

## **NILLUMBIK PLANNING SCHEME**

### **AMENDMENT C131**

#### **EXPLANATORY REPORT**

##### **Who is the planning authority?**

This amendment has been prepared by the Nillumbik Shire Council, which is the planning authority for this amendment.

The Amendment has been made at the request of Nillumbik Shire Council.

##### **Land affected by the Amendment**

The Amendment applies to land within the Green Wedge Zone and Rural Conservation Zone (Schedules 1 – 5).

##### **What the amendment does**

The Amendment amends the schedule to the Green Wedge Zone and schedules 1 to 5 of the Rural Conservation Zone to require a permit trigger for earthworks which involve the receipt, importation, stockpiling or placement of more than 100 cubic metres of fill on land within those specified zones.

Specifically, the request:

- Amends the Schedule to Clause 35.04 (Green Wedge Zone), and schedules 1-5 of Clause 35.06 (Rural Conservation Zone).

##### **Why is the Amendment required?**

The Amendment will assist the council to manage large earthworks and the placement of fill within the Green Wedge and Rural Conservation Zones (Schedules 1-5) allowing the Council to assess and mitigate the future risks and fill activities which are having significant environmental and amenity impacts in the Shire.

Earthworks are currently unregulated in areas that are not subject to environmental specific planning controls and have a range of potentially negative environmental, amenity and landscape impacts. Requiring a permit for 'earthworks' will provide Council with a mechanism to regulate them and to minimise these impacts.

##### **How does the Amendment implement the objectives of planning in Victoria?**

The Amendment implements the following objectives as set out in Section 4 of the *Planning and Environment Act 1987*:

- Section 4(1) (a) To provide for the fair, orderly, economic and sustainable use and development of land.
- Section 4(1) (b) To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.
- Section 4(1) (g) To balance the present and future interests of all Victorians.

##### **How does the Amendment address any environmental, social and economic effects?**

The Amendment will provide a basis for addressing the potential environmental, amenity and landscape impacts of earthworks and the importation of fill within Nillumbik's Green Wedge.

### **Does the Amendment address relevant bushfire risk?**

The Amendment will not increase the risk of life, property, community infrastructure and the natural environment from bushfire.

### **Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

This Amendment supports Direction 4.5 *Plan for Melbourne's green wedges and peri-urban areas*, in facilitating the desired planning outcomes for green wedges and peri-urban areas through *avoiding significant land disturbance, reducing the occurrence and impact of soil erosion and salinity and managing potentially contaminated land*.

The Amendment will improve the effectiveness and efficiency of the Nillumbik Planning Scheme and will provide certainty around the current ambiguity of use of rural land for clean fill earthworks, particularly 'dumping' which may also be attributable to a commercial scale use in its own right in some instances.

The Amendment is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* under section 7(5) of the Act.

The amendment complies with Minister's Direction No 11, '*Strategic Assessment of Amendments*'. All requirements to be met under the direction have been considered and met in the preparation of the amendment.

The Amendment is consistent with Minister's Direction No 9 *Metropolitan Strategy*, particularly Direction 2 – *Better management of metropolitan growth*. This direction reinforces 'green wedges' as a fundamental feature of metropolitan planning and includes:

- Policy 2.4 - *Protect the green wedges of metropolitan Melbourne from inappropriate development*.

It also identifies *Melbourne 2050 will protect the green wedges for non-urban uses and encourage proper management of these areas. Each green wedge has unique features and will require a tailored management approach to promote and maintain its diversity*.

The Amendment is also consistent with Direction 7 – *A greener city*.

This direction includes:

- Policy 7.1 - *Ensure that water resources are managed in a sustainable way*
- Policy 7.5 - *Protect ground water and land resources*
- Policy 7.7 - *Protect native habitat and areas of important biodiversity through appropriate land use planning*.

The amendment will provide a mechanism by which Council will be able to address potential impacts on water and land resources and protect habitat and biodiversity.

The amendment is consistent with Planning Practice Note 42 *Applying the Rural Zones* in advancing the purpose of the zones including in the Green Wedge Zone in *protecting and conserving non-urban land outside of the Urban Growth Boundary (UGB) for its agricultural, environmental, historic, landscape, or recreational values, or mineral and stone resource* and in the Rural Conservation Zone in *primarily protecting and conserving rural land for its environmental features or attributes*.

### **How does the amendment support or implement the Planning Policy Framework and any adopted State policy?**

The Amendment is consistent with State policy **11.01-1R Green wedges – Metropolitan Melbourne** where the objective of this clause is to *protect the green wedges of Metropolitan Melbourne from inappropriate development*.

