

Planning and Consultation Committee Meeting

to be held at the Civic Centre, Civic Drive, Greensborough
on Tuesday 13 July 2021 commencing at 7:00pm.

Agenda

Carl Cowie
Chief Executive Officer

Friday 2 July 2021

Distribution: Public

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Planning and Consultation Committee Meeting seating plan

Cr Natalie Duffy
Edendale Ward
(Leave of
Absence)

Cr Karen Egan
Bunjil Ward

**Cr Richard
Stockman**
Blue Lake Ward

Katia Croce
Governance
Lead

Blaga Naumoski
Executive Manager
Governance,
Communications
and Engagement

Cr Geoff Paine
**(Chairperson Planning
Matters)**
Wingrove Ward

Carl Cowie
Chief Executive
Officer

**Cr Peter
Perkins**
(Mayor)
Ellis Ward

Cr Frances Eyre
(Deputy Mayor)
Swipers Gully
Ward

**Cr Ben
Ramcharan**
Sugerloaf Ward

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Nillumbik Shire Council

**Agenda of the Planning and Consultation Committee Meeting to be held
Tuesday 13 July 2021 commencing at 7:00pm.**

1. Welcome by the Chair

Members of the public are advised the meeting will be recorded and a recording of the meeting will be made publicly available on YouTube and Council's website.

2. Acknowledgement of Country

The Acknowledgement of Country to be read by the Chairperson

Nillumbik Shire Council acknowledges the Wurundjeri Woi Wurrung people who are the Traditional Custodians of this Land. We would also like to pay respect to the Elders both past and present and extend that respect to other First Nations people present.

3. Apologies

Recommendation

That the apologies be noted.

4. Confirmation of minutes

Confirmation of minutes of the Planning and Consultation Committee Meeting held on Tuesday 8 June 2021.

Recommendation

That the minutes of the Planning and Consultation Committee Meeting held on Tuesday 8 June 2021 be confirmed. (**Attachment 1**).

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5. Disclosure of conflicts of interest

Committee members should note that any conflicts of interest should also be disclosed immediately before the relevant item.

6. Officers' reports

PCC.016/21 Nillumbik Planning Scheme Amendment C131 - Earthworks in the Green Wedge

Item: Planning Matter

Distribution: Public

Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety

Author: Leigh Northwood, Strategic Planning Lead

Summary

Council recently exhibited Amendment C131 (the Amendment) to the Nillumbik Planning Scheme, which seeks to amend the schedule(s) to the Green Wedge Zone and Rural Conservation Zone to require a planning 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.

The Amendment is intended to assist Council to manage large earthworks and the placement of fill within the Green Wedge and Rural Conservation Zones, by allowing Council to assess and mitigate future risks and fill activities that have the potential to create significant environmental and amenity impacts in the Shire.

This report outlines the exhibition undertaken for this Amendment and summarises the submissions received to the exhibition of the Amendment.

The Amendment was placed on exhibition pursuant to the requirements of the *Planning and Environment Act 1987* (the Act), from 22 April to 3 June 2021. Council received ten (10) submissions in total.

Submitters have been invited to attend the 13 July 2021 Planning & Consultative Committee Meeting (PCC) to speak to their submissions.

Where a submission raises an issue regarding the proposed amendment that cannot be resolved, the Act sets out the process for the Amendment. In accordance with Section 22 of the Act, Council must consider all submissions received. Section 23 of the Act, requires that Council after considering the submissions which request a change to the Amendment, that the planning authority, (Council), must—

- (a) change the amendment in the manner requested; or
- (b) refer the submission to an independent planning panel be appointed under Part 8 by the Minister for Planning; or
- (c) abandon the amendment or part of the amendment.

A report will be prepared for Council's consideration at the 27 July 2021 Council Meeting. This report will recommend that Council resolve to either refer unresolved submissions to an independent planning panel and ask the Minister for Planning to appoint the Panel in accordance with Part 8 of the Act or abandon the Amendment.

6. Consultation Matters

PCC.016/21 Nillumbik Planning Scheme Amendment C131 - Earthworks in the Green Wedge

Recommendation

That the Committee (acting under delegation from Council):

1. Notes the submissions to Amendment C131 to the Nillumbik Planning Scheme.
2. Considers a further report at the July Council Meeting to resolve to either request the Minister for Planning appoint an independent planning panel to consider Amendment C131 pursuant to Section 23(1)(b) of the *Planning and Environment Act 1987*, or abandon the amendment.
3. Requests that Officers notify submitters to the proposed Amendment C131 of the Committee’s resolution.
4. Requests that Officers provide an update on Participate Nillumbik in regard to next stages for Amendment C131.

