSC communications campaign
10. Raised funds to support legal fees and expert witnesses to see to the abandonment of proposed Planning Scheme Amendments C81 and C101 – to date we have raised more than 30 thousand dollars
11. Commissioned protest signs to attach to fences across rural Nillumbik – more than 500 properties are currently publicly opposing amendments with these signs
12. Lodged with VCAT a case against the voting process of NSC for proposed Planning Scheme Amendment C101. The hearing is scheduled for October 17<sup>th</sup> 2016.
13. Written to the Minister for Local Government requesting she appoint a Commissioner to investigate NSC process, procedure and probity.  
We have also requested a meeting with the Minister, a date for which is yet to be confirmed.
14. Prepared a submission to the Local Government Act Reform review program outlining the electoral and process issues in Nillumbik and how reform of the Act needs to consider the needs and experiences of residents and landowners in rural Nillumbik
15. Requested meetings with all local Members of Parliament at State and Federal level.  
We are particularly grateful to the Honourable Cindy McLeish MP (Member for Eildon) and the Honourable Ryan Smith MP (Member for Warrandyte), both of whom have provided us with assistance and support for our situation and our cause.
16. We are in the process of identifying candidates to put themselves forward for Council in the upcoming council elections, including the PALs founder, Karen Egan, some members of the PALs Working Group and others in the community
17. We are preparing a submission to the **Productivity Commission's** 9-month public inquiry into the regulatory burden on Australian farm businesses commissioned by the Federal Treasurer, Scott Morrison which is due to report by late 2016.  
It is noted by PALs that amongst key points in the Draft Report on the Regulation of Australian Agriculture released 21 July 2016  
***"Native vegetation and biodiversity conservation regulations need fundamental change so that risks and impacts are considered at a relevant landscape-wide scale. Environmental regulatory decisions also need to take into account economic and social factors."*** We are confident that the primacy of bushfire risk should drive such change.
18. We are making this submission to the Fire Season Preparedness Inquiry

At this time our actions have not had the effect of influencing NSC to prioritise human life over the environment and abandon proposed Planning Scheme Amendments C81, C101 or their environmental activism objectives. This means that at this time our current and future fire preparedness is at high risk and the likelihood of rural Nillumbik experiencing a catastrophic bush fire event that includes the significant loss of life and property can be expected to be high. This has strengthened our collective resolve and commitment to achieving the abandonment of the amendments, and of having our values, priorities, needs, families and properties, and the high bush fire danger and risk locally appropriately acknowledged by NSC and included in all of planning.

## How might the Inquiry Into Fire Season Preparedness assist us?

It would be of enormous assistance to us if the Fire Season Preparedness Inquiry was able to assist us to improve our annual fire season preparedness. We believe that this may be able to occur if the inquiry could give consideration to the following actions that we believe may improve our ability to manage, maintain and prepare our properties appropriately for the annual bush fire season.

