Nillumbik Pro Active Landowners (PALS)

RESPONSE TO

Planning And Building Approvals Process Review – Discussion Paper

November 2019

NILLUMBIK PALS PROACTIVE LANDOWNERS

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Response To Planning And Building Approvals Process Review Discussion Paper

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Nillumbik Pro Active Landowners ("PALs") actively represent in excess of 2000 landowners and their families across the rural, semi-rural and peri-urban areas of Nillumbik Shire.

PALs constituents are not politically aligned but represent extensive, community-based views as they affect landowners' everyday lives, livelihoods, property rights, enterprises and their right to legitimately live within the rural and semi-rural landscape.

This PALs response represents the broad views of our members who continue to be deeply concerned at the extensive array of both State and Local Government red tape as well as the oppressive over regulation imposed through State Legislature and the Victorian Planning Provisions.

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GENERAL OBSERVATIONS

The *Discussion Paper* is an extensive document (144 pages) that seeks to discuss and address the core issue of excessive red tape.

PALs observe that any paper that commences with a Glossary containing a page and a half of acronyms (57) detailing the assorted Bodies and/or Departments as well as existing programs or pathways is an indictment of a system already swamped by excessive red tape and over regulation.

There is an inferred intent of the Discussion Paper to address the reduction of red tape across the full breadth of the VPP, including areas covered by rural, semi-rural and peri-urban areas and applicable zonings, but the reality is that the Discussion Paper only addresses matters that relate to inner suburban applications, mid suburban applications and green field developments.

It is disappointing therefore to find within the content of the Discussion Paper only a singular reference to any matter related to rural zonings and overlays[1]. It appears tokenistic.

The failure to address, or even discuss, the important issues related to excessive red tape and regulations pertaining to permitted uses within rural zones represents a fatal flaw in the process.

It is a clear and obvious intent of the *Discussion Paper* to make a poorly defined effort to assist Applicants / Developers by streamlining current processes to deliver outcomes within a shorter timeframe than is occurring currently.

Whilst this goal is most worthwhile, the issues related to individual dwelling applications, particularly those within semi-rural, peri-urban and rural areas, still under the overly strict controls of the VPP, have been totally ignored.

However, PALs supports the core principle of a red tape review and has previously held a private meeting with the then Red Tape Commissioner (2017) to discuss our concerns with immediate reference to the effect of excessive red tape on landowners, mainly through the ever increasing imposition of regulations, requirements and controls eagerly enforced by over-zealous council planners on applicants and landowners, as well as the opaque and possibly corrupt vegetation offsets scheme.

The common use of the terminology *"the planning scheme is complicated"* has been the go-to phrase that apparently authorises council and State Government Departments to bombard applicants and landowners with requirements, controls, enforcements and restrictions as well as a frightening array of Zonings, Clauses, Overlays, Consultants Reports, Studies, Assessments and supporting information for any planning application or in response to enforcement actions of alleged breaches of the VPP.

1. Page 38. A1 Simply Planning Schemes. Opportunities for improvement. Removal of duplicative permit requirements from different overlays.

The massive financial and mental strain on applicants and landowners presents a disgrace and clear disregard of human dignity and human rights, all of which is inflicted before any notion of actually building is seriously contemplated.

The combined effect of these excessive requirements and costs is a mechanism apparently designed for bureaucrats to dissuade applicants or respondents from continuing or commencing their applications.

It is abhorrent to PALs that any bureaucracy, be it Local Government, State Government or State Government Departments, can inflict such pain and suffering on their constituents.

It is also inconceivable that, should one emerge from the tortuous regime with a planning permit, the Applicant is then routinely and systematically subjected to the draconian Vegetation Offsets Scheme that will invariably impose a massive financial "cash contribution" into the opaque government coffers to "offset" the loss of native vegetation related to their application. It is consistently forbidden to replace vegetation loss with vegetation replanting in the same location.

Just in relation to single dwelling planning permit applications the permit process routinely:

- Takes up to 3 to 4 years to complete, if at all.
- Costs the Applicant anywhere from $10,000 up to and beyond $300,000 for up to 15 Consultants Reports, many with ongoing requirements for monitoring.
- Be subject to vexatious objections from often distantly located, unrelated and unaffected environmentalists.
- Involves almost certain VCAT appeals either against pre-determined council officer refusal, or vexatious objectors, adding another 6 – 12 months and around $50,000 to the process.
- Results, if ultimately successful, in a planning permit that would consistently contain dozens or even scores of conditions, requiring vegetation offset payments usually within the $10,000 - $100,000 range, and without fail, sets further requirements for supply of additional information such as Land Management Plans, Engineering Design for driveways and ongoing monitoring by council officers awaiting the first opportunity to apply fines and/or enforcement proceedings for non compliance.

All of the above regularly occurs within Rural Zoning that permits single dwellings, albeit with a planning permit.

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CASE STUDY

Single dwelling planning permit application on 12ha in PantonHill

Application for one bedroom dwelling (approximate cost $110,000) on owners location – light bush (no major trees proposed for removal and none in the vicinity of house location), minimal grade for house location, 300 metre driveway along contours and crossing a dry gully.

