

# Submission by Nillumbik Shire Council on the Review of the Native Vegetation Clearing Regulations

## **Overall Comments and Relationship to the Bushfire Management Overlay**

Nillumbik Shire Council welcomes the opportunity to represent our community in responding to the Department of Environment, Land, Water, and Planning (DELWP) Review of the Native Vegetation Clearing Regulations. Nillumbik Council believes that protecting the environment is vitally important and indeed many residents live in Nillumbik because of the natural environment that surrounds them.

Our environment needs protection and as a green wedge shire, Council supports initiatives that do so. Protection for the environment must be balanced with the need to protect life from bushfire. The Native Vegetation Clearing Regulations must be considered in conjunction with the Bushfire Management Overlay (BMO). The BMO is being geographically expanded in Nillumbik and when properties have both the BMO and the Native Vegetation Clearing Regulations applied, there will be a number of properties for which permits may not be able to be granted. This includes new development as well as changes to existing buildings and/or land.

The two pieces of legislation can provide conflicting requirements with one regulation requiring vegetation to be removed while the other requires it to stay. The Review does not offer any clear or certain solutions to this problem of implementation for our rural community.

The Assessment Guidelines also place an economic burden on landowners wishing to develop, redevelop or manage vegetation on their land. Landowners are required to engage ecological consultants to assist in the preparation and lodgement of their planning applications without any certainty that they will receive a favourable planning decision at the end of the assessment process. This creates anxiety for landowners with the cost burden of their application and the uncertain planning outcome as well as frustration that they are not empowered to adequately manage the bushfire risk on their land. This social impact is heightened in certain parts of the Nillumbik community who were directly impacted by the 2009 bushfires.

The recommendations of the 2009 Victorian Bushfire Royal Commission gave priority to protecting human life and were designed to reflect the shared responsibility that governments, fire agencies, communities and individuals have in minimising the prospect of a future similar tragedy. The Commission identified that communities and their needs and safety must be at the forefront of government policy. Council does not believe that this has been the case with respect to the review of the Assessment Guidelines and regulations. Council would expect that these safety, economic and social concerns are identified and addressed in preparation of a

Regulatory Impact Statement before the revised Assessment Guidelines are approved in their final form by the Government.

Therefore, the Nillumbik Council urges three courses of action. First, DELWP should consider mechanisms to deal with those residents who purchased property under existing rules who may now be at a significant disadvantage. This could be some form of a grandfather clause or other means of reasonable compensation. It is recognised that those residents who have already submitted a planning application for consideration will not be subject to the new rules, but that exemption omits many owners who may now be significantly disadvantaged into the future.

Second, DELWP should review the implementation of both the Native Vegetation Clearing Regulations and the BMO and consult directly with the community and specifically with the property owners who may be disadvantaged.

Third, although the focus of the legislation is clearly on protecting the environment as it should be, this does not preclude stronger reference to the importance of bushfire protection measures and ultimately to human life in the clauses related to the strategic objectives in the Victorian Planning Provisions (VPP) and in the Assessment Guidelines. Residents of the Shire of Nillumbik have serious concerns over the interaction of the Native Vegetation Clearing Rules and the BMO and will want assurances that their ability to take basic protective action is covered. A detailed understanding of the regulations and knowledge of exemptions go some way to alleviating this concern; however, it is not obvious to the average person upon initial reading and it would help to make that point more clear. This is not intended to detract from the key messages contained within the VPP and Assessment Guidelines regarding the importance of protecting the environment, but rather, to reassure the public that DELWP understands their concerns.

Nillumbik Council believes that a holistic, integrated and simplified approach to these issues is required and encourages DELWP to consider the combined impact of regulations from the perspective of the resident while balancing the need to protect the environment. Our residents are passionate about the environment but deeply concerned about the risk of bushfires. We believe that this could be emphasised more in the VPP, the Assessment Guidelines and other communications.

### **Other Matters**

Further to the above general comments, Nillumbik Council notes a number of changes that will negatively impact our residents.