1. Is it within the scope of the inquiry to recommend that local fire safety would be enhanced if the Regional Fire and Emergency Management Committee role changes to become a mandatory endorsement body for any and all local government planning provisions in areas covered by Bushfire Management Overlay?
2. Recommend that all S173 (environmental lock up agreement) land is required to be actively maintained and managed by landowners and/or Council for fire preparedness, along with all Council bush land in areas covered by Bushfire Management Overlay.
3. Recommend a review of local land zoning in rural Nillumbik with the view to ensuring land zoning is more reflective of actual rural Nillumbik communities and landholdings (where currently 81% of properties are smaller than those in current zones, which in Council's view means there is more vegetation cleared through existing minimum bush fire provisions than would be the case if lot sizes were larger)
4. Recommend continuing increases in planned burns on public land  
**(2009 Victorian Bushfires Royal Commission - Recommendation 56d and Progress Report Victorian Bushfires Royal Commission Implementation of Recommended Actions August 2015 Inspector General of Emergency Management)**
5. Recommend that in considering all landscape and environmental significance overlays under the Victorian Planning Provisions, **local and state government agencies are required to consider the social, economic, environmental and safety consequences of implementing proposed overlays.** Our experience is local and state governments currently have no obligation to take into account the social, economic, environmental and safety consequences of proposed planning amendments on communities who will be impacted upon by them.
6. Recommend proactive reporting by local government planning departments in all areas covered by Bushfire Management Overlay areas to validate how and where local government accommodates local bush fire risk factors in local planning provisions (beyond the minimum requirements)
7. Recommend proactive reporting by local government in all areas covered by Bushfire Management Overlay to ensure residents are able to follow high fire danger guidelines and leave early, safe in the knowledge that if their homes are destroyed, Council will favourably consider permit applications to rebuild providing Bushfire Assessment Rating Australian Building Code guidelines are satisfied
8. For NSC, recommend council implements Recommendation 3 of the **2009 Victorian Bushfires Royal Commission** in all Council rural plans, strategies and considerations, including the Nillumbik Green Wedge Management Plan. Recommendation 3 includes evacuation and shelter options and particular plans for vulnerable people to evacuate safely
9. For NSC, recommend all plans, policies, strategies and planning proposals and provisions **include the prioritisation and protection of human life as the overriding priority and objective of Council**, and that this is able to be demonstrated.

10. For NSC, **recommend the abandonment of proposed Planning Scheme Amendments C81 and C101** and a complete revision of the Nillumbik Green Wedge Management Plan that results in a plan that more appropriately and accurately reflect the needs, preferences, priorities and values of residents and landowners in the Nillumbik Green Wedge including the need to prioritise fire season preparedness in local conditions. Insist that NSC re-engage with its rural constituency to develop appropriate bushfire prevention and protection policies in the development of any and all future proposed Planning Scheme Amendments.
11. Recommend NSC considers the **development of a collaborative scheme of individual landowner management agreements to remove proposed onerous and restrictive planning controls for most private land use and land management activities** (which we believe will exacerbate bushfire risk due to non-compliance driven by cost, complexity and undue imposition of controls). These would be entirely novel and independent of any other existing arrangements with NSC, negotiated in good faith between landowners and NSC. We are of the view that appropriate environmental objectives are more readily achievable through individual landowner/Council land management partnerships which have bushfire mitigation at their core, the primacy of the importance of human life as their abiding principle with resultant landowner community engagement and harmony as amongst their essential properties.

We commend this submission to the Inquiry for its consideration with the optimism that Nillumbik's and surrounding districts' bushfire preparedness will be substantially enhanced as a result. We thank the inquiry for the opportunity to present our submission.

**Damian Crock  
Chair  
Working Group  
Nillumbik PALs  
Friday 29 July 2016**

***Addendum: Letter and Ministerial Briefing from PALs to The Hon. Richard Wynne MP  
dated 8 June 2016***

***Please ensure that the Inquiry Into Fire Season Preparedness is directed to all supporting materials  
which can be downloaded at the following link:  
<https://app.box.com/s/b8562ksyxj363qpluvwo32dotd828dzy>***

# ADDENDUM 1

## Nillumbik PALs - Pro Active Landowners

The Hon Richard Wynne  
Minister for Planning  
Level 20, 1 Spring Street  
Melbourne, VIC 3000

8 June 2016

Dear Minister Wynne

### Nillumbik Shire Council – Proposed Planning Amendments C81 and C101

I chair a totally apolitical voluntary working group called Nillumbik PALs (Pro Active Landowners). I live at 10 Menzies Road, Kangaroo Ground and we have a health and fitness business in Eltham. We have been in Nillumbik for over 6 years.

Formed only 8 weeks ago, as a single purpose group, in response to proposed planning amendments C81 and C101, Nillumbik PALs already have approximately 1550 landowners as members. They are to a person deeply concerned, angry, confused and determined.