- Land zoned Rural Conservation Zone – Schedule 3, ESO and BMO requirements.
- In excess of $300,000 spent on Consultancy fees (many Reports forced to be done at different times of year in an attempt by council to find adverse outcomes).
- 2 frog studies.
- 4 Ecological Studies.
- Fire expert evaluation for original location and subsequently at council forced location.
- Engineering study to show effects of driveway on landscape.
- Wildlife Study to determine effect of driveway on passing wildlife.
- Eventually obtained Melbourne Water consent for gully crossing.
- Eventually obtained DELWP consent for vegetation removal (subject to vegetation offsets – see below).
- Eventually obtained CFA consent for fire related matters.
- Subject to objections from local extreme environment groups none of whom live within 30km of the site. 3 objections all received by council on the same day but were all 3 weeks after the completion of advertising requirements.
- Council Officer dealing with application continually used the typical "drip feed" method for RFI's and response to RFI's. Also had close contact with objectors.
- Five (5) years to finally obtain planning permit to build on a location **determined by council** (not applicant) 20 metres from road frontage on a 25 degree slope.
- Permit contained 14 pages of conditions.
- Vegetation offsets yet to be finalised but expected to cost around $60,000.
- Further requirements for full engineering design of driveway and dwelling excavation with ongoing supervision (as a direct consequence of council location requirement).
- Further requirements for a Land Management Plan.
- Further requirements for an effluent disposal study to demonstrate that effluent can be contained on the site without affecting the gully. (Note: Had dwelling been approved in applicant's location this would not have been necessary – but due to council forcing applicant to relocate dwelling, effluent became an issue due to proximity to gully).

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PALS RESPONSE TO DISCUSSION PAPER

The regulatory system and VPP are designed to cater for ever increasing bureaucracies.

The applicable type of bureaucracy can occur at every, or any, level of Government.

This presents the dilemma of the chicken and egg conundrum.

Does the system need to be complex in order to deal with the day to day requirements of Government and hence bureaucrats need to proliferate in order to decipher and interpret that ever more complicated system, or is it in the interests of bureaucrats to make the system complex in order to justify their existence as it is apparently beyond the scope and mentality of mere humans to comprehend?

The interests of bureaucrats and, in particular, the public servants that operate within each level of the relevant bureaucracy, are best served by a "complicated" regulatory system.

That is, the more complicated and protracted the system is, apparently the more relevant the bureaucracy is that controls, manages and presides over that system.

SIMPLIFY THE SYSTEM → REDUCE THE REQUIREMENTS WITHIN THE SYSTEM → LESS PERSONEL REQUIRED TO MONITOR THE SYSTEM → REDUCTION IN RED TAPE

PALs submit that the sole solution proposed by the Discussion Paper to reduce red tape is to increase bureaucracy numbers so that supposedly the dealings that the public, developers, applicants and landowners have with the relevant bureaucracy can be dealt with more expeditiously.

PALs submit that increasing bureaucracy numbers will not result in a reduction of red tape.

If the number of public servants is increased it will only result in a short term benefit in application turnaround.

"Complications" will quickly return and the processing, or lack of it, will quickly deteriorate because the applications are becoming even "more complicated".

If RFI requests are required to be more timely and targeted, this will only result in more complicated RFI's and an increased initial reluctance by the relevant bodies to accept any application in the first place without clearing all of the hurdles placed in front of applicants for information.

This is not a reduction in red tape. This will only deliver a longer backlog of applications awaiting acceptance.

PALs submit that the only way to reduce red tape is to reduce the level and type of material and information that bureaucrats are to consider.

If bureaucrats have **less requirements** that must be considered against any given application, then any given application will be dealt with more expeditiously.

The key to red tape reduction is to reduce controls, reduce requirements, reduce the cost to applicants, reduce the overlays and simplify the VPP. In short, give the bureaucrats less to do and they will do it faster.

Combine the above with more rigorous application of default time frames whereby a lack of decision or action by council and/or an authority automatically results in approval.

This would dramatically reduce the need for constant referral to VCAT and result in a reduction in the required staffing level for those charged with the delivery of results and permits.

The appropriate matters that planning staff, both at council and government levels, ought to be involved with is at a more strategic level, getting the policy settings right and setting the correct policy direction.

The day to day application of permit assessment and requirements should be a straight forward process that could just as easily be privatised.

A suitably accredited planner could just as easily assess all of the day to day requirements in order for a permit to be issued. Once assessed and approved by the accredited planner then the application would be forwarded to the council for their records and random auditing.

Privatisation combined with simplified planning controls and overlays would be a major step forward in the reduction of red tape.

It is of considerable importance to reduce the number, complexity and types of consultants reports and studies currently listed in many of the current Overlays. Most of the reports now required do not relate directly to the application, but rather are used as an excuse to impose a council or DELWP sanctioned environmental control regime over the entire property.

An important contributor to a simplified regulatory system is enhanced and expanded "as of right" provisions being built into the VPP.

Whilst some work was done in this area in the review of the VPP, and briefly discussed in the Discussion Paper, not enough was achieved to be of any significant longer term benefit.

The PALs submission to the VPP is attached in Appendix A.

Further to our submission to the VPP review and within the context of this submission, PALs propose that further work be undertaken on "as of right" provisions as well as further work on the VicSmart provisions and their expansion.

As detailed above there is a strong argument for the privatisation of VicSmart applications.

If the privatisation was combined with an expanded range of VicSmart triggers, particularly in relation to single dwellings on RCZ land in rural, semi-rural and peri-urban areas, then the totally unacceptable situations of which there are many, as detailed in the above Case Study, would be rightly consigned to history, never to be repeated.

