

**12. Officers' reports****OCM.094/16 Regulatory Impact Assessment on planning fees**

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**File:** 40/04/000**Distribution:** Public**Manager:** Ransce Salan, General Manager Environment and Planning**Author:** Jeremy Livingston, Manager Planning and Health Services**Summary**

The State Government has released a Regulatory Impact Statement (RIS) in relation to new planning fees. These apply to planning applications, subdivisions and planning scheme amendments. A review of these fees is long overdue and warmly welcomed. Councils (and their communities) have been bearing a disproportionate cost burden for the delivery of planning services due to low and non-indexed planning fees set by State Government. Instead, it is Government policy that planning services provided by councils should be recovered from those who directly benefit from these services.

Although it is not possible to know in advance what increased income generation the proposed fees will bring to the planning services in Nillumbik, the proposed fees will certainly assist Council in receiving greater cost recovery for its provision of planning services to the community. The proposed annual indexing of planning fees to CPI is appropriate, and is strongly supported.

**Recommendation****That Council:**

- 1. Notes the receipt of the released Regulatory Impact Statement (Planning and Environment (Fees) Regulations 2016 and Subdivision (Fees) Regulations 2016.**
- 2. Submits a response broadly supporting the Regulatory Impact Statement, as outlined in paragraphs 8 to 19 of this report.**

**Attachments**

1. Summary of proposed fees
2. Summary of proposed fee changes

**Background**

1. Earlier this month, the State Government released a Regulatory Impact Statement (RIS) concerning the setting of new statutory fees for matters administered under the *Planning and Environment Act 1987* and *Subdivision Act 1988*.
2. A review of planning fees has long been called for by the MAV and local councils. The issue was last raised by the sector at the MAV's State Council in October 2015.

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In addition, at last year's October Ordinary Meeting, Council resolved to write to the Minister for Planning requesting:

- that his recent commitment to reviewing planning application fees set by the *Planning and Environment Fee Regulations 2015* be commenced and completed urgently, to reduce the level of community/ratepayer subsidisation for Council to perform its duties as the responsible authority under the *Planning and Environment Act 1987*.
  - that any new planning fees introduced as a result of the review be subject to annual indexed increases (which is currently not the case).
3. The *Planning and Environment (Fees) Regulations* were set in 2000, and since that time there has been eight years in which fees have not been indexed. This results in a significant accumulated shortfall for councils. The lack of indexation has effectively created a transfer in the costs of planning from permit applicants to the wider community. Also, the existing planning fees have not been reviewed in light of changes in the legislation and processes followed by Council, such as the introduction of VicSmart planning application in 2014.
4. The Minister for Planning is seeking comment from all stakeholders on the proposed new planning fees in the circulated RIS (which if adopted will be gazetted as the new *Planning and Environment Fee Regulations 2016* and *Subdivision Fee Regulations 2016*).

**Policy context**

5. This report directly supports the achievement of Council Plan 2013-2017 strategies:
- We will advocate about issues affecting the Nillumbik Shire, supported by informed and clearly articulated policy positions.

**Budget implications**

6. The adoption of the proposed planning fees as set out in the circulated Regulatory Impact Statement will have a favourable budget outcome for the Statutory Planning Team in terms of receiving greater income, and therefore better cost recovery for the delivery of this statutory service. Historically, Nillumbik has recovered less than 20 per cent of its service cost due to low planning fees set by the State Government. As the planning fees have not benefited from CPI increases since 2009, this figure dropped to 16.5 per cent for the 2015-2016 financial year.

**Consultation/communication**

7. In recent years, Council has supported the Municipal Association of Victoria's (MAV) sector advocacy to the State Government for a widespread review of planning fees in order to achieve better cost recovery for the planning services that Council is required to provide under the *Planning and Environment Act 1987*.