We know and understand that Nillumbik Shire Proposed Planning Amendment C81 has been voted to go through to you as Planning Minister for approval and implementation.

**We are formally requesting a personal meeting with you to urge you not to accept Council's recommendation for implementation of C81.**

C101 has been voted to go a Planning Panels Victoria panel in the coming months. We are urging that both C81 and C101 are abandoned.

C101 was voted by Council 5-2 on 13 April 2016 to be abandoned in its entirety. The vote also called for CEO Stuart Burdack to notify you as Minister of the abandonment. That did not happen. The Council sought and obtained legal advice that the abandonment vote required ratification at the next OCM on 26 April 2016 – when it was not ratified but defeated 3 to 4. That process is now the subject of VCAT proceedings brought by one of our members, Max Parsons.

A 15 July 2016 Directions Hearing is scheduled but no formal hearing date as yet has been set for that matter.

Please see following this letter our Ministerial Briefing for your information which provides you with grounds and our strong recommendation for you to reject both C81 and C101.

The 7 attachments referred to can all be downloaded from the link here:

<https://app.box.com/s/b8562ksyxj363qpluvwo32dotd828dzy>

Our delegation would include 4 members:

Damian Crock	Chair of Working Group)
Karen Egan	Founder of Nillumbik PALs
Max Parsons	Nillumbik PAL
Anthony Mendola	Nillumbik PAL

We look forward to hearing back from you shortly regarding a meeting time and place.

We are optimistic that you will appreciate the genuine and wideranging concerns of our group which comprises owners of most of the landmass of the Shire of Nillumbik.

Yours faithfully

Damian Crock - **Chair – Nillumbik PALs Working Group**

223 Grange Road, Fairfield 3078

Tel: 9499 9585

Email: [nillumbikpals16@gmail.com](mailto:nillumbikpals16@gmail.com)

**Ministerial Briefing on Nillumbik Shire Council  
Proposed Planning Amendments C81 and C101**

**Briefing prepared for the Honourable Richard Wynne MP,  
Victorian Minister for Planning**

**Briefing prepared by Nillumbik Pro Active Landowners  
(Residents of rural Nillumbik)**

**Briefing date, 8 June 2016**

1. You will be meeting with landowners and residents of the rural area of Nillumbik who will present their case to reject Nillumbik Council's recommendation to adopt proposed planning amendment C81 and to ultimately reject C101, the process for which is ongoing. The time, date and location of this meeting are yet to be confirmed.
2. The delegation represents a group of approximately 1,550 residents and land owners who will be impacted upon should proposed planning amendments C81 and C101 be adopted. The group numbers in excess of 1,500 voters and is named Nillumbik Pro Active Landowners (PALs). It was formed in late April 2016 as concerned landowners became aware of C81 and C101. It has a single purpose which is the abandonment of C81 and C101.
3. The purpose of this briefing is to provide you with information supporting the case to reject proposed planning amendments C81 and C101. Further information is provided in **Attachments**. (link to attachments for 45MB download: <https://app.box.com/s/b8562ksyxj363qpluvwo32dotd828dzy> )

**Background**

The rural area of Nillumbik is designated in *Melbourne 2030* (**Attachment 1**) as one of Melbourne's twelve Green Wedge areas. As you know, green wedge areas contain state-wide infrastructure (in the case of Nillumbik it is Sugarloaf Dam) that needs to remain separate from higher density urban population to minimise the risk of contamination. This has been reinforced in *Melbourne@ 5 million*, and in *Melbourne 2050*.

