

Reforming the Victoria Planning Provisions

Draft Submission to Victorian State Government

Nillumbik Shire Council

1 December 2017

Victorian Planning Provisions Review

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1. Introduction

Nillumbik Shire Council welcomes the opportunity to participate in this 'once in a generation' review of the Victorian Planning Provisions where State Government's aim is to create a planning system fit for the 21st century.

The scope and scale of the proposed changes are significant and will require State Government funding in order to ensure implementation. The transitional arrangements may be complex and are likely to be operational for an extended period of time.

Nillumbik Shire Council is broadly supportive of the proposed changes, including the proposed use of technology to promote greater accessibility and useability of information is strongly supported. However, it must be noted that the discussion paper provides only a broad overview with a limited level of detail meaning that the responses provided are general in nature. Further clarification from Nillumbik Shire Council's perspective is required on the proposals and Nillumbik Shire Council requests a further opportunity to give feedback on any drafted changes to the VPP before they come into operation.

Nillumbik Shire Council would welcome any opportunity to be involved in pilot or early adopter initiatives relating to the proposed reforms.

2. Shire Context

The Shire of Nillumbik is a semi-rural council, formed in 1994 with the conservation of the Green Wedge as its strategic focus. The Nillumbik Green Wedge is distinguished from others by the quality of its environment and natural bushland. It covers approximately 91 per cent of the total Shire area. The remaining nine per cent of the Shire is urban or township land within the Urban Growth Boundary. Almost half of the Green Wedge is a mixture of rural residential and hobby farms. Twenty per cent is used for agriculture and another 20 per cent is conservation areas. Seventy-nine per cent of the Green Wedge is in private ownership and approximately 43 per cent of privately owned land is of environmental significance.

The current estimated population of Nillumbik is 61,273 people, or around 1.37 per cent of Greater Melbourne's population (ABS Census 2016). It is growing at a much slower rate than the total Metropolitan area. It is also an ageing population, consistent with the national trend. The bulk of population is located in the south and south-western areas, generally comprising Diamond Creek, Eltham, Eltham North, Greensborough, Hurstbridge and Wattle Glen.

Over the past decade Council's planning has focussed on consolidating and reinforcing the role of the activity centres within the Shire. The bulk of new economic development, employment growth, housing expansion and community facility improvements will occur in these areas over the coming years.

The Urban Growth Boundary (UGB) contains residential development in the municipality and also protects the Green Wedge. General Residential zoned land in Diamond Creek and Low Density Residential Land in Plenty are identified as having greenfield development potential; these localities are expected to accommodate most of the Shire's future population growth.