Attachments

- ⇒1. Amendment C131 Summary of Submissions
- ⇒2. Redacted Compiled C131 Submissions
- ⇒3. Communications Schedule for Amendment C131

Discussion

1. There is currently no one provision in Planning Schemes to regulate the deposit of clean fill on land particularly in the peri-urban areas of Melbourne. Earthworks are currently unregulated in areas that are not subject to environmental specific planning controls (e.g. the Environmental Significance Overlay) and have a range of potentially negative environmental, amenity and landscape impacts.
2. Amendment C131 (the Amendment) amends the schedule to the Green Wedge Zone and the Rural Conservation Zone (Schedules 1 to 5) to require a planning 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.
3. The Amendment will assist Council to manage large earthworks and the placement of fill within the Green Wedge and Rural Conservation Zones allowing Council to assess and mitigate the future risks and fill activities which are having significant environmental and amenity impacts in the Shire.
4. Amendment C130 was requested to the Minister for Planning (the Minister) by Council in July 2020 to ask the Minister to utilise his powers of intervention under Section 20(4) of the *Planning and Environment Act 1987* (the Act) to implement interim controls to modify the schedule to the Green Wedge Zone and the Rural Conservation Zone (Schedules 1 – 5) by inserting a permit trigger for *Earthworks which involve the receipt, importation, stockpiling or placement of more than 100 cubic metres of fill to all land*. At the same time Council sought authorisation from the Minister to undertake an amendment process for Amendment C131 pursuant to Section 8A of the Act to prepare and exhibit a permanent control to achieve the same outcome.

6. Consultation Matters

PCC.016/21 Nillumbik Planning Scheme Amendment C131 - Earthworks in the Green Wedge

5. On 15 December, Council received correspondence from the Minister advising refusal of Councils request to approve Amendment C130 (interim controls) noting the Minister did not consider that the proposed amendment meets the tests under 20(4) for exemption from the requirements of sections 17, 18 and 19 of the Act.
6. The Minister further noted that Department of Environment, Land, Water and Planning (DELWP) had commenced consultation on its *Planning for Melbourne's Green Wedges and Agricultural Land* and considered that the overarching issue of 'soil importation, large-scale earthworks and associated land uses' should be properly considered through that work, and that it would be premature for him to intervene at that time.
7. Officers note that as part of its adopted submission to the *Planning for Melbourne's Green Wedges and Agricultural Land* consultation, Council have identified the issue of illegal clean fill dumping in our Green Wedge and identified the need for a State-wide approach to appropriately deal with this significant planning issue. Latest advice from DELWP in regard to the outcomes and recommended reforms from this consultation is that results are due to be released in July 2021.
8. Although authorisation was not granted for Amendment C130, authorisation for the preparation of Amendment C131 (permanent control) was given by the Minister on 15 December 2020 pursuant to an earlier Council resolution to request such in July 2020.
9. Given Council elections in late 2020, Council lodged an exemption request pursuant to Section 4(1) of the Act with the Minister, to the requirement to prepare and give notice of an amendment within 40 business days after authorisation. This request was approved on 22 December 2020.
10. Subsequent to the outcome of the 2020 Council elections, the new Council resolved at its 23 March 2021 Council Meeting to reaffirm its intention to regulate earthworks in the Green Wedge and to reaffirm its request to the Minister to authorise preparation and exhibition of Amendment C131.

Notification of Amendment

11. There are situations in which a planning authority may be exempted from all or part of the normal notice requirements for an amendment pursuant to Section 19(1A) of the Act. A planning authority is not required to give notice of an amendment to the owners and occupiers of affected land that it believes may be materially affected by an amendment if the number of owners or occupiers makes it impractical to notify them all individually. In this situation, the planning authority must take reasonable steps to ensure public knowledge of the amendment. Such steps might include extra display notices in local newspapers, news items or a sign on the site proposed for development.
12. Given the large number of owner/occupiers in Nillumbik's Green Wedge (approx. 15,000), in resolving to seek the Ministers approval for authorisation at its meeting in March 2021, Council applied for an exemption from direct notification to owners/occupiers of land effected by the Amendment, pursuant to Section 19(1A) of the Act.

6. Consultation Matters

PCC.016/21 Nillumbik Planning Scheme Amendment C131 - Earthworks in the Green Wedge

13. DELWP provided advice on 1 April 2021 noting that the exemption met the requirements of Section 19(1B) of the Act to apply the exemption at Section 19 (1A) of the Act in their view. The agreed notification methods used are discussed in more detail below.

Exhibition

14. The Amendment was on exhibition from 22 April 2021 to 3 June 2021.
15. In lieu of the exemption from sending out direct mail out notifications, it was ensured that sufficient notifications were published through other avenues. Notifications included:
- Letters to Prescribed Ministers
 - Letters, as instructed by DELWP, to Victorian Farmers Federation, Deputy Secretary Water Catchments, DELWP, EPA and Green Wedge Coalition.
 - Media Release article
 - Herald Sun article
 - Government Gazette publication
 - Participate Website
 - Warrandyte Diary article
 - The Local Paper article
 - Social media posts
 - Nillumbik News article
17. Please see **Attachment 3** for the communications schedule with dates and copies of the notifications.