4. Under *Melbourne 2030*, the State prioritised legislating to protect Melbourne's twelve green wedge areas and provides guidance to local government regarding planning for these areas in *Planning Practice Note 31* (**Attachment 2**).
5. Under planning guidelines provided by the State, local government is required to work with local residents and land owners in each green wedge area, and the broader community, to prepare a Green Wedge Management Plan to articulate the shared value of each area, its resources, preferred future land use and to meet local community needs.
6. Nillumbik Council progressed this planning in 2008, and published the *Nillumbik Green Wedge Management Plan 2010-2025 Part 1* in 2010 (**Attachment 3**). In 2011 Nillumbik Council published *Part 2* of the plan (**Attachment 4**).
7. Community engagement with and input to the *Nillumbik Green Wedge Management Plan* was limited to council employees, local environmental lobby groups, local environmental activist community members, a representative of the arts committee and a representative of the horse riding trails committee (**Attachment 3** page 47). Most engagement was with residents of urban areas of Nillumbik. Local residents and land owners of rural Nillumbik areas were not actively involved or consulted with in developing the plan that aimed to direct the future use of their land. Local rural Nillumbik resident and land owner expertise was not used in the development of the plan that aimed to direct the future use of their land in accordance with *Planning Practice Note 31* (**Attachment 2**).

8. As can be expected in a plan that has been developed with and informed by a limited and predominantly urban environmental lobbying interest, the *Nillumbik Green Wedge Management Plan Parts 1 and 2* denies any consideration of rights associated with ownership of land or obligations of council to prioritise the needs of residents and land owners. This is problematic because 85% of the land mass in rural Nillumbik is owned privately, and it is reasonable for residents and owners of private land to expect to be the primary and prioritised decision making partner in any discussion impacting upon changes in land management, maintenance and use of land that they own.
9. Despite the failures in process, engagement and governance inherent in the development of the *Nillumbik Green Wedge Management Plan*, the plan does have some merit. Guiding Principles are identified to guide all future decision making and these focus on partnering to achieve sustainable outcomes, providing for social, environmental and economic benefits, embracing change, actively managing land and using the precautionary principle so as to avoid serious or irreversible harm (Attachment 4 page 15-17).
10. If these guiding principles are used, residents and land owners in rural Nillumbik could have a reasonable expectation that the economic, social and environmental circumstances relating to their families, homes and land holdings are included in all council strategy, assessment, and planning control development and in planning control revision programming.
11. The *Nillumbik Green Wedge Management Plan* high and medium priority environmental implementation actions include the development of new planning controls for rural Nillumbik areas, and a review of existing environmental significance overlays also impacting on rural Nillumbik areas. It is these priority actions that have resulted in the development of proposed planning amendments C81 and C101. C81 imposes an idealised neighbourhood character that all existing properties should strive to achieve and that all future permitting and planning decisions will be based on. C101 reviews the existing environmental significance overlay and replaces one overlay with up to four, increases the number of private properties with overlays to about 6,500, and significantly increases restrictions, permitting requirements, land owner access, amenity and use of private land holdings.
12. Proposed planning amendments C81 and C101 provide a useful case to show rural Nillumbik residents and land owners, and council, how council aims to use guiding principles articulated in the *Nillumbik Green Wedge Management Plan* to develop and implement change in the rural area of Nillumbik.
13. In February 2009 bushfires caused the death of 173 Victorians including residents and many landowners in Nillumbik. A Royal Commission was appointed to investigate and report on the fires and this commission published their report findings and recommendations in July 2010 (**Summary Report Attachment 5**). Recommendations included planning and building controls and a commitment that the protection of human life should always be the overriding objective. All recommendations were accepted and committed to by all levels of government in Victoria including local government and Nillumbik Council.

## Issues

14. The Royal Commission recommendations are not embedded in the *Nillumbik Green Wedge Management Plan Part 1*, published in 2010, nor are they embedded or considered in *Part 2*, published in 2011, and the council plan only considers environmental protection when planning for and prioritising decisions. This is a critical flaw in the plan, and the way Nillumbik Council develop and deliver policies, planning amendments and overlays on rural Nillumbik areas.

15. The Planning Panel convened to assess amendment C81 made a clear and unambiguous recommendation of the need to insert a direct reference to the risk of bushfire into each of the 7 schedules that inform the Significant Landscape Overlays.

