



Nillumbik Pro Active Landowners (PALS)

**SUBMISSION TO MELBOURNE WATER
AND TO NILLUMBIK SHIRE COUNCIL**

CHRISTMAS HILLS LAND SALES

July 31, 2018

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INTRODUCTION

Nillumbik Pro Active Landowners ("PALS") is a group of approximately 2,000 landowners, residents and ratepayers, the majority of which live in the peri urban and rural parts of the Nillumbik Shire. It was formed in early 2016 in response to unpopular proposed local planning scheme amendments. As a result of PALS legal (and electoral) actions, (which influenced eventual composition of the current Nillumbik Shire Councillor corps), the amendments did not make it into law. The group has since been tasked with representing its constituents on a range of issues considered of vital importance to their lives, families, properties and interests.

As one Victoria's Shires most known for its significant Green Wedge areas, the current Melbourne Water Christmas Hills Land Sales program is considered by PALS to be of once-in-a generation importance, given:

- the strong landowner focus of the mandate of the NSC ("NSC") as constituted after the 2016 elections; and
- the timespan between the lands' reservation by Melbourne Water's predecessor and the current process, which has seen significant environmental, social, economic and political changes in the landscape.

The current Council was elected in significant measure as a result of the coalescence of PALS to ventilate and advocate for the interests and rights of landowners in the Shire who are proud in their assertion of responsibility for the foundation, maintenance and majority ownership of

Nillumbik's cherished and widely envied Green Wedge. The more than 1000 hectares of land which is the subject of the current process are largely located in the midst of the Green Wedge

THE ESSENTIAL MEANING AND SIGNIFICANCE OF THE GREEN WEDGE TO PALS

When the Shire of Nillumbik was formed in 1994, its strategic focus was on the conservation of the Green Wedge. Over time and with the recent (long forgotten or mistakenly overlooked) recognition of landowners critical role in the establishment of and management contribution to the Green Wedge, it is consideration and understanding

of landowners value to the Green Wedge's management which should provide both Melbourne Water and NSC with another lens through which to consider the land sales process – which PALS submit should balance a conservation emphasis with responsible land management, which is central to the NSC's current mandate. This vital role of landowners is the foundation for both Melbourne Water and NSC to weigh with renewed emphasis, this critical submission, particularly given the extensive PALS constituency in the Green Wedge

NSC has itself recognised that Nillumbik's *"Green Wedge is distinguished from others by the quality of its environment and natural bushland. It covers approximately 91% of the total Shire area. The remaining 9% 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. 20% (sic) is used for agriculture, another 20% is conservation areas. **Seventy-nine percent of the Green Wedge is in private ownership and approximately 43% of privately owned land is of environmental significance. (emphasis added)"***¹

OPPORTUNITY AND CHALLENGE MELBOURNE WATER & NSC COLLABORATION

PALs view the impending land disposal being undertaken by Melbourne Water around Christmas Hills presenting a monumentally important and complex host of opportunities, challenges and outcomes.

It is critical that NSC and Melbourne Water work in close partnership to achieve what could potentially be a ground-breaking approach to realising a vision resulting in a robust blend of conservation and human occupation.

Melbourne Water must fulfil its legislative obligations to dispose of the land covered by its Public Acquisition Overlay (PAO) but has both a moral and financial responsibility to achieve the maximum return for taxpayers, as well as incorporating the importance of minimising red tape and bureaucratic requirements for future landowners.

As made clear by PALS in its recent formal representations to NSC on the **Green Wedge Management Plan Review** current being conducted, The State Government and Governments nationally recognise contemporary trends towards the reduction of red tape. Consequently, The State of Victoria has established The Office of The Red Tape Commissioner, with whom PALS have held extensive discussions in person, which has provided an appreciation of the trend and the seriousness with which it is being addressed by Government. Melbourne Water and the NSC must similarly recognise and adopt this approach in the consideration and development of their plans in relation to this significant segment of the Shire and The State. Any land management and development settings should be facilitated for the next generation of landowners being now sought through the sales process by fundamentally and significantly reducing red tape in this critically important disposal and subsequent reoccupation process both for the current and successive generations.

OPTIONS DEVELOPMENT REPORT – CHRISTMAS HILLS LAND USE STUDY

This Report was prepared for Melbourne Water by *spiire* in March 2018. The Report is very detailed and comprehensive. PALs commends *spiire* on both the quality of the Report and on the in depth analysis of the sites and potential options going forward.