#### *Assessment pathways*

The rules change the assessment pathways criteria and will require a significant amount of paperwork for even the basic pathway. The requirements for the basic pathway application are too burdensome. In theory, even the most minimal clearing

will require a complicated application in addition to current offsetting requirements. In actuality, this is likely to deter residents from doing the right thing and may result in more damage to native vegetation than the intended results of the legislation. Nillumbik Council urges the State to consider a simpler application process for the basic pathway and to re-examine the process for offsetting for the most basic of clearing permits. Local residents would appreciate the opportunity to be engaged in the development of any application process.

#### *Reduction in clearing threshold*

The reduction in the clearing threshold from 1ha to 0.5ha for the determination of the assessment pathway will bring many more properties under higher assessment pathways. In conjunction with changes to the assessment pathway noted above and the extension of the BMO, the issue is exacerbated. As above this is likely to deter residents from doing the right thing and may result in more damage to native vegetation than the intended results of the legislation. Consequently, Nillumbik Council urges DELWP to reconsider the change to the threshold thereby leaving it at 1ha unless other changes are made to simplify the process for the basic pathway.

#### **Positive Aspects**

There are a number of positive aspects that will assist in protecting the environment while simplifying the process. While submissions have not been asked to provide this information, we believe it is important to highlight the positive aspects and to acknowledge the efforts of DELWP to simplify and to add flexibility.

#### *Differentiation between large and small trees*

The existing Assessment Guidelines treat all trees the same regardless of size. All scattered trees were assigned a default extent of 0.071ha. This was often an overstatement of the extent relevant to the specific tree in question. The proposed amendments differentiate between large and small trees and provide a more accurate assessment.

#### *Extent of scattered trees*

The existing Assessment Guidelines apply an extent of 0.071 to each scattered tree regardless of overlapping canopy. The proposed amendments allow the extent of two or more overlapping trees that do not qualify as a patch to be determined as the actual extent of the canopy. This is a more accurate reflection of the local circumstances.

#### *Information requirements*

Applications in the basic and intermediate categories will not require an accredited native vegetation assessor. While in theory this is a positive outcome, the complicated nature of the information required is likely to mean that the average

person will require assistance through such an assessor. As noted above, a simplified application for the basic pathway would assist.

#### *Flexible arrangements for assessing species impact*

DELWP modelled data is used to determine the presence of threatened species habitats. Under the current regulations, there are situations in which the site has been reviewed by an accredited assessor who has demonstrated that the data was incorrect; that is, that the site was not a suitable habitat for that species. Despite the assessment, an offset requirement would still be triggered. The proposed amendments provide some flexibility around this issue based on a qualified assessment and therefore allow for a more accurate assessment of the site.

#### *Retention of exemption to remove Burgan and clarification of technical name*

The retention of Schedule 1.0 to Clause 52.17 which lists native vegetation for which residents in the Shire of Nillumbik do not require a permit to remove, destroy or lop is welcomed and is an important reassurance to residents that certain fire prone vegetation or other invasive native vegetation can be removed. Nillumbik Council understands that some technical clarifications to the proper botanical name for Burgan will be made.

#### *Flexibility with offset sites*

The proposed amendments will allow applicants to source their offsets under current requirements or through an offset exchange. In addition, applicants will be able to source their offset at a site with a lower strategic biodiversity value (to a limit) if the offset secured includes protection of at least ten per cent more biodiversity units, or at least two large old trees for every large tree removed. This will provide greater flexibility in sourcing offset sites and will result in more offset locations available.

### **Conclusion**

Although DELWP has not requested commentary on the general rules, recent elections in which the voters sent a clear message to Nillumbik Council necessitate the broad submission made here. Nillumbik Council believes that the overall regulatory regime including Clause 12, 52.16, 52.17 and 66.02 (which are the primary clauses in the VPP subject to the proposed amendments), should be comprehensively reviewed to better reflect the needs of our residents while still protecting the environment.

The planning application process for proposals which require assessment against the Assessment Guidelines should not be solely dependent on the expertise of Council's Environmental Planner to explain to permit applicants and other stakeholders in the planning application process the documentation requirements and assessment process. The complexity and technicality of the various regulations do not support the principles of simplicity, transparency and certainty which should underpin the assessment process.

As noted above, Council strongly encourages DELWP to review the proposed changes, directly consult with those residents most impacted, and adopt an integrated approach to all of the regulations.