15.1 The Panel proposed the following wording: ***'The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defensible space and appropriate landscaping and vegetation management.'***

As concerned landowners, we were horrified to read that at the full council meeting of May 24, 2016 council planners proposed to reword this very important statement to remove all reference to the risk of bushfire and replace it with an innocuous statement about vegetation.

15.2 The rewording was as follows: ***'Landscaping and vegetation will be managed to minimise the visual impact on the identified elements of the landscape, while providing defensible space to minimise the risk to life and property.'***

The rewording was adopted almost by default when the council voted narrowly (4:3) to send the amended C81 amendment to you for approval. The above demonstrates the council's further refusal to place priority on the risks of bushfire and to overtly dismiss a clear preference of the Panel to make an unequivocal statement to ensure that bushfire risk was a predominant consideration.

16. Council made no attempt to partner with or obtain input to the development of proposed planning amendments C81 and C101 from residents and landowners in rural Nillumbik areas who would be the most affected by them. This is a failure of Principle 1 of the *Nillumbik Green Wedge Management Plan* which says council will collaborate as a partner.
17. Council attempts to ensure rural Nillumbik residents and land owners were aware and encouraged to either object or support amendments C81 and C101 have clearly failed to reach a majority of residents and landowners. Notifications were either not received at all or people were not given sufficient time for their view to be submitted to inform council of their position. Council decisions have not been informed by rural Nillumbik resident and land owners. This includes a failure in the council feedback portal in November 2015 which lost an unknown number of objections. This represents a failure of Principles 3 and 7 of the *Nillumbik Green Wedge Management Plan* pertaining to advocacy, transparency and social equity.
18. Where council did receive objections from residents and land owners in rural Nillumbik areas within the time frame provided, council has often misrepresented the content provided to them, and rejected the specialist evidence provided by residents and land owners in rural Nillumbik areas. This represents a failure of Principle 5 and 10 of the *Nillumbik Green Wedge Management Plan* relating to preserving and enhancing heritage and promoting an understanding of the green wedge and sharing its values. Complaints and objections to C81 and C101 from rural Nillumbik residents and land owners are continuing to be received by council – almost daily.
19. Council has prioritised and supported input from environmental lobbying interests who for the most part do not live in rural Nillumbik areas, over and above the input from residents and land owners living in rural Nillumbik who will be impacted upon by C81 and C101. This is a failure of Principles 4 and 8 of the *Nillumbik Green Wedge Management Plan* relating to the interdependence of the green wedge in being part of a network and the need to recognise local identity and support cohesion across communities.

20. Council has made poor efforts to listen to residents and land owners in rural Nillumbik, and is providing information that is misleading, untrue or unclear regarding the impacts of C81 and C101. This has created an environment where there is no trust in councillors or council staff as well as open contempt for the process of development and implementation of the *Green Wedge Management Plan*. This is a failure of Principle 6 of the *Nillumbik Green Wedge Management Plan*, implementing change in a sustainable way.
21. Council has failed to undertake a comprehensive social, economic and environmental assessment on the impacts of C81 and C101. As this is a requirement of Planning Practice note 46 (**Attachment 6**) a rural Nillumbik resident and land owner has prepared a peer reviewed assessment (**Attachment 7**).

The assessment shows amendments can be expected to:

- a. present a risk to lives and livelihoods,
- b. increase the frequency and severity of fire events,
- c. increase the cost of living locally,
- d. reduce the value of land and properties,
- e. negatively impact upon local business owners and operators,
- f. negatively impact on the environment,
- g. negatively impact on the local tourist industry

This is a failure of Principle 2 and 9 of the Nillumbik Green Wedge Management Plan to complete a social, economic and environmental assessment and exercise the precautionary principle to avoid placing people, property and the economy at risk of harm.