The amendment is also consistent with State policy **12 Environmental and Landscape Values** where in seeking to control the impacts of fill in rural areas, the amendment advances the objectives of this policy where *Planning should help to protect the health of ecological systems and the biodiversity they support (including ecosystems, habitats, species and genetic diversity) and conserve areas with identified environmental and landscape values.*

The amendment is particularly aligned to the objectives of State policy **13 Environmental Risks and Amenity**, with particular regard that *Planning should aim to avoid or minimise natural and human-made environmental hazards, environmental degradation and amenity conflicts.* With the green wedge covering 91 percent of the Shire, land filling is an environmental, health and safety issue. This type of activity is largely unregulated and can have negative impacts to the environment, landscape and amenity of the green wedge areas.

### **How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The Amendment supports the implementation of the LPPF. Specifically, the proposed Amendment advances the following local planning policies:

Clause 21.05-3 *Environment, Conservation & Landscapes* includes Objective 2 which seeks to ensure land use and development is assessed in the context of its potential effect on the wider catchment and encourages sustainable land management by:

- Encouraging coordinated environmental management of public and private land;
- Protecting the natural systems including land, air and water from pollution and detrimental activities in accordance with relevant State legislation including State Environment Protection Policies, best practice environmental management guidelines and approved catchment strategies; and
- Ensuring land use and development is consistent with identified land capability and environmental constraints and is managed to have minimum adverse impact on neighbouring properties and the catchment.

### **How does the Amendment support or implement the Municipal Planning Strategy?**

Not applicable.

### **Does the Amendment make proper use of the Victoria Planning Provisions?**

The Amendment seeks to ensure that the Victorian Planning Provisions are correctly applied through the correct application of zone provisions and reflects the current and future intended use of the land.

The amendment will add a permit trigger for earthworks which involve the receipt, importation, stockpiling or placement of more than 100 cubic metres of fill on land within those specified zones.

Adding a planning permit trigger to the schedules to the Green Wedge and Rural Conservation Zones is the most appropriate application of the VPP for this type of planning permit trigger.

The majority of major earthworks and soil importation/dumping is occurring on land in these zones.

In this application, the new permit trigger is considered building and works under the parent clause 35.04-5 of the Green Wedge Zone and clause 35.06-5. As such, the council will be required to consider the decision guidelines in clauses 35.04-6 and 35.06-6 which include a range of general, rural, environmental, design and siting issues listed under those clauses.

### **How does the Amendment address the views of any relevant agency?**

The views of relevant agencies will be sought during the public exhibition process, however both the EPA and Melbourne Water have been consulted in regard to the subject of this amendment, and are generally supportive of the proposed amendment and have noted that they (under their relevant operational Acts) cannot effectively regulate the issue of clean fill dumping in rural areas, and consider the planning scheme as the most effective control for such activities. Both agencies note an increased frustration by local authorities in dealing with this issue in rural areas.

### **Does the Amendment address relevant requirements of the Transport Integration Act 2010?**

The Transport Integration Act 2010 requires that a planning authority have regard to transport system objectives and decision-making principles where a planning scheme amendment is likely to have a 'significant impact on the transport system'. There are no statements of policy principles relevant to the amendment.

### **Resource and administrative costs**

#### **What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

The Amendment will lead to an increase in planning permit applications, however the resource and administrative costs associated with this are not expected to be significant and will be offset by a reduction in resources applied to managing the impacts of unregulated earthworks and the importation of fill.

### **Where you may inspect this Amendment**

The amendment can be inspected free of charge at the Nillumbik Shire Council's website at <https://participate.nillumbik.vic.gov.au/>

And/or

The Amendment is available for public inspection, free of charge, during office hours at the following places:

Nillumbik Shire Council Offices  
Civic Drive  
Greensborough 3088

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at:

[www.planning.vic.gov.au/public-inspection](http://www.planning.vic.gov.au/public-inspection).

### **Submissions**

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by **[insert submissions due date]**.

A submission must be sent to:

Nillumbik Shire Council  
Civic Drive (PO Box 476)  
Greensborough 3088

Council's offices will be closed during the Covid-19 State of Emergency. If you require a hard copy, or if you have difficulty accessing the documents please contact the Strategic Planning team via [strategic.planning@nillumbik.vic.gov.au](mailto:strategic.planning@nillumbik.vic.gov.au).

### **Panel hearing dates**

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: To commence in week of (to be confirmed once Council endorsement recieved).
- panel hearing: To commence in the week of (to be pre-set once Council endorsement recieved).