

Your ref: Melbourne Water Surplus Land, Watsons Creek Storage Reservoir

31 March 2021

Leigh Northwood
Nillumbik Shire Council
PO Box 476
Greensborough VIC 3088

VIA EMAIL: Leigh.Northwood@nillumbik.vic.gov.au

Dear Leigh

**Proposed Planning Scheme Amendment C120nill – Melbourne Water Surplus Land
Watsons Creek Storage Reservoir, Christmas Hills**

Thank you for Council's response email dated 15 February 2021 and request for information dated 23 March 2021 in regards to Melbourne Water's Proposed Planning Scheme Amendment (PPSA) C120 to the Nillumbik Planning Scheme for the former Watsons Creek Storage Reservoir in Christmas Hills.

It was a pleasure to present at the Councillors briefing on the 16th of March 2021. Melbourne Water provides the below response to Council's queries including outlining the next steps in the process.

Council queries

The following specific issues were raised by Councillors at the briefing, and our responses are provided below.

1. *Traditional Owners engagement in the land divestment process and any opportunity for their 'first right of refusal process' or similar? In not, why?*

Melbourne Water response:

There are no specific requirements in the Government Land policies that direct consultation with Traditional Owners as part of the divestment process or First Right of Refusal process.

Consultation occurred with the community and stakeholders in 2017 and 2018.



2. *Any ability for further consideration of trails and widening through particularly Precinct 3.*

Melbourne Water response:

The land within Precinct 3 is governed by DELWP and the Governor In Council order for transfer to the Warrandyte Kinglake Nature Conservation Reserve. The provision of trails through this Precinct is not at the discretion of Melbourne Water.

Tennis Courts / Mechanics Institute

These two sites are currently within the Public Use Zone 1 (PUZ1). This zone cannot be retained on the land due to the surplus nature of the land with respect to Melbourne Water's ownership. An alternate zone is required.

The community has indicated a desire to retain both the Mechanics Institute Hall and the Tennis Courts as publicly available assets. Melbourne Water has proposed to facilitate this through the Masterplan and rezoning which supports Council purchase and ownership of this land through application of the PUZ6 (Local Government). However, if Council are unable to purchase the land an alternate zoning (not a public land zone) will be required that still facilitates use by the community.

With regards to the Mechanics Institute Hall, it is recommended that Council apply the Rural Conservation Zone to this land as it is privately owned.

A suitable zone for the tennis court must consider the site's location in the Nillumbik Green Wedge, the likely private ownership of the land and the use of the land. From a planning land use perspective, an outdoor tennis court is a *Minor Sports and Recreation Facility – Land used for leisure, recreation, or sport, without substantial provision for spectators, and which is usually open to non-paying spectators*. A Minor Sports and Recreation Facility is nested within Leisure and Recreation.

Given the proposed rezoning for surrounding land is to the Rural Conservation Zone – Schedule 3 (RCZ3) and the available zones in the Green Wedge are limited, it would be appropriate to apply the RCZ3 to this land for consistency. However, the RCZ has significant limits on land uses and all Leisure and Recreation land uses are prohibited, with the exception of Informal Outdoor Recreation. Therefore, the tennis court would be relying on its existing use rights under the RCZ.

Alternatively, if the tennis court can be made available to the public for casual use by non-paying persons, a case could be made that the tennis court is an *Informal Outdoor Recreation* use and therefore is 'as of right' (no permit required) in the RCZ. We are not aware of the exact nature of the tennis court arrangements.

Melbourne Water request that Council confirm their interpretation of the tennis court land use and whether the RCZ3 is an appropriate zone control for the site.

Unresolved Issues

Council identified that there are still a number of unresolved issues in relation to the proposed PSA. Specifically, Council officers have indicated the following:

Notwithstanding the briefing the issues raised in Council's response to the earlier draft on 5th June 2020 still apply, and will form the recommendations to Council in regard to the proposed amendment.

Officers still have significant concerns in regard to a number of issues that the proposed amendment has not effectively resolved.