PALs strong belief is the most efficient and ultimately the most successful way to reduce red tape is to simplify the system, not populate the bureaucracies.

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APPENDIX A

Nillumbik Pro Active Landowners (PALS)

SUBMISSION ON

Reforming the Victoria Planning Provisions ("VPP")
Discussion Paper

1 December 2017

Nillumbik Pro Active Landowners (PALS)

SUBMISSION ON

Reforming the Victoria Planning Provisions ("VPP") Discussion Paper

1 December 2017

BACKGROUND INFORMATION

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. The group was formed in early 2016 in response to unpopular proposed local planning scheme amendments. It is comprised of well intentioned, not politically aligned landowners from all walks of life, with a diverse range of skill sets and talent. As a result of PALS legal (and electoral) actions, (which influenced eventual composition of the current Nillumbik Shire Councillor corps), the proposed planning scheme amendments which inspired the formation of Nillumbik PALS 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 of the areas of Victoria most impacted by the tragedy of the Black Saturday in 2009, bushfire related issues have been and continue to be at the forefront of our constituents concerns. The operation and application of the Victorian Planning Provisions, the duplication and replication of local and State laws and the inter-relationship between planning, environment and development and the consideration of the potential influence on bushfire behaviour, severity and potential mortal danger are at the forefront of our concerns. We are pleased to have the opportunity to have a substantive input into the review of the Victorian Planning Provisions given our recent experience which has been of Statewide significance.

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NILLUMBIK – THE SHIRE

The Shire of Nillumbik is located less than 25 kilometres north-east of Melbourne, and has the Yarra River as its southern boundary. It extends 29 kilometres to Kinglake National Park in the north. The Shire stretches approximately 20 kilometres from the Plenty River and Yan Yean Road in the west to Christmas Hills and the Yarra escarpment in the east.

The Shire covers an area of 431.94 square kilometres and has an estimated population of 64,219 who live in close-knit communities which range from typical urban settings to remote and tranquil bush properties.

Areas and townships of the Shire of Nillumbik

- Arthurs Creek
- Bend of Islands
- Christmas Hills
- Cottles Bridge
- Diamond Creek
- Doreen (parts of)
- Eltham
- Eltham North
- Greensborough (parts of)
- Hurstbridge
- Kangaroo Ground
- North Warrandyte
- Nutfield
- Panton Hill
- Plenty
- Research
- Smiths Gully
- St Andrews
- Strathewen
- Watsons Creek
- Wattle Glen
- Yarrambat

Land within Nillumbik Shire, including townships, peri urban and rural areas, is widely recognised and understood as being amongst the most fire-prone, heavily wooded, highly populated areas not only in Australia, but worldwide.

Townships contain significant stands of native vegetation which is protected by Local and State planning and environmental protection legislation. Much of the Shire is within the north east Melbourne Green Wedge by virtue of which the clearing of native vegetation is significantly hindered or restricted. Arcane State based native vegetation clearing regulations further impede effective bushfire prevention and mitigation works. Local and Victorian Planning Provisions have particular relevance and impact in this particular community.

COMPREHENSIVE REJECTION OF BAD LAWS – LOCAL AND STATE

RESOLUTE OPPOSITION TO LAWS PROPOSED OR MADE

PALs formed 18 months ago in response to proposed Nillumbik Planning Scheme Amendments C81 and C101 which proposed sweeping changes, restrictions and significant increases in the complexity and degree of red tape with which applicants would have been required to comply for any planning applications within the Rural Conservation Zone, as well as the Green Wedge and peri urban areas in the Nillumbik Shire.

- **Proposed Nillumbik Shire Planning Scheme Amendment C101**
  A Nillumbik PALS member, Max Parsons of Kangaroo Ground, took legal action against Nillumbik Shire Council ("NSC") at VCAT and on 11 November 2016 VCAT declared in ***Parsons v Nillumbik SC [2016] VCAT 1898***, as foreshadowed by Parsons, that NSC failed to comply with ***s28 of The Planning and Environment Act 1987*** in not notifying the Minister for Planning of the abandonment of C101 by NSC – after a binding 5-2 vote of the NSC Policy and Services Committee seven months previously.

  The abandonment had come after landowners lobbied vociferously about the flawed development of the proposed planning scheme amendment and about its potential for exacerbation of bushfire risk, amongst other concerns relating to the interference with landowner rights and to the imposition of controls regarding routine land management activities.

After a subsequent investigation commissioned by the newly elected NSC in late 2016 and presented in February 2017 by ***Christopher Wren QC***, one of a series of serious recommendations made in the ***Executive Summary of the Investigation into the abandonment of Nillumbik Planning Scheme Amendment C101*** was:

> "that consideration be given by the incoming CEO to a review of Council's vegetation offset programme in the context of the programme's transparency and accountability "

This, for an aspect of the environmental law development regime that was not an initial subject of the Terms of Reference of the Investigation. This flagged the vegetation offset programme as a concern for Nillumbik PALS at a local level, which has now expanded to a State level, as more attention has been drawn to it.

It appears to be a source of prospective or actually rampant distortion, effective state sanctioned punitive extortion and corrupt administration.

These identified and systemic problems and associated mortal hazards are materially and unacceptably exacerbated when combined with existing environmental and planning provisions and proposed sweeping changes to local and State fire protection services.

