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The Hon. Richard Wynne MP
Minister for Planning
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Dear Minister

RE: Illegal clean fill ‘dumping’ in the Green Wedge – Amendment C130 and C131

I write to you in regard to a resolution by Council at its Ordinary Council Meeting on 28 July 2020, and subsequent further resolution of the Future Nillumbik Committee on 11 August 2020 (enclosed).

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 to protect the amenity and landscape values of the Green Wedge.

Council seeks control over earthworks and the importation and placement of fill within the Green Wedge, by requiring a planning permit. Although some of these areas are partially or wholly subject to overlays (such as the Significant Landscapes Overlay) that require a planning permit for ‘works’, not all of the areas covered by these zones are also covered by such overlays.

In these areas ‘earthworks’ are currently unregulated 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.

I note that Council formally lodged amendment C130 today, requesting you utilise your powers of intervention under Section 20(4) of the *Planning and Environment Act 1987* to implement interim controls modify (on an interim basis) 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.*

The amendment is required to provide Council with control over earthworks within the Green Wedge that are subject to the Green Wedge and Rural Conservation Zones.

Council has also lodged concurrently a request for authorisation of amendment C131, which seeks to make interim controls requested by C130 permanent.

The proposed amendments (C130 and C131) are consistent with the outcomes and Panel recommendation report for Amendment C143 to the Hume Planning Scheme that implemented the requirement for a permit for *earthworks involving the receipt, importation, stockpiling or placement of more than 100 cubic metres of fill*. Notably the Panel made the following observation and provided consideration, which reflects the issues and position that Nillumbik Shire faces in managing illegal dumping of fill in rural areas:

Land filling has become an environmental, health and safety issue for Council given its role as a growth area and the close proximity between residential development and Green Wedge and rural land with respect to land filling associated with disposing of excess soil material. Much of this activity is unregulated and is of concern to Council regarding environmental impacts to the character of its rural landscape.

Regarding the need for the Amendment, the Panel agrees with Council's concerns over the extent and nature of land filling that is occurring in Hume under the influence of both its role as a growth area and close proximity to rural land available for such activity. The lack of a comprehensive permit requirement for land filling earthworks of a large scale creates problems for Council with respect to managing and regulating such activity in order to safeguard the environment and health and safety of the green wedge and rural community. Having regard to these factors, the Panel considers the Amendment is needed in order to provide Council with the ability to manage the impacts of land filling earthwork.

In submitting these Amendments for your consideration and approval, Nillumbik Shire Council consider the matter to be of genuine State and regional significance. The introduction of the 100 cubic metre permit trigger will allow Council to more appropriately determine the proposed earthworks, assess the impact to the environment, amenity and landscape of the Green Wedge and consider appropriate mechanisms to ensure rehabilitation and remediation that furthers not only the State objectives of Plan Melbourne but those of Melbourne Water's State *Healthy Waterways* Strategy and the Environment Protection Authority's *Our Environment, Our Health* Strategy that seeks to protect the environment and people by preventing and reducing harm.

As noted above, this issue is not local to Nillumbik but rather is a regional issue that all peri-urban Councils constantly grapple with. In seeking to best respond to the objectives of Plan Melbourne *to protect the Green Wedges from inappropriate development*, Councils must be afforded the ability to introduce planning scheme provisions that allow a rigorous and considered analysis of applications in consultation with relevant authorities administering State policies and provisions critical to delivering the benefits of protecting our Green Wedges for all Victorians.

More recently as you will be aware, Yarra Ranges Shire Council held a round table discussion to discuss this very issue and together with a number of peri-urban Councils, including Nillumbik Shire Council, sought to advocate for the introduction of a particular provision in all planning schemes to appropriately regulate this growing issue for our communities. Accordingly it is put to you that this is a major issue where State policy and the Victoria Planning Provisions are at conflict and do not serve the best interests of the public.

The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known. You will be aware that recent activities at both 130 and 265 Chapel Lane, Doreen have specifically highlighted issues arising from the placement of fill on land in the Green Wedge, with widespread media coverage and letters of complaint and enquiry lodged with not only Nillumbik Shire Council, but Melbourne Water, the Department of Environment, Land, Water and Planning, and the Environment Protection Authority (EPA). Notably Nillumbik Shire's discussions with both Melbourne Water and the EPA have identified that both agencies are of the considered view that their operational Acts cannot reasonably respond to this matter, and the planning scheme and *Planning and Environment Act* are the most appropriate tools for controlling this issue.

The issues have been reasonably considered by all parties, inclusive of the local community and those of adjoining Shires and the views of affected parties are known. The matter is one that requires a coordinated approach in responding to an activity that is otherwise void of appropriate mechanisms in the planning process to have the situation dealt with in a simple, just and transparent manner. The matter requires coordination to facilitate decision making by more than one agency, particularly where other agencies are hamstrung by their respective Acts and strategies to take meaningful action towards resolution.

Nillumbik Shire Council urge you to consider and approve immediate interim planning scheme provisions to regulate the placement of fill in the Green Wedge as a matter of urgency and in the interests of the public.

We welcome an opportunity to discuss our concerns further. Please don't hesitate to contact me for any clarification. We look forward to working with you to advocate on more appropriate measures with respect to this matter.

Yours sincerely



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