The Report has covered the issues extensively and draws some very sound conclusions.

Of particular importance to PALs are the ongoing pathway and outcomes related to potential zoning changes with the land use area.

The Report states:

“The planning controls applied to the Study Area are just as important in guiding land use and development in the area as the proposed subdivision component of the Master Plan. In particular application of appropriate planning controls can serve to protect and enhance biodiversity and landscape values.”

“In addition to zoning changes it may be appropriate to apply secondary planning mechanisms to the Study Area to ensure future development and land use is managed to minimise impacts on the environment and cohesion of the area. The final master plan will provide specific direction for subdivision and dwelling development in the Study Area. This is likely to include design guidelines and land use direction. Implementation of the master plan through the Nillumbik Planning Scheme is considered to be an appropriate outcome.”

The Report contains a discussion on three proposed options going forward. The quotation above originates within the context of the preferred *Option 2* which states:

“Option 2 provides for change within the Study Area whilst minimising the impact on the Green Wedge. It also allows for planning controls to be altered without the need for Parliament Ratification”.

PALs support the principles of *Option 2* but also supports the thrust contained under the *Option 3*. Heading 7.4 – ALTER ALL LAND, which states:

“General Option 3 for the Study Area would seek to alter planning controls across all land within the Study Area (public and private)”.

PATHWAY FORWARD

The Christmas Hills land is unique as it exists under the single ownership of Melbourne Water.

This provides an opportunity to achieve a win-win scenario in terms of achieving a strong financial return for Melbourne Water whilst simultaneously delivering an outcome to facilitate human occupation of the area. The outcome sought should see a fire-conscious (safe) environment combined with the ongoing protection of the existing vegetation, which (properly planned and managed) need not result in the apparent oxymoron.

The same potential exists for the NSC through an increased rate base and the creation of another strong local community.

OPPORTUNITY TO STREAMLINE PLANNING

The Government is currently engaged with an extensive review and update process of the Victorian Planning Provisions (“VPP”) with the guiding principle to achieve a system that is smarter, faster and simpler. The NSC now have an opportunity to contribute to that guiding principle by developing this component of the Nillumbik Planning Scheme with the potential to deliver a localised framework that is simpler, cheaper and shorter.

The challenge and moral responsibility is to facilitate future human occupation of the subject land parcels, with minimal red tape and minimal burdensome, expensive and time-consuming permit requirements.

This should be a clear duty of care to prospective purchasers. It would be morally irresponsible to allow the sale of any of the existing titles to new owners with the knowledge that their future ability to actually occupy and live on that title would be severely impacted by potential delays of multiple years and having to spend thousands of dollars just to find out whether their permit application to build would be granted.

Therefore, it is PALs view that Melbourne Water, in close partnership with the NSC, should undertake and complete the process necessary to ensure that, once an allotment has been sold to be public, a purchaser should have the certainty and guarantee that they will in fact, be able to build their home. Melbourne Water and NSC both have a duty of care to deliver that certainty.

PALs assert it is incumbent on Melbourne Water to create a planning framework that facilitates the above, in order to satisfy that duty of care. It is incumbent on the NSC to facilitate that duty of care and provide due support to Melbourne Water to achieve that outcome.

A component of the framework has been addressed already within the *spiire* Report with the initial work completed in relation to a Master Plan. It is acknowledged in the *spiire* Report that the future planning for the site should indeed be based around this concept of a Master Plan or Development Plan.

Much of the work towards a final Development Plan has already been completed within the *spiire* Report, which to date includes a detailed analysis of the existing titles that comprise the overall site and include:

- potential building site – building envelopes,
- defensible space – to create acceptable defensible areas from bush fire attack,
- potential access – both road and driveway,
- identification of areas that are unsuitable for dwellings or occupation,
- identification of significant vegetation,
- identification of environmentally sensitive areas,
- identification of areas of importance from a heritage perspective.

Whilst it is sensible to incorporate a Development Plan for the site, the mechanisms and opportunity to insert such a plan into the existing planning framework is confusing and difficult and in PALS opinion, would not provide the certainty that is required. Such a Development Plan set up within the existing planning framework could be open to legal challenge.

PALS submit that to continue to work within the existing planning controls of Rural Conservation Zones, Green Wedge Zones and other existing controls, will not deliver the best planning outcome for both the community and its future residents.