Submissions

18. Council received ten (10) submissions, two of which were received after the exhibition closing date. Please see **Attachment 1** for a redacted Summary of Submissions and **Attachment 2** for the redacted Compiled C131 Submissions that will be published on Participate Nillumbik.
19. Eight (8) of the submissions received were in support of the Amendment with two (2) submissions opposed to the amendment.
20. The supporting submissions generally encourage Council's efforts to regulate earthworks in the Green Wedge with two of them requesting that the threshold of 100 cubic metres be reduced.
21. One of the objecting submissions suggest that Council needs to do further strategic work to justify its proposal to reasonably preserve existing rights, provide certainty and resolve ambiguity. The other opposing submission outlines a similar issue around having freedom to conduct earthworks within their private property.

6. Consultation Matters

PCC.016/21 Nillumbik Planning Scheme Amendment C131 - Earthworks in the Green Wedge

Related Council decisions

22. Council resolved at its 28 July 2020 Ordinary Council Meeting, among other matters:
- *Council does not support disposal of clean fill on land zoned Green Wedge or Rural Conservation unless it is for a direct agricultural purpose ,with a volume less than 100 cubic metres and requests officers commence the preparation of a planning scheme amendment to achieve this outcome similar to that currently operating in the Hume Planning Scheme.*
 - *Council immediately request the Planning Minister to introduce into the schedule for Green Wedges Zone and Rural Conservation Zone a 100 cubic metre limit of clean fill.*
23. At its 25 August 2020 Council Meeting, Council (among other matters) resolved to ‘advocate to the Minister for Planning and request a meeting at the earliest date for the immediate approval and gazettal of Council’s Planning Scheme Amendment made through Section 20(4) of the Planning and Environment Act 1987’.
24. At its 23 March 2021 Council Meeting, Council resolved to:
- *Reconfirm its intention to regulate earthworks in the Green Wedge by requesting the Minister for Planning, under Section 8A of the Planning and Environment Act 1987, to authorise the preparation and exhibition of Amendment C131nill to the Nillumbik Shire Planning Scheme.*
 - *Exempt itself from direct notification to owners/occupiers pursuant to Section 19(1A) of the Planning and Environment Act 1987, and notification of Amendment C131nill should be provided via the following means:*
 - a. *On the Participate Nillumbik website;*
 - b. *Through social media posts and at least one media release; and*
 - c. *Advertisement in one metropolitan newspaper (the Age or the Herald Sun).*

Options

25. As part of considering the submissions received, Council at the July Council Meeting will be presented with an officer’s recommendation. This recommendation may consider the following options:
- a) Requests the Minister for Planning to appoint an independent Planning Panel to consider the submissions received for Amendment C131 in accordance with Section 23(1)(b) of the Planning and Environment Act 1987; or
 - b) Resolve to abandon the Amendment.

Council plans and policies

26. This report directly supports the achievement of Council Plan 2017-2021 strategy:
- Prepare and develop an improved and holistic approach to strategic planning.

6. Consultation Matters

PCC.016/21 Nillumbik Planning Scheme Amendment C131 - Earthworks in the Green Wedge

Sustainability implications

27. 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.

Community engagement

28. Pursuant to the Act, Amendment C131 was publicly exhibited from 22 April 2021 to 3 June 2021. See above in regard to notification and exhibition.

Innovation and continuous improvement

29. Approval of Amendment C131 would improve Council's ability to manage the impacts of illegal clean fill dumping on the Green Wedge through the Nillumbik Planning Scheme.

Collaboration

30. Council officers have been proactively liaising with the Department of Environment, Land, Water and Planning (DELWP) to prepare amendment material to the department's satisfaction.

Budget implications

31. Previous budget implications around direct mail notification was addressed by the lodgement of exemption request made under section 19(1A) of the Act.
32. Planning scheme amendment budget allocation 20/21 and 21/22 financial years.

Relevant law

33. *Planning and Environment Act 1987 (the Act)*.

Regional, state and national plans and policies

34. Council will consider requesting the Minister to convene an independent Planning Panel at its 27 July 2021 Council meeting to consider the Amendment and submissions and provide Council with recommendations.

Conflicts of interest

35. Officers preparing this report have no conflict of interest in relation to its subject, content and recommendations.

Planning and Consultation Committee Meeting Agenda

13 July 2021

- 7. Supplementary and urgent business**
- 8. Confidential reports**
- 9. Close of Meeting**