Proposed Nillumbik Shire Planning Scheme Amendment C81
The other proposed planning amendment (C81) was refused approval by the Minister for Planning Richard Wynne MP on 12 February 2017 after going through years of planning scheme amendment development processes. In refusing to approve C81, which had gone through the entire planning amendment process and which had been passed to the Minister for Planning for final determination on 24 May 2016, the Minister delivered a scathing rebuke to the former NSC and in particular to its planning department, attributing his refusal to approve as follows:

> "After careful consideration, I have decided to refuse to approve Amendment C81. The spatial application and content of the Schedules to the Significant Landscape Overlay are an inadequate application of the Victorian Planning Provisions with respect to the purpose, geographic application and form and content. Overall, I am not satisfied that the amendment would result in a good planning outcome because the amendment includes duplications, contradictions and inconsistencies with a number of existing provisions within the Nillumbik Planning Scheme."

A copy of the letter from the Minister for Planning to the Mayor of Nillumbik is to be found at this link: **https://app.box.com/s/45nlt5wx25ssz74cmlkhy8xp8ppnkovo**

The refusal to approve attested to the poor planning outcomes and PALS asserted that as the proposed planning scheme amendments C81 and C101 virtually sought to mirror many of the details of the State ***Native Vegetation Permitted Clearing Regulations***, the Victorian Government could not credibly nor responsibly impose similar regulation in the face of the rejections of C81 and C101 by the most fire prone, highly populated, highly vegetated zones on Earth.

We are determined that the opportunity presented by the current proposed reform of the Victorian Planning Provisions must be taken and must incorporate and take heed of the lessons learned at the local level in Nillumbik. We cannot support, endorse or tolerate a suite of planning legislation that would undermine the advances made to date on the above issues which have bushfire related issues and the primacy of human life at their core.

We submitted at the time that it was apparent that the flaws in the initial consultation processes in which the NSC engaged while developing the now defunct local laws were also mirrored in the approach taken by DELWP in consulting with select environmental groups in the development of the State ***Native Vegetation Permitted Clearing Regulations***. In fact it appeared that the unbalanced, selective method of consultation demonstrated in Nillumbik seems to be endemic when it comes to the development of restrictive environmental controls, many of which appear to have become enshrined in many Victorian Planning Provisions. Those materially and personally impacted by proposed environmental laws seemed to be deliberately excluded from or marginalised in the process. This exclusion illegitimated the entire regime and we called for the complete dismantling and re-engineering of the regime.

Similarly, we also are concerned in relation to the consultation processes which have been involved in the development of the regime which is the subject of the current reform. It appears to PALS that, particularly in relation to purported environmental aspects of the planning regime, the piecemeal and incremental increase in compliance requirements over decades, which has gone virtually unnoticed but is paradoxically afforded credibility or legitimacy based largely on the passage of time rather than on sound environmental or planning credentials, has resulted in the arcane system as it exists in Victoria, which local government then seeks to impose or replicate locally. This has spawned an entire consultant industry and a regime of practically impossible to comprehend regulation.

We have repeatedly and resoundingly communicated our view that it is imperative that Victorian Government environmental policy supports and is consistent with Victorian Government emergency services policy. These should be considered in relation to this planning reform given the important interaction between planning, the environment and human safety.

We also now emphasise that Victorian Government emergency services policy must recognise and reflect the core role of government being to protect and serve citizens first, as its highest priority; and reflect the prioritisation of the safety of all Victorians in all policy, strategy, and regulation.

This is the context within which this PALs submission is made, together with reference to PALS other important submissions such as that made to the Fire Season Preparedness Inquiry detailed on page 7.

PALS SUBMISSIONS TO THE VICTORIAN PARLIAMENTARY INQUIRY INTO FIRE SEASON PREPAREDNESS 2016/2017

PALs made two formal submissions to the ***Victorian Parliamentary Inquiry into Fire Season Preparedness***. PALs were extensively quoted and referred to in the Final Report of the Inquiry.

This reform process again provides the Government with an opportunity to immediately appreciate and understand the seriousness with which PALs treat the serious and complex issue of fire and its effect throughout the Nillumbik Shire and the State. To most people in the broader community the issue of the impact of planning controls and environmental controls are only of passing interest.

To all residents of Nillumbik Shire, the issue of the threat of bushfire is the single most important issue faced, day in day out. All residents live with the spectre of fire, much more so within the annual fire seasons from late September, through the heights of the Summer and continuing through to May. The potential exists of a life and death scenario each and every fire season.

Fire seasons require all residents and landowners to be on continued high alert. The role of landowners and residents also plays a crucial role in the management of the potential fire risk and the minimisation of any outbreak of fire across the Shire and further across the State.

As canvassed extensively in our submissions referred to above, PALs represent the views that, as landowners, we have a responsibility to properly maintain our properties to minimise fire risk year in, year out. Planning provisions should not exacerbate the existent risks.

PALs were instrumental in the abandonment of proposed planning scheme amendments which proved a victory for common sense and which called a halt to the seemingly never ending increase in local bureaucratic red tape.

Within the context of the *VPP Reform,* PALs submit that we are very well placed and hold a very relevant and authoritative position to be able to have a constructive, valuable and decisive input to Government in relation to the long overdue reforming of the VPP.