PALS submit that there is an opportunity to create a framework that both satisfies and acknowledges the environmental sensitivity of the area as well as giving people certainty that, should they purchase land within this area, they will indeed be guaranteed their right to build.

INNOVATIVE PLANNING CHRISTMAS HILLS SPECIAL USE ZONE

The proposal is to create a ***Christmas Hills Special Use Zone*** to cover the entire area under the control of Melbourne Water now. This could have the potential of expanding to adjacent land that displays similar characteristics, but currently lies outside the Melbourne Water land and/or is in private ownership.

Within the immediate area there are already existing examples of *Special Use Zones*.

These include:

Existing Special Use Zones	
Bend of Isles Special Use Zone	
Heritage Golf Club Special Use Zone	
Eltham College Special Use Zone	

These examples serve to demonstrate the variability in the application of this special use zone framework. In fact, the *spiire* Report already makes reference to the potential for a **Special Use Zone** in its deliberation over the future of the Rob Roy land and its best future management outcome.

If a **Special Use Zone** were to be created within the Christmas Hills precinct, it would create a much needed identity for the area and set it apart in terms of both preserving the landscape whilst encouraging occupation, albeit within reasonably tight controls.

DELWP assists here with some advice in relation to *Special Use Zones*.

"Planning Practice Note 3: Applying the Special Use Zone"

"Master planning for sites"

... "The Incorporated Plan Overlay or the Development Plan Overlay is the appropriate tool to encourage master planning and to provide exemptions from third party notice and review for permit applications which are generally consistent with the incorporated plan or the approved development plan."

"37.01 SPECIAL USE ZONE"

"To recognise or provide for the use and development of land for specific purposes as identified in a schedule in this zone."

"The schedule to this zone may specify that an application is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act."

PALs submit that Melbourne Water and the NSC work together with a view to examine and adopt the concept of a **Christmas Hills Special Use Zone**.

The principles to be considered in relation to this zone would include:

1. Preparation / finalisation of a detailed and comprehensive Development Plan.

Much of this has already been undertaken within the *spiire* Report. The Development Plan should include all relevant parameters that would/could control the:

- location of dwellings,
- outbuildings,
- infrastructure,
- works,
- driveways,
- access,
- existing areas of open pasture,
- future areas of potential open pasture,
- existing vegetation,
- areas of environmental significance,
- no go areas,
- existing uses rights,
- preferred future uses,
- identify defendable space areas,
- fire-fighting infrastructure,
- stipulate individual site controls,
- water and effluent requirements,
- road frontage requirements,
- any anomalies in relation to title boundaries,
- areas suitable for further subdivision,
- areas where boundary re-alignments could result in acceptable allotment outcomes.

2. Land Disposal process and planning permit triggers

Once the Development Plan has been completed and identified/tagged allotments available for sale to the public, the disposal process would utilise that identification and release those parcels accordingly.

As long as a purchaser remained within the confines and controls established in the Development Plan, the new owner would be able to build their home and live on their land without the need or requirement for a planning permit. This would provide the necessary certainty for the purchaser and would satisfy the clear duty of care that Melbourne Water have towards that purchaser.

If a purchaser wished to vary any of the parameters set out in the Development Plan, then the normal requirements for a planning permit would be triggered.

This solution is site specific and eliminates the likelihood of any ongoing disputes. Every party knows where they stand in relation to what is allowed and what is subject to a planning permit.

Costs are minimised, time delays are eradicated and new landowners can move directly towards their goal of a home on their land.

Further, as with the case with all **Special Use Zones**, there would be an accompanying schedule to control the implementation of the Development Plan and specify circumstances where a planning permit is and is not required.

Where a planning was required, the schedule would detail what is required in order for the council to make an informed assessment and determine whether a planning permit should issue or not.

3. Benefits to the Green Wedge, landowners and the community

The best contribution that the Melbourne Water Christmas Hills land could provide to the Green Wedge is its health. The best way to enable this to occur is to encourage homes on the existing parcels and allow limited subdivision. People that live on site are far more likely to maintain and care for their land than absentee owners. Pasture improvement, good property maintenance and encouragement for appropriate levels of livestock (cattle, sheep, goats, horses, alpacas) all deliver the best chance of a healthy landscape. These uses should be encouraged and should also require no permit.