**Information about new planning fees**

8. The RIS identifies the following guiding principles to inform the setting of the new planning fees:
- Fees charged should support Victoria's planning objectives;

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- Fees should be set to encourage the optimal use of the planning and subdivision functions of councils
  - Fees should not over-recover costs and should be based on efficient costs
  - Fees should be equitable
  - Fees should be simple to understand and administer
9. The MAV believes that it is critical that fees are set appropriately so that:
- An efficient and effective planning service can be provided. This includes the provision of appropriate resources, systems and improvement activities. Fee income has become even more important to councils in a rate-capped environment;
  - Those that directly benefit from a planning decision pay the full costs of that decision (although exceptions to this general rule are acknowledged)
  - There is an incentive to submit high quality planning permit applications or amendment proposals that are well resolved that reduce the need for rework during the process
10. It is State Government policy that costs of planning services should be recovered from those who directly benefit from the services. Although, the State Government has identified that in most cases the actual cost to councils for providing planning services was significantly higher than the current fees, it has also been recognised that it is difficult to aggregate fees across all councils and across different types of fees. This is because each municipality has different types and volumes of planning requests. As such, Council will need to monitor for the first 12 months that the new fees are in operation as to the extent of increased income generation derived from these new fees.
11. The RIS states that it is estimated that current planning fees only recover about 20-30 per cent of the actual costs to councils. Historically, Nillumbik has recovered less than 20 per cent of its service cost due to low planning fees set by the State Government. As the planning fees have not benefited from CPI increases since 2009, this figure dropped to 16.5 per cent for the 2015-2016 financial year.
12. The proposed changes to the prescribed fees will directly affect any person making an application for a planning permit or an application for other planning or subdivision matters. The increases are significant in some cases, however the State Government considers they remain reasonable in relation to the benefit ultimately obtained by the person making the application.
13. The proposed new fees are aimed at recovering a greater percentage of costs from those making planning requests. A summary of the new fees (and their corresponding increases) are outlined in Attachments 1 and 2.
14. Importantly, the new fees will be converted to fee units and be subject to annual indexation according to the value of fee units set by the Treasurer under the *Monetary Units Act 2004*. The proposed fees will expire in 2026, at which time there will be new Fee Regulations prepared.

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**Assessment of the proposed new fees**

15. Across the board, the proposed increase in fees are substantial. However, it is anticipated that the proposed fees will still not fully recover the cost of Council providing its mandatory planning services.
16. An analysis of the RIS identifies the following outcomes which are supported:
  - Continuance of the existing practice of scaling development fees depending on the cost of the development proposed.
  - Overall, significant fee increases to most classes of planning applications, including increasing the fees for amendments to existing permits and amendment fees to applications following public notice of an application.
  - Introduction of a new fee (initially to be set at \$188) for buildings and works concerning a single dwelling valued at less than \$10,000 (currently no fee applies).
  - Additional development value bands to deliver a higher level of cost recovery from the single dwelling over \$250,000 and other development categories with a construction value of over \$2 million. These classes of development have been identified by the State Government as more complex applications that should derive greater cost recovery for Council based on the time and resourcing to support the processing and assessment of these proposals.
  - The proposed fees for subdivisions is supported. The proposed fees for applications for subdivision permits introduce a fee based on the number of lots to be created. In formulating the proposed fees, some councils suggested to State Government to propose a fee for 100 lot increments, which is what is proposed under the RIS. Given that Nillumbik generally only experiences subdivisions of a small number of lots, on some occasions the proposed subdivision fees may well provide a full cost recovery for Council.
  - New fees for VicSmart planning applications, which are set at a lower fee value reflective of their 'fast-track'/streamlined processing.
  - Introduction of a statutory fee (initially to be set at \$620) for requests to amend or end Section 173 Agreements. However, the MAV correctly identifies that a fee value of \$1,000 would be more appropriate given that these matters require legal review.
  - Increase in the amendment fee to planning applications after public notice, but before decision, as this will more accurately reflect officer time attributed to changed proposals.
  - Increase in the amendment fee to an existing planning permit application. Currently, no fee applies in some situations.
  - The fees associated with considering engineering plans, preparing engineering plans and supervision of works (all related to subdivision proposals) will continue to satisfactorily recover Council's costs with respect to the resource required to support these activities.