Melbourne Water response:

As noted it is accepted that the impetus for the rezoning is Melbourne Water's obligation under the Victorian Government Landholding Policy (VGLP) and the Victorian Government Landholding Transactions Policy (VGLTP) to divest property (given it is no longer required for future service delivery) and to achieve a price no less than market value, and with 'the most appropriate zoning (and other relevant planning provisions) so that the land can be sold on the basis of its highest and best use'. It is still considered that this requirement as the driving influence behind the proposed amendment, results in tension between the VGLP/VGLTP and requirements of the Victorian Planning Provisions (VPP) pursuant to the Planning & Environment Act 1987, particularly in regard to:

- State policy around planning for bushfire and increased risk of 'threat to life' in a high risk bushfire landscape;
- The purpose of the proposed zone (RCZ) and the implied use for dwellings that the IPO sets up for future owners. Use of Section 173 Agreements is not considered an acceptable outcome as this is not a planning tool and sits outside the planning scheme; and
- Creation of 'undersized' RCZ parcels adding to further fragmentation of the Green Wedge – although it is acknowledged some attempts have been made to consolidate parcels – Council still consider there could be more done in this area where there are still issues with undevelopable lots and as per point 2 above.

Bushfire Policy

As previously discussed with Council, the intent of the Christmas Hills Land Use Study is to apply a zone control that reflects the future private ownership of the land. The use of the Masterplan and IPO are intended to guide the re-subdivision of Melbourne Water's land holdings to reduce the number of parcels that will be available for private ownership. This is based on the understanding of the high risk in the area with regarding to bushfire.

In the presentation to the Councillors we reiterated that the Incorporated Plan would see 45 parcels consolidated into 16 parcels whilst other lots retain their existing boundaries and sizes. This reduces the number of lots available to the market following the rezoning and thus further reduces the risk to life from bushfire.

The IPO also provides additional controls related to bushfire protection which will apply to developable parcels within the area.

Proposed zone purpose, IPO and dwellings

The purpose of the Rural Conservation Zone (RCZ) is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To conserve the values specified in a schedule to this zone.
- To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.
- To protect and enhance natural resources and the biodiversity of the area.
- To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.
- To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.
- To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.

The PSA seeks to apply this zone to the area in recognition of the existing landscape character and environmental features, as well as the existing uses which include agriculture. The RCZ was determined to be the most appropriate zone of the available green wedge zones to apply to the land. It is also the zone applied to privately held parcels in the area. As noted by Council, the purpose of the RCZ is not to facilitate rural living and any new dwellings require planning approval.

The Incorporated Plan Overlay to be applied to the land as part of the PSA is intended to guide future subdivision and consolidation as well as ensuring development is appropriate. It does not seek to create an implied use for dwellings and rather it provides direction about appropriate development outcomes in the context of the land's significance and risk. A number of the purposes in the IPO schedule explicitly state to avoid or to limit development.

Use of Section 173 Agreements routinely occurs as a means of perpetually providing a control on a specific parcel through inclusion on title. It also ensures any future owner is aware of the restrictions applying to a parcel of land from the sale process to ownership. Suggestions from Council on alternate agreements or planning tools are welcome and can be investigated further.

Creation of undersized RCZ parcels

As presented to Council at the briefing, the IPO and accompanying plan provide for a future parcel pattern in the area which consolidates parcels where appropriate and possible. This has led to a total of 43 parcels able to be disposed of following rezoning, of which 22 lots would be below the minimum subdivision size in the RCZ. Many of these parcels cannot be consolidated with other Melbourne Water parcels and must remain below the minimum subdivision size. We note that a number of these sub-minimum lots already contain existing dwellings and will not create additional planning burden on Council. Melbourne Water is also seeking to provide controls on lots under the minimum lot size and with significant vegetation/bushfire constraints to prevent development in the future.

Should Council wish to rectify this through a further control, such as a Restructure Overlay which impacts privately held land in the area, that should be considered by Council separately. We understand this is not within the Terms of Reference of GLPS.

Next steps

Melbourne Water will present this letter and Council's correspondence from February and March 2021 to the GLPS for their consideration and review of the PSA. Any resolution from Council's meeting in April 2021 will also be provided to GLPS for their information.

Should you have any queries in relation to the overall project, please do not hesitate to contact Melanie Hall, Senior Property Officer of Melbourne Water on (03) 8600 0963 or alternatively via email melanie.hall@melbournewater.com.au.

Yours sincerely



Sevdal Arslan

Property Sales Manager