The main area of input to the *VPP Reform* will be directed towards matters that may, either directly or indirectly, impact our constituents. Therefore, the main emphasis of our submission relates to peri urban, rural, agricultural, land management, green wedge and environmental matters related to home building, land use, vegetation management and landscapes.

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VPP REFORM – Survey results June 2017

The above survey was apparently circulated in June 2017. It appears that the circulation of this survey was confined to a selected group of users. Due to the very nature and complexity of planning schemes, it would appear that the "public" effectively had no opportunity to respond or contribute to the survey. This appears to be consistent with many of the issues in relation to consultation identified above in the development locally of proposed planning scheme amendments and at State level with review of the important legislation in relation to native vegetation clearing.

Any lay person's ability to comprehend the highly complex, convoluted and cross referenced system of zones, overlays, controls, statements and guidelines, let alone the individual interpretations by Council planners and the undue influence some local activist groups have over those interpretations, all point to an effective denial of effective input to the process and therefore - access.

- The essence of the VPP is that, as an overall scheme, it has become effectively unintelligible to any lay person.
- The planning system has become so voluminous and complex that it has become the virtual exclusive domain of planning and environmental professionals. It has become a system which has cemented the influence of both State and Local government operatives. The system has lost touch with the end users that must endure the phenomenal level of bureaucracy - the applicants.
- The degree and complexity of red tape, the requirement for consultants, purported experts, surveys, submissions, lawyers, town planners and professional advocates have all become so entrenched in the ever-increasing complexity within which the planning system supposedly resides, that access by any other than these professionals and bureaucrats, effectively, becomes an impossibility.
- The system appears to be written for and largely appears to serve bureaucrats that operate within it.
- From the survey, 87% of respondents use the system weekly.
- From those that use the system:

  only 5% were anyone other than a professional (and it is not specified who they were)
  47% were local government bureaucrats

  17% were planners

  10% were government planners and the balance were professionals in some manner or another.

  Interestingly only 1% were lawyers.

- **It is an indictment of the planning system when the public are, effectively, not able to access planning schemes because they are too "complicated".**

  This is evidenced time and time again with council planners repeatedly stating to landowners / lay applicants and advocates..."*the planning scheme is very complicated*". Council and Government planners operate within their domain and employ arcane jargon rather than plain English which runs counter to the rest of the law which is tending towards increased use of plain English to enhance comprehension and access. Planners appear to have revelled in industry jargon to ensure their professional survival and relevance.

- However, even within the confines of the survey respondents, it was abundantly clear that the significant majority (72%) believe planning schemes need to be reduced in complexity. PALs see, and we would suggest virtually all of the public would also see, this statement as self-evident.

- With respect to what level of micro detail should planning schemes descend, a strong majority of respondents support the notion that planning permits are required for far too many minor matters (62%) and that there should be more "as of right" provisions and an increased level of permit exemptions introduced into planning schemes (46% and 62% respectively).

- The survey revealed that respondents strongly believe that referrals could be made more efficient (79%) and that a significant number of external referrals are not required as they could be incorporated as standard conditions (67%).

The summary of the survey strongly suggests that the planning system is highly over-regulated, overly complex, needlessly detailed and excessively controlled by bureaucrats.

There is no doubt that the planning system is in urgent need of major reform.

PALs acknowledge and applaud the State Government's release of the *VPP REFORM* initiative. PALs appreciate the opportunity to now have an input into the process and all comments and positions stated by PALs in the following responses are made in the context of providing a positive contribution towards a better, simpler, more accessible and more intelligible planning system.

NILLUMBIK PALS PROACTIVE LANDOWNERS

Proposal 1:
A simpler VPP structure with VicSmart assessment built in

PALs agree that the VPP should be reformed to provide a simpler structure and an integral component of the reform would be a broader inclusion of the successful VicSmart provisions.

VPP STRUCTURE

The ongoing structure of the VPP appears cyclical in nature. There have been restructure and simplification processes undertaken in the past in relation to the VPP and Planning Schemes to address over complexity and the proliferation of zones, overlays and controls. History has shown that in the years following a restructure plan to simplify the VPP, there has followed a prolonged period where complexity and proliferation slowly re-emerged to the extent that any previous success was eventually reversed.

It is to the Government's credit that reform is again emerging as a necessary process to regain control of the system.

Those involved in planning appear to seek to make simple issues ever more complicated by the use of controls. Respect for the end users of the VPP, the public or more specifically landowners, appears to be marginal. PALS share a common view that currently, planners of various types interfere too much with individual human rights and interfere too much with an individual's right to decide. Within the peri urban and rural areas of the State planners seek to control outcomes that will deliver the bland and the uniform in the belief that if successful, the human footprint will not be visible and the environment will be therefore "protected". This is spurious.

NILLUMBIK PALs SUPPORT

1 **Planning Schemes, overlays, schedules, MSS, Management Plans and controls should all be rewritten in plain English.**

The convoluted and complicated systems of Clauses, Schedules and controls and their interrelationships effectively exclude any lay person from being able to access content in any meaningful or readily intelligible way.

The wording, cross-referencing and, in particular, their inter-related hierarchy should be clearly and unambiguously set out in plain English.

The advantage will be a reduction in costs to applicants and the general community through more efficient government services, and a Planning Scheme that can be appreciated by a lay person and not almost exclusively accessed by government or council planners and/or private consultants.