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- The proposed fee for Council-initiated planning scheme amendments (to be initially set at \$906) is supported, and is commensurate with current fees.
17. Having assessed the proposed fees, officers have identified the following suggested improvements:
- The proposed fees seek to increase the amendment fee to planning applications after public notice, but before decision, which will be 40 per cent of the fee applicable to the original permit class, plus the difference in fees if the amendment moves the application into a different class. This required calculation appears to work against one of the key guiding principles outlined in the RIS, being “fees should be simple to understand and administer”. It is recommended that this proposed fee be replaced with a flat fee. Although proponents can clarify fees with Council, fees should equally be simple and understandable to enable ‘mum and dad’ proponents to self-identify and calculate. In turn, this also places an unnecessary administrative burden on councils.
  - Similarly to the previous dot point, the proposed fees seek to increase the fee for amendments to existing permits, to be calculated at 75 per cent of the fee applicable to the original permit class, plus the difference in fees if the amendment moves the permit into a different class. This proposed fee is more problematic, as either the proponent or Council needs to identify what the original planning application fee was (which changes from time to time, and will become more fluid with CPI increases introduced). Sometimes Council is requested to amend permits issued one or two decades ago, making the proposed fee calculation even more challenging. Again, this does not support the principle of simple and easy to understand fees, and this recommended complicated fee calculation should be replaced with a flat fee amount so to not unnecessary burden both proponents and councils of this complexity.
  - The proposed fees seek to introduce a scaling of fees for private-initiated planning scheme amendments paid to the responsible authority to consider submissions. The proposed fees will be escalated from up to 10 submissions (\$18,010), up to 20 submissions (\$32,215) and 20 plus submissions (\$41,792). Whilst the notion of a scaling system is supported to better reflect the resourcing required for Council to consider these submissions, there is concern that the scaling model (based only on submission numbers) may be too simplistic, and may be inequitable for more minor changes to the planning scheme which attract a larger number of submissions.
  - Certification and Statement of Compliance fees for subdivisions should be rolled into one fee to again avoid unnecessary administrative burden. Once a proponent has chosen to proceed with a subdivision proposal, both approvals are required to complete the subdivision.

**Conclusion**

18. The release of the Regulatory Impact Statement on planning fees is most welcomed, given that the last holistic review of planning fees was undertaken over 16 years ago. Although it is not possible to know in advance what increased income generation the

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proposed fees will bring to the planning services in Nillumbik, the proposed fees will certainly assist Council in receiving greater cost recovery for its provision of its planning services.

19. The lack of indexation has effectively created an unacceptable imbalance in transferring the costs of planning services from permit applicants to broader ratepayers. The proposed annual indexing of planning fees to CPI is appropriate, and is strongly supported. The absence of indexation for many years has resulted in a significant accumulated shortfall for local councils.

## Fee changes – summary

Planning permit applications	Previous fee	Proposed fee (fee units)	Proposed fee amount	Percentage change
use only	\$502	89	\$1,241	147%
single dwelling	\$0 to \$490 (depending on value of works)	13.5 to 3894 (depending on value of works)	\$188 to \$54,282	variable (depending on value of works)
development	\$102 to \$16,130 (depending on value of works)	77.5 to 3894 (depending on value of works)	\$1,080 to \$54,282	variable (depending on value of works)
subdivision	\$249 to \$781 (depending on nature of change)	89 per 100 lots	\$1,241 per 100 lots	variable (depending on nature of change and number of lots)
Permit application other than use, development or subdivision	–	89	\$1,241	<b>New fee category</b>
VicSmart	(fee charged as standard permit fee)	13.5 (for works between zero and \$10,000)  29 (for works over \$10,000)	\$188 or \$404	<b>New fee category</b>
amend an application after notice but before decision	\$102	–	40% of fee applicable to the original permit class plus the difference in fees if the amendment moves the application into a different class	variable
amend an application for an amendment to a permit	\$102	–	40% of fee applicable to the original permit class plus the difference in fees if the amendment moves the application into a different class	variable
amend an existing planning permit	\$102 to \$815 (depending on type of permit and value)	13.5 to 23.05	\$188 to \$3,213	variable
Amend a planning scheme	\$2,918	1021 to 2727 (depending on number of submissions)	\$14,232 to \$38,014	500% to 1330%
Planning scheme under section 20(4) of the Planning and environment Act	\$2,918	270	\$3,764	29%
Planning scheme amendment under s. 20a	\$2,918	65	\$906	-69%

Planning permit applications	Previous fee	Proposed fee (fee units)	Proposed fee amount	Percentage change
issue a certification of compliance (planning permit)	\$147	22	\$307	108%
Issue a planning certificate	\$18.20	1.5	21	15%
satisfaction matter	\$102	22	\$307	200%
amend or end a s.173 agreement	–	44.5	\$620	<b>New fee category</b>
Certify a subdivision plan	\$100 + \$20 per lot	9.5	\$164	variable
amend an application to certify a subdivision	–	7.5	\$105	<b>New fee category</b>
Request to amend a certified subdivision plan	–	9.5	\$132	<b>New fee category</b>