22. Nillumbik Council Chief Executive Officer (Stuart Burdack) has acknowledged that, in future, council is likely to use a contemporary consumer partnering process to progress, prioritise, develop and implement change including planning amendments. It is acknowledged the C81 and C101 engagement process is not providing an optimum outcome for council or for the community it serves.
23. With respect to C101 an application has been lodged with VCAT which challenges the legality of the council decision to refer a lawful decision of the properly authorised Policy and Services Committee to a full Ordinary Council Meeting for ratification. Legal advice is that this appeal has a strong likelihood of success. C81 has progressed too far into the planning process to be included in the VCAT matter and Supreme Court action is out of the financial reach of rural Nillumbik residents and land owners at this time.
24. In progressing proposed planning amendments C81 and C101 Nillumbik Council has failed to apply its own assessment and evaluation program. Council has also failed to meet Victorian Planning Guidelines, is now the subject of legal action and has received significant media coverage in print, radio, television and on social media. Your office is receiving objections and complaints directly, as is the Minister for Local Government, the Ombudsman and the Independent Broad-based Anti-corruption Commission (IBAC). All of this would not have occurred had Nillumbik Council collaborated and partnered appropriately with rural residents and land owners in the first instance.



25. Rural Nillumbik residents and land owners consider that we manage and maintain our land holdings in a responsible manner. We are environmentally aware and apply sound, evidenced based principles with regard to fire safety, appropriate maintenance and the enhancement of the landscape all to support the long term survival of local fauna and flora. We understand a balance between utility, safety and environmental sustainability is achievable, and most of us practice this. We also understand that protecting the green wedge from excess development is important for the whole community. Our view is that it is possible for planning controls to enhance our ability to manage and maintain our land holdings appropriately, provide a framework to encourage others to do the same **and** protect the Nillumbik Green Wedge without placing our lives, families, livelihoods and current and future financial security at risk.
26. We would welcome the opportunity to work with council productively and constructively to achieve this fine balance in developing and implementing a local planning and control framework for land holdings.

## Options

You can assist us to create and pursue this opportunity as we understand that your options to deal with proposed planning amendments C81 and C101 are:

- **Reject C81 and C101** proposed planning amendments in totality – our view is that this is the only appropriate outcome given the high level of rural Nillumbik resident and land owner risk and Nillumbik Councils mismanagement of this program. **This is our recommended option.**
- Send C81 and C101 back to Nillumbik Council and direct them to make no decision until the outcome of the VCAT hearing is known and the council election in October 2016 has occurred. This option provides the opportunity for an incoming council to support sustainable appropriate management of the privately owned properties in the green wedge with local rural Nillumbik residents and land owners and the whole community. This is not our preferred option.
- Endorse C81 and support C101 to progress to a Planning Panel. This option places lives, families business, livestock and the Nillumbik green wedge environment at extreme risk and will mean our efforts to advocate and promote responsible planning controls will need to continue. We do not support this option.

## Action

We ask you to support rural Nillumbik residents and land owners and support responsible management of the Nillumbik green wedge by rejecting Nillumbik Council recommendations pertaining to C81 and (at some later time) to C101.

## Attachments

**Attachment 1 – Melbourne 2030 Section 2 Better Management of metropolitan growth October 2002**

**Attachment 2 - Planning Practice Note 31: Preparing a Green Wedge Management Plan June 2015**  
[www.delwp.vic.gov.au/planning](http://www.delwp.vic.gov.au/planning)

**Attachment 3 Nillumbik Green Wedge Management Plan Part 1**

**Attachment 4 Nillumbik Green Wedge Management Plan Part 2**

**Attachment 5 2009 Victorian Bushfires Royal Commission Report Summary July 2010**

**Attachment 6 Planning Practice Note 46 Strategic Assessment Guidelines for preparing and evaluating planning scheme amendments**

**Attachment 7 Economic Social and Environmental Assessment Proposed Planning Amendments C81 and C101**