

5 May 2020

**DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING**

*Through the Engage Website Portal*

<https://engage.vic.gov.au/integrating-environment-protection-reform-land-use-planning>

**Re: Nillumbik Shire Submission – Integrating environment protection reform into land use planning**

Nillumbik Shire Council welcomes the opportunity to comment on draft changes to the Victorian Planning Provision (VPP) to facilitate changes to the *Environment Protection Act 2017* (EP Act) (as amended to commence on 1 July 2020). Council acknowledges reform to the EP Act is to create a pre-emptive legislative framework allowing the elimination or reduction of risk to human health before the consequences of the hazard and exposure are realised.

Past use of land for gold mining and processing has resulted in potentially contaminated residues affecting land in large areas in the Shire, particularly in the Yarrambat and Plenty areas. These areas are currently subject to subdivision and residential development pressures. It is noted that Nillumbik Shire is 91% Green Wedge. Although not under as much development pressure, sensitive uses, particularly for use for agriculture can be impacted by historic land use including previous use of the land for treatment with herbicides/pesticides, storage of fertilisers and other chemicals, waste disposal such as illegal dumping and imported fill that contains contaminated land.

The proposed changes, particularly in regard to the EAO provide greater clarity and guidance for Council and applicants. The new assessment tools, including the Preliminary Risk Assessment are helpful additions and will provide a more effective ‘graduated’ pathway in assessment of subdivision and development for contamination.

Although this graduated pathway assists in decision making around contamination and the Responsible Authorities ‘satisfaction’ that potential contamination has been effectively dealt with, Council have concerns in regard to situations where agreement with consultant recommendations cannot be made. As with all disciplines that underpin professional consultant input, there can be variation in assessment and therefore recommendations from one provider to another.

It is noted that the assessment tools provide a reasonable expectation that a certain level of assessment will be undertaken (as prescribed by the EP Act in the case of the Preliminary Risk Screen Assessment and Environmental Audit), but the PPN is silent on any type of review mechanisms, i.e. a potential peer review by another qualified consultant. Where Council’s need to satisfy themselves that recommendations are correct, they may seek review by another suitably qualified professional to review assumptions and recommendations. This is something that can occur reasonably frequently, particularly in regard to

engineering/geotechnical advice given the significant risks that are associated with such advice.

It is considered reasonable that the PPN address this issue to avoid a cost onus to Council in having to engage consultants to undertake this work. Where there is reasonable uncertainty, there should be a mechanism to require further clarification from another qualified consultant to review the findings but not as a cost to Council's or other agencies.

It is noted that the inclusion of the 'Victoria Unearthed' database tool is a good start towards providing access to effective information for Council, landowners and other agencies to assess if potential contamination of land exists, however it is noted that Council has advocated to the State Government to formally identify all existing and former mining leases and introduce a mechanism for this information to be disclosed by vendors on sale of this land as part of their Section 32. Indeed a State-wide detailed contamination database (including former mining leases) would remove the onus from local governments in identifying sites across various databases (that are often not up to date or incomplete), and also provide certainty to existing and potential land owners as to the contamination of land. It is noted that recommendation 14.1 of the Independent Inquiry identified that DELWP '*develop a comprehensive State-wide database of sites that pose a high risk to the community because of their past use, which should link to other relevant government data sources including information held by the EPA*'. It is considered that this recommendation should still be implemented.

It is noted the requirement for a Certificate of Environmental Audit has been removed from the EAO provision and from the PPN where it was required as part of both the Overlay and PPN previously. The assessment framework identified within the PPN now appears to put onus on the preparation of an Environmental Audit (and any resulting conditions of remediation which can be included in a planning permit through a Section 173 Agreement) with no requirement for the subsequent Certificate. It is assumed that a Certificate of Environmental Audit is no longer required. Clarification is sought from DELWP in regard to this. This is a significant additional step which has often caused concern and a level of 'duplication' that was confusing to many land owners.

Thank you for the opportunity to provide this submission.

**Cr Karen Egan**  
**MAYOR**