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2 **The number of Zones, Clauses and schedules need to be significantly reduced.**

There can be no doubt that Planning Schemes in general contain too many zones, clauses, schedules, statements, plans and supporting documents.

The current propensity to over-govern supports bureaucratic tendencies to add restrictions and controls.

A revised and condensed system of consolidated zones, clauses, schedules and the other various statements would lead to a system that is more permeable and will assist in moving towards single points of access and creating user friendly pathways to reach a destination.

3 **Inclusion of the VicSmart principles for all dwelling and property improvement applications.**

By clearly setting out a series of triggers and performance indicators any dwelling application or application for property improvements, such as sheds, fencing, dams, farming uses, driveways, etc. should be able to achieve approval within a short specified time. Currently, VicSmart applications provide a timeline to a planning permit of 10 days but are restricted to very simple suburban dwelling or strictly confined 2 lot subdivision provisions.

PALs support the broadening of the VicSmart application to include all zones and overlay areas affected by a Planning Scheme.

With respect to peri urban and rural applications related to the above, a period of 21 days would provide a reasonable balance between inspection and approval. This would require the satisfaction of a concise series of checkpoints in relation to siting, vegetation removal, earthworks and the satisfaction of reasonable BMO requirements.

A revised VicSmart application should not contain references to current requirements such as dwelling colour and materials, dwelling style, ridge line controls, front gate type and design, driveway location, dwelling location (all subject to reasonable BMO requirements).

Many of the controls that are consistently applied by government and council planners take the form of "discourage", "strongly discourage", "not encouraged", "not preferred"...

Typically, statements containing these types of phrases sit in accompanying documents but outside the planning scheme. These documents are most often prepared by council planners and represent nothing more than their own personal view, or that of the local activist organisations that carry undue influence.

These types of documents must be deleted as they are not developed through consultation and no referral to the community is undertaken prior to their application or adoption.

A revised VicSmart application should not require the supply of a myriad of consultants reports and statements that currently are required to accompany virtually all applications.

A council and/or government department planner should not be enabled to place their own interpretation of an acceptable dwelling style, size, colour, location or siting onto an individual application.

The key trigger points for a permit requirement should principally relate to issues of human safety, fire safety, protection of, or where possible, replacement of existing vegetation. Any and all requirements for the payment of money for vegetation offsets should be removed from any and all VPPs as it has been identified as a potential source of corrupt perversion of the system.

By the appropriate use of a "tick the box" application process, planners will not be required to micro-manage simple or straight forward applications. This will lead to increased administrative efficiency and reduction in personnel to service the current over complicated planning system.

Time reduction in application processing will benefit all involved in the system, particular those it should serve – applicants and the community.

1

A strong case to be made for the privatisation of the VicSmart component of the VPP.

An improved and extended VicSmart process would be facilitated by consultant planners working in private enterprise. There should be no requirement for, or involvement from, council or government planners where a suitably designed certification framework could be established for use by external planning consultants.

A privatised approach to "tick the box" applications would yield improved efficiencies and decreased time frames and contribute to a decrease in government red tape.

This would result in a Consultant Planner being able to "issue" a planning permit and include the government or council authority as a referral authority. Appropriate legislation to protect the planning system via a means of electronic certification by the consultant planner would be a simple but effective safeguard to the integrity of the Planning Scheme.

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2 **Strengthen "as of right" provisions.**

Similarly, to increase number and extent of the "as of right" provisions across all planning schemes will provide clarity, certainty, increased efficiencies and decreased costs.

It is important for applicants to be able to easily and conveniently access planning schemes and understand what can and cannot be done without being burdened by a planning permit requirement.

A proforma "tick the box" application certified by the applicant and/or owner submitted to the responsible authority would document what was proposed without any requirement for a planning permit.

3 **Basic premise and restoration of proper onus of proof.**

In dealing with building in peri urban and rural areas a right to build must be applied to all existing land titles unless the responsible authority can demonstrate reasons that legitimately indicate otherwise.

If supporting information is required to demonstrate that a landowner should not be able to build then it must be incumbent upon the responsible authority, at its own cost, to provide that evidence. The evidence must also be able to be challenged through legal avenues.

4 **Removal or significant reduction in the number of Consultant Reports related to dwelling applications.**

PALs acknowledge that in certain very limited circumstances relevant consultants' reports are required to confirm and/or justify the siting, design and/or associated infrastructure related to property enhancement, property maintenance, dwelling and associated outbuildings, vegetation removal or management, fire related issues and similar requirements.

However, report requirements are currently widely used to place prohibitive costs and time delays on applicants who just wish to be able to build their homes without ongoing incremental and successive requirements of government and council planners.

It is quite common for Applicants in peri urban and rural areas to spend up to $100,000 or more on Consultants' reports and bear the further financial burden of significant time delays, often between up to 2 to 5 years.

It is accepted that an exception to the requirement of copious reports is in relation to fire mitigation and fire safety. This should be mandatory in peri urban and rural areas. However, if the Applicant supplies the relevant report which is accepted and approved by the applicable Fire Service (usually the CFA), then this report should be supplied to the responsible authority and recorded. It should not be able to be challenged and/or rejected by the responsible authority on the spurious grounds of the "precautionary principle". The applicable Fire Service should be a mandatory referral authority and no responsible authority should have the power to overrule that authority.