Subdivision should be permitted where there are identified locations on each prospective new parcel as to where a dwelling could be appropriately located, in conjunction with maximising the potential for healthy land in each parcel. Boundary re-alignments could be

encouraged where there is an improved potential to create healthy land and appropriate house sites.

To have people on site is the single most important mechanism for a healthy landscape, as well as the best management tool to minimise the impacts of a major bushfire event. If the land is allowed to remain unoccupied there is huge potential for fire events to gain momentum and traction.

People on the land

- maximises access for CFA and other fire-fighters,
- increases penetration into individual sites for fire-fighting purposes,
- maximises access to invaluable static water supplies,
- maximises the opportunity for preparatory or ongoing maintenance works on each occupied site,
- maximises the likelihood that important landscapes of open pastures and open land are maintained to provide a critical weapon for CFA and fire-fighters,
- maximises the likelihood of being able to contain / control / mitigate the passage of the fire front across their land,
- minimises the likelihood of ember attacks gaining a foothold on individual properties,
- minimises the loss of infrastructure, property, buildings, dwellings and, most importantly, human life by virtue of the fact that the property is properly prepared with appropriate safeguards for refuge, thus allowing landowners to stay and defend if they so choose,
- increases the likelihood of having properly maintained egress opportunities should there be a need to evacuate,
- maximises the likelihood of a local community identity and introduction of local community infrastructure,
- Positive contribution to a healthy green wedge.

Vacant or unoccupied land

- maximises the likelihood of unmaintained land and unimpeded growth of pest plants and noxious weeds,
- minimises the ability of CFA and other fire-fighters being able to penetrate the land,
- maximises the likelihood of fire events traversing and gaining momentum across the landscape,

- creates negative visual effect by having messy, ugly weed and pest plant infestations,
- maximises the likelihood of the unimpaired spread of feral animals,
- is counter productive to a vibrant green wedge,
- minimises the likelihood of a strong local community through township identity.

PALS SUPPORT OF RECOGNITION OF LONG USER OCCUPANTS

PALs support the preservation of the Rob Roy Hill Climb facility with the land being transferred to the Crown and a Committee of Management established to ensure its long term survival.

PALs supports the option to transfer ownership of the Ponyland land in Osborne Road to the existing tenant to ensure its ongoing operation.

PALs support the retention of Waneroo Farm as an ongoing farming enterprise but on the basis that, if this ongoing use leads to the degradation and neglect of that particular landscape, then consideration should be given to the subdivision of that land to enable smaller parcels that would more than likely be appropriately and properly maintained into the future.

PALs have serious concerns in relation to the size of the area proposed to be transferred to the WKNCR and its potential for a significantly increased fire risk to the immediate adjoining areas as well as the potential to create a fire wick to incinerate lands to the south fanned by northerly winds.

PALs appreciate and understand the environmental considerations in relation to the proposed transfer of this land but would submit that any transfer should be contingent upon an approved fire maintenance program, under the direct and immediate control of the CFA, being guaranteed and implemented with required targets set and assessed against performance.

REFERRAL TO IMPORTANT PALS INFORMATION

PALs refers Melbourne Water to the detailed and important information contained in its recent submissions in relation to fire management in the Green Wedge - ***Victorian Parliamentary Fire Season Preparedness Inquiry***, in which Nillumbik Shire was given singular prominence, after PALS extensive submissions.

https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Fire_Season_Preparedness/Submissions/Submission_59_-_Nillumbik_Pro_Active_Landowners.pdf

PALs also refers Melbourne Water to the detailed and important information contained in its recent submissions in relation to native vegetation clearing in the Green Wedge - ***Victorian Government Review of Native Vegetation Clearing Regulations and Victoria's Biodiversity Strategy Review***:

https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Fire_Season_Preparedness/Other_docs/Nillumbik_PALS-QON-28022017.pdf

These submissions should be read in concert with this current submission, as they have had substantive influence in Victoria, given Nillumbik's status as the world's most heavily vegetated, highly populated, fire prone zones on Earth.

CONCLUSION

The overriding purpose of this submission is to achieve the end result of certainty to future landowners via a process that establishes a robust outcome that is visible to all.

The end result of the appropriate disposal of the existing titles can be achieved through a smarter mechanism to deliver a simpler, shorter and cheaper pathway for future residents.



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Nillumbik PALS

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