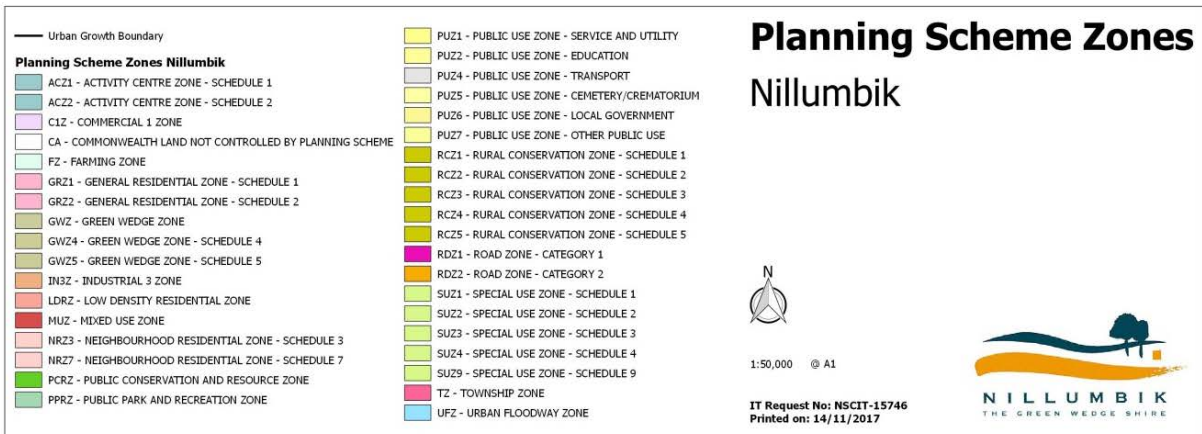
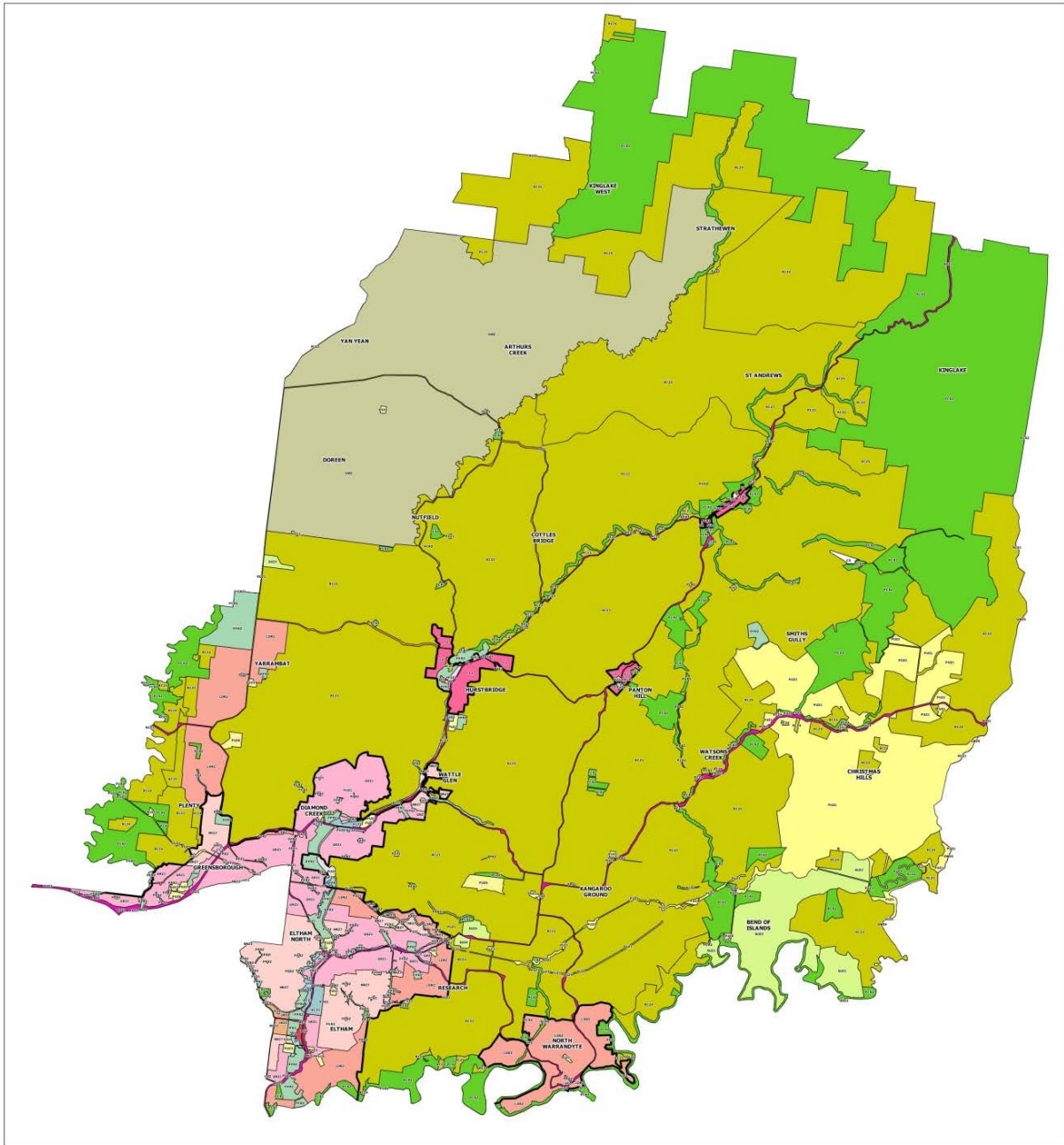


Figure 1. Zoning Map of Nillumbik

3. Strategic issues to be addressed through the VPP

The intention to review the zones and overlays as a general principle is welcomed.

Nillumbik Shire is an interface council, part of metropolitan Melbourne; even though vast majority of the Shire's geographical area is semi-rural/rural.

The Shire's urban centres of Diamond Creek and Eltham contain the Shire's two activity centre zones. As part of the proposed review of all zones, the suggestion of potentially replacing the Activity Centre Zone (ACZ) with other planning tools such as the Mixed Use Zone, Commercial 1 zone and an Incorporated Plan Overlay or Development Plan Overlay causes concern. The suggestion of possible amalgamation of the ACZ with the Priority Development Zone (PDZ) also raises concerns. The ACZ allows a significant degree of local control which should not be eroded.

The majority of the Shire is Green Wedge land in accordance with Clause 57 and is zoned predominately Rural Conservation Zone (RCZ) and to a lesser extent Green Wedge Zone (GWZ), with schedules prescribing a range of minimum lot sizes. This results in stark differences in land use on either side of the green wedge boundaries, with areas of GWZ being adjacent to GRZ within the Shire and Urban Growth Zones in neighbouring councils.

The minimum lot sizes specified in the various schedules to the RCZ reflect the desired environmental objectives in these schedules. There are many lots in the RCZ and to a lesser extent the GWZ that are significantly below the prescribed minimum lot size and these lots are a legacy of subdivisions pre-dating the current scheme. Development of these lots is proving particularly difficult due the conflicting objectives of applicable policies, zoning and overlays. A common scenario is land affected by an Environmental Significance Overlay (ESO) and the Bushfire Management Overlay (BMO). Clause 52.48 adds another competing layer of consideration and contains an exemption for the creation of defendable space for a dwelling at Clause 52.48-8. However, this exemption is only relevant to residential zones and does not include RCZ or GWZ land. This results in all native vegetation loss as a result of defendable space needing to be offset and considered during an assessment process.

Clause 57 (Metropolitan Green Wedge Land) urgently needs to be reviewed and preferably removed. Despite a relaxation for the 'in-conjunction' test being applied to the green wedge and rural conservation zones, a similar relaxation was not granted for this clause. As such there is direct conflict in permissible uses between the RCZ and Clause 57 within the green wedge. The outcomes sought in Clause 57 can be achieved through the drafting of an appropriate local policy and including more detailed objectives in the RCZ schedules and any relevant overlays, such as the Environmental Significance Overlay. The removal of Clause 57 would consolidate the green wedge considerations into one section of the scheme and aligns with the objectives of these reforms. However, the removal of Clause 57 would trigger the need for a review of the uses table in the RCZ to include conditions similar to the GWZ and/or Clause 57.

Tourism plays a significant role within the Shire and this is an area that Nillumbik Shire Council is developing and enhancing. At present tourism opportunities in the Shire's rural areas is proving a very difficult task to realise due to the onerous nature of the existing planning provisions.

The recent expansion of the BMO has had a significant impact on the Shire with the total number of properties affected by this overlay now exceeding 8,000. The BMO and the environmental aspects of the planning scheme ESO effectively compete against each other as one seeks to provide defendable space and the objectives and polies of the ESO seek to minimise impact on vegetation for environmental biodiversity protection. This is the cause of significant and ongoing community tension and is one driver for Council’s review of its Green Wedge Management Plan.

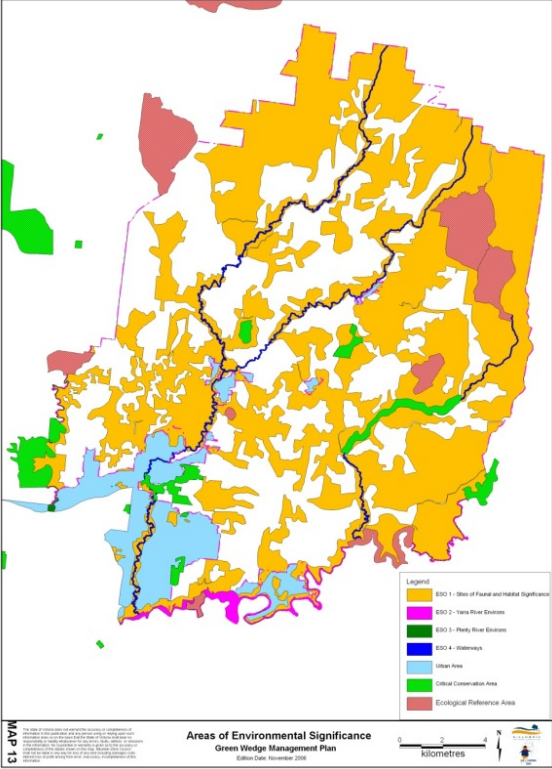


Figure 2 Environmental Significant Areas

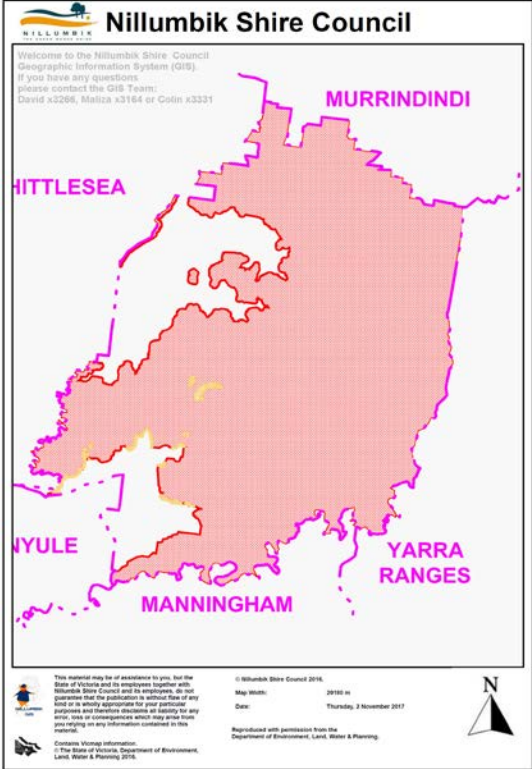


Figure 3 Extent of BMO

Nillumbik Shire Council has some concerns that the funding allocation for the third and final stage of this project, being the implementation of the new provisions, has not yet been secured. Given the scope and scale of the proposed changes, implementation, at the local level, will not occur without additional state government funding/assistance.

4. Specific responses to discussion paper questions

4.1 Proposal One: A simpler VPP structure

Question 1: What other changes to the VPP structure do you think should be considered?

Comment: The basic premise of restructuring the VPP to allow for increased useability by the relevant stakeholders is timely given the degree of complexity that now exists with the VPP.

The new structure should allow for more succinct assessment. This will help to remove inconsistencies and better link state and local objectives.

Integrating VicSmart into the overlay schedules would highlight the eligibility of an application to be considered under VicSmart (currently a number of applications have to be amended after lodgement).

Council would like clarification on the potential integration of VicSmart into the zoning provisions. The discussion paper indicates integration with the overlays exclusively.

The proposed consolidation of all the administrative provisions would help to increase the useability of the provisions.

4.2 Proposal Two: An integrated planning policy framework

Question 2.1: Are there any themes that should be added to the proposed PPF thematic framework to ensure that it covers all required policies?

Question 2.2: What else could be done to make planning policy easier to apply and understand?

Question 2.3: What will be needed to support transition to a new PPF format?

Comment: The consolidation of the various tiers of policy into one overarching document is a logical improvement, with the flow-on effect that the development of a consistent approach to the style and writing of the framework should become easier.

However, Nillumbik is concerned that the integration of local policies into the proposed PPF thematic framework will water down the importance and relevance of local planning policies, particularly neighbourhood character. Further information is required for Council to better understand how state and local policies will be distinguished in this suggested framework. Replacement of the current clearly structured policy section in the scheme with this PPF thematic framework appears to be contrary to desire to simplify the scheme. Nillumbik Shire Council strongly supports the strengthening of local policy to be upgraded, effectively giving local and state policy equal weighting.

The translation of existing regional and local content into new themes will be a complex task. Ongoing guidance from the Department will be particularly important during the transitional period to ensure consistency across local government.

Question to DELWP: Further clarity is required regarding the definition of 'regional' in terms of the policy tiers. Does regional indicate the metro area and the eight regions as per Plan Melbourne?

Nillumbik is deemed to be metro for the purposes of Plan Melbourne but the Shire is quite different in nature (and policy themes) from predominately urban local government authorities. How will the potentially significant differences across a region be handled? Will there have to be a greater reliance on local policies to identify and discuss particular matters? Council seeks further clarification on the matter.

4.3 Proposal Three: Assessment pathways for simple proposals

Question 3: What other matters do you think are suitable for code-based assessment?

Comment: Council generally supports the idea of introducing new-code based assessment provisions for simple proposals. However, a much greater degree of clarity is needed around the operation of the proposed code-based assessment. The information provided in the discussion paper does not provide sufficient clarity to give an informed opinion. The examples listed in proposal 3.2 are not frequent proposals and would offer little benefit to Nillumbik. However, Council would support a review of the home occupation provisions at Clause 52.11 with a view to modernising this particular provision.

As mentioned in proposal one, Council supports the embedding of VicSmart assessment into zones and overlays where appropriate.

4.4 Proposal Four: Smarter planning scheme drafting

Question 4.1: What are the key matters you think a VPP user manual should include?

Question 4.2: What planning documents or information do you think should be included in a Victorian planning library?

Question 4.3: Are there other ways the drafting and consistency of planning scheme provisions could be improved?

Comment: The intended audience of the VPP user manual needs to be considered. Planning professionals will be seeking highly detailed guidance on specific topics which would be quite different to a lay person, perhaps dealing with the planning provisions for the first time. It will be challenging to create a single document that can effectively cover the diverse needs of all potential users. The proposed digitalisation of the user manual and associated online templates and forms is a sensible and welcomed approach.

The creation of a central online planning library for all planning documents is also considered to be a logical advancement. However it is questionable as to whether applicants would be inclined to refer to documents rather than enquire directly with the relevant authority including local government. It is likely that even if applicants have undertaken some initial research that they will want to confirm their understanding to remove the risk of any potential liabilities. This means the library may provide more use for the planning professionals rather than the community in general.

The quality of drafting of the provisions has been identified as an area which would benefit from the development of a dedicated unit within the Department. Whilst this would certainly be beneficial, seeking input from a wide range of planning professionals and practitioners would help to reduce potential teething problems. The creation of a formal working group could provide a forum for this aspect of the reforms. Greater consistency in the drafting of provisions across all planning schemes would particularly benefit applicants who have dealings with multiple councils.

4.5 Proposal Five: Improve specific provisions

The table below is Council's response to possible reforms of specific provisions detailed in Appendix 2 of the Discussion Paper:

Provision number	Council's response
1	Support
2	<ul style="list-style-type: none"> a) Support the renaming of zones to clearly demonstrate difference between like zones e.g. industrial zones b) Further clarification needed as to why ACZ may be replaced, it was only recently placed in the Scheme; c) Support consistency with phrases.
3	<ul style="list-style-type: none"> a) Support b) Can't rely on land sizes alone to determine the suitability of a site for a childcare centre, should have more detailed conditions beside the section 1 use. Amenity issues particularly traffic implications must be fully considered. c) Support
4	Support
5	Support
6	<ul style="list-style-type: none"> a) Support b) Council is concerned with non-industrial uses encroaching into industrial zoned land – will this begin to erode our industrial areas? Contrary to policy. c) Same as point (b).
7	Support
8	Support
9	Support
10	<ul style="list-style-type: none"> a) Keep the UFZ, restricting certain land uses makes sense in an area subject to flood. E.g. prohibits an application to extend a dwelling in a situation where a residential zone and UFZ affects the land and the extension will be in the UFZ. Overlays don't restrict use.
11	Support
12	<ul style="list-style-type: none"> a) Use controls should not apply in overlays as it creates confusion. b) Support c) Support d) Support
13	<ul style="list-style-type: none"> a) Support – the current exemptions are presented in a very scattered and confusing manner. The proposed modification could significantly address the issue. b) Support

Provision number	Council's response
	c) Support Consideration should be given to the relationship of the environmental overlays to Clause 52.17 in the context of vegetation removal.
14	Support
15	Support
16	Support
17	There are distinctions between the flooding overlays – do these distinctions matter? This would require Melbourne Water input. As floor levels are the primary consideration, can it be code based assessment dependant on Melbourne Water advice.
18	Support
19	Support
20	Support
21	a) Support b) Support c) Support d) Don't support this, Melbourne Water involvement is required if there is a question of impeding water flow. e) Support f) Could work if the application requirements included the submission of certificate stating the flood level for the subject site.
22	Support
23	Support
24	Support
25	Support
26	a) Support a review of the car parking rates (further inclusions needed) b) Change of uses can have significant implications on car parking demand. Unsure as to whether this would be an appropriate change. Include a planning permit trigger to subdivide car spaces in the following circumstances: <ul style="list-style-type: none"> • Where car spaces have not been previously allocated, • Car spaces are proposed to be separately disposable (on their own allotment – i.e. a car park use); and, • There is an existing reduction in car parking (excluding visitor car spaces) and the number of car parking spaces on any lot is more than the maximum parking provision specified in the table. Such applications should address Clause 52.06-7 or its future equivalent. The intent here is to avoid additional or unreasonable car parking

Provision number	Council's response
	reductions at the subdivision stage with no planning justification typical in apartment or large mixed use developments.
27	Support
28	Support
29	Support
30	Support
31	Support
32	Support but question whether this is necessary.
33	Support
34	Support
35	<ul style="list-style-type: none"> a) Support and well overdue for consideration b) Defining the term 'create or alter access" won't add value, rely on the common meaning for create and alter. c) Support d) Support for standard conditions. e) Support f) Support <p>More complex applications should be referred to VicRoads.</p>
36	Support
37	Support
38	Support – clear up the confusion
39	Support
40	Support – clear up the confusion
41	<p>Support</p> <p>Need clarification on decision guidelines in Cl. 43.01 on whether minor buildings and works affect heritage values – how to ensure consistency across Councils</p>
42	<ul style="list-style-type: none"> a) Support b) Support – recommended and determining authorities are confusing e.g. CFA. Should be either recommending or determining c) Support d) Support
43 onwards	Support

Other

- Council has some concern over the proposed removal of Clause 52.27 from the particular provisions. Whilst the reduction in duplication is supported in principle, the issue of supporting harm minimisation strategies need to be considered. The Victorian Commission for Gambling and Liquor Regulation (VCGLR) processes address different issues to the existing planning scheme. Is the intention to increase the scope of the VCGLR enforcement processes? Whilst the new proposal discusses the idea of reducing the planning scheme obligations for smaller businesses in this area, Nillumbik has identified that the issue of abuse of packaged liquor is more prevalent. If this clause is removed from the planning scheme Council's ability to deal with this issue could be compromised.
- The proposed exemption discussion Clause 52.27 (b) seems to conflicting with the current arrangements of using schedules to minimise or prohibit gaming machines within commercial zones. How will the new provisions address this (potentially unintentional) change?
- The proposed streamlining of common application requirements as listed at Clause 52.27 (c) is useful improvement and should lead to increased efficiencies.
- Clause 52.27 – need to also clarify if 'intensification' of a use, such as increase in patrons or hours, needs a permit under this clause.
- Council is currently experiencing an increase planning applications in relation to tiny houses (can they be treated as a granny flat?), food vans and food truck parks. It is unclear as to how these uses should be identified and managed within the existing scheme. Is a new clause required?

Proposal 5.2 – Update the definitions section of the VPP

Council fully supports a review and modernising of the definitions.

Proposal 5.3 – Regularly review and monitor the VPP

Council fully supports regular review and monitoring of the VPP.