The number, complexity and extent of consultants' reports typifies the dilemma of the current VPP. Within rural areas it is common for up to 10 reports to be required. A report requirement may apply for such minor works as an excavation of 501mm, the replacement of a water tank, an outbuilding that has no detrimental effects on neighbours, removal of a dead tree capable of killing stock or humans should it fall, or an extension to an existing home.

The removal of inappropriately numerous and extensive report requirements should be referred to the Victorian Red Tape Commissioner. The removal of many consultant report requirements would assist greatly in speeding up the processing of applications, decreasing costs to applicants and increasing the efficiency of planning departments, both State and local.

5

Dismantling and reconstitution of the Vegetation Offsets Regime

The opaque, arcane and incredibly complex vegetation offsets regime must be removed from any relevant Planning Scheme or associated documentation. PALS can report with authority that it is a source of perversion of the system and is the subject of widespread endemic abuse and corruption.

In peri urban and rural areas virtually all applications are referred to this regime for a calculation of an amount of money that all applicants will need to pay in order to obtain their permit to build. It is rare that Applicants are allowed to replace any vegetation on their own land, a farcical situation that diametrically opposes the principal of no net loss of vegetation.

Planners in both State and Local Government often misuse and deploy the offsets regime to levy charges that diametrically opposes the principal of no net loss of vegetation.

This amounts to Government sanctioned extortion. The assessment and calculation of applicable offsets has to be undertaken by another self-created profession and often under the dubious control or direction of the responsible authority whose own planning department makes the referral for calculation in the first place. If this scenario played out in private enterprise, it would be the likely source of criminal sanction.

Planners in both State and Local Government often misuse and deploy the offsets regime to frustrate, levy charges on and inordinately delay any applicant who wishes to build. PALS have extensive historical evidence of this malpractice which has been provided by aggrieved landowners throughout Nillumbik who have been victim of it for over a decade.

The levying of offset payment as a means to control residential home building under the guise of saving the environment is innately dishonest, lacks environmental scientific rigour and unduly compromises people's rights.

Money should not be the currency of vegetation retention or protection. The only valid currency should be vegetation replacement on site in the peri urban and rural areas when dealing with dwelling construction and property maintenance.

Money should not be the currency of vegetation retention or protection.

The interconnection between the VPP and the Offsets Regime only further complicates an already overburdened system and should be fundamentally recalibrated or abandoned.

PALs are of the view that vegetation should be responsibly replaced, not unduly increased if exacerbation of bushfire risk is resultant. Vegetation management should not be used as a weapon to discourage building and should not be connected to financial imposts.

All reference to the vegetation offsets regime must be removed from all planning schemes and the scheme itself should be dismantled and redesigned from scratch.

NILLUMBIK PALS PROACTIVE LANDOWNERS

Proposal 2:
An integrated planning policy framework

1

PALs support an integrated policy framework.

It is entirely logical for a more generic framework to exist, consistent across the State and it is logical to consolidate it into a single source to facilitate usable sequential access.

Whilst there is an obvious need for local content for a planning scheme to relate to individual and varied geographical and municipal areas and circumstances, there are significant parts of current local schemes that reflect undue local influence of activist groups pushing undemocratic agendas and which do not reflect worthwhile, widespread local aspirations.

Within the peri urban and rural areas there is no desire to facilitate any adverse environment and/or development outcomes.

Landowners have long been overlooked or regarded with contempt by responsible authorities by not being consulted and/or included into decision making as it relates to their environment. PALS legally proven experience establishes this assertion as fact. For this to be the fact despite Nillumbik's fireprone character which was largely and wantonly disregarded in the development of additional overlays (now abandoned), suggests that elsewhere in Victoria it may well be the orthodoxy.

In the development of environmental controls in relation to vegetation and property maintenance, it is clear that there has been little recognition or acknowledgement of the crucial role that landowners have in the protection of the very environment within which we all live. Landowners must be consulted extensively to ensure the best outcomes in land management for the State.

Consideration of fire mitigation works, weed and feral animal reduction and the strong desire to leave the land better then when one arrived is paramount in the consciousness of landowners. To build your home, or your wish to build your home, should not be stymied by overzealous bureaucrats in the belief that they are protecting the environment. This is spurious. The current VPP's however, further this falsehood and enable administrators of the system to intimidate and bully landowners by using the planning scheme provisions to thwart and frustrate.

PALs believe that is not the premise upon which any planning scheme should be based. The VPP's should be a usable useful tool not a weapon against landowner's genuine and reasonable aspirations.

The content and pathways into and through a planning scheme should provide a mechanism to assist users get to where they wish to be. The sensible integration and recalibration of the system should reflect that.

NILLUMBIK PALS PROACTIVE LANDOWNERS

2 **PALs support a simplified Municipal Strategic Statement (MSS)**

The key to a successful planning system is simplicity. A component of the simplicity is a well defined and targeted MSS.

The MSS should comprise no more that 10 dot points and be free of undue local activist interference. It should not be a policy document rather it should identify local direction only and leave its implementation sitting with the local zones and schedules, which as stated above need to be dramatically revised, shortened and rewritten.

3 **PALs supports the expansion of policy themes subject to:**

- Properly reflecting the views, direction and policy of the broader community and not concentrating on idealism.
- Still being contained in a simplified form and not attempting to micro manage

4 **PALs support a clearer and simpler structure for policy making and setting new guidelines for writing policy**

It is of paramount importance to achieve a planning system that is predictable. Predictability is governed by transparency.

Transparency is assisted by clear concise guidelines as to how policy will be determined.

To assist applicants in understanding and participating in the planning system all reports, be they from government, council or consultants, should be required to be written in plain English and not use the common thread of continually quoting Zones, Clauses by number with little or no ongoing relation, excessive abbreviations or jargon.

NILLUMBIK PALS PROACTIVE LANDOWNERS

Proposal 3:
Assessment pathways for simple proposals

1

PALs support embedding a VicSmart assessment pathway in particular provisions.

As stated above the VicSmart assessment pathway should be embedded across all zones in relation to dwellings and associated works.

In relation to peri urban and rural areas it is just as important to establish either a speedy and efficient pathway via VicSmart or to embed "as of right" provisions into relevant provisions.

This will help to eliminate red tape, unacceptable demands for information, decrease processing times dramatically, enhance system efficiency, decrease costs dramatically to applicants and the community at large via less wasted time spent by bureaucrats on given applications. It would provide certainty and clarity for applicants who are the true users of the system.

Currently government and council planners use the system in such a way that is not consistent with the intent. The system should exist to assist, not hamper or frustrate .

By removing excessive controls, introducing VicSmart principles and expanding "as of right" provisions the system has the potential to be both effective and efficient.

2

PALs support the introduction of new code based assessment provisions for simple proposals to support small business, industry and homeowners.

As stated above a simplified assessment process is the key to an efficient and effective planning system.

A system that facilitates a more broad understanding of the planning scheme parameters and directions is a scheme that is far more likely to be used constructively, efficiently and effectively by the community.

Doubt, mistrust and misuse will be minimised if the general community has a better understanding of planning schemes through the use of plain English, an innovative user manual and the use of the minimum number of controls and restrictions.

Irrespective of whether applicants ultimately use a consultant or not, if the applicant has a sound grasp of the principles and uses allowed and a good grasp of the mechanisms to be used to get to where they wish to be, then that is a good outcome for the planning system. Within the context of peri urban and rural areas this is of paramount importance to landowners.

NILLUMBIK PALS PROACTIVE LANDOWNERS

Proposal 4:
Smarter planning scheme drafting

1

PALs support the creation of a new VPP user manual

Provided the manual is written in plain English, is user friendly and is perhaps interactive it has the potential to be a very useful tool.

2

PALs supports the establishment of a dedicated business unit related exclusively to VPP and planning scheme amendment drafting

It is critical to have planning schemes and planning scheme amendments well developed and drafted.

Any work done in this area needs to be done in conjunction with appropriate review and amendment of relevant overarching or controlling legislation. Principally this would include, but not necessarily be limited to:

- The *Planning and Environment Act 1987*
- *Victorian Civil and Administrative Tribunal Act 1998*

The most efficient way to ensure that planning schemes and amendments are legally robust and able to withstand differing interpretations is to have an experienced unit dedicated to that task.

The composition of the unit should not only be bureaucrats or lawyers, as it is important not to lose touch with the community. It is therefore important that the composition of the business unit reflect a community view on each any every matter placed before it.

This could take the form of community consultation or representation from a suitable community based organisation/s that is/are recognised as presenting an unbiased viewpoint from the community or lay persons standpoint.

3

PALs support the creation of an online Victorian planning library.

An online accessible and interactive planning library is an essential component of an efficient system. This would require significant resources but would provide an important repository in a "one stop shop".

A library, apart from including all planning scheme information in relation to zones, overlays, etc., should also provide links to relevant court and/or VCAT cases pertaining to any relevant zone or clause tagged beside the relevant zone or clause number. This would provide an invaluable resource to allow users to access cases and results that may directly affect or impact them.

NILLUMBIK PALS PROACTIVE LANDOWNERS

Proposal 5:
Improve specific provisions

PALs position on each is logged below using the same numbering system as Appendix 2

1.	All zone schedules	Agree
2.	All zones	Agree
3.	All residential zones	Agree
4.	Mixed Use zone	Unsure – not relevant to our submission
5.	Industrial 1 zone	Unsure – not relevant to our submission
6.	Industrial 3 zone	Unsure – not relevant to our submission
7.	Commercial 2 zone	Unsure – not relevant to our submission
8.	All rural zones	Agree – Important see submission detail
9.	Farming Zone	Agree – Important see submission detail
10.	Urban floodway zone	Unsure – not relevant to our submission
11.	Urban Growth zone	Unsure – not relevant to our submission
12.	All overlays	Agree - see detail in submission
13.	Environmental & landscape overlays	Agree – Important see submission detail
14.	Heritage overlay	Unsure – not relevant to our submission
15.	Development plan overlay	Agree - May be relevant see submission
16.	Neighbourhood character overlay	Unsure – not relevant to our submission
17.	Land Management overlay	Agree – May be relevant see submission
18.	Erosion management overlay	Agree – May be relevant see submission
19.	Salinity management overlay	Agree – may be relevant see submission
20.	Floodway overlay	Agree – Important see submission detail
21.	Land subject to inundation overlay`	Agree – Important see submission detail
22.	Special building overlay	Unsure – not relevant to our submission
23.	Airport environs overlay	Unsure – not relevant to our submission
24.	City Link Project overlay	Unsure – not relevant to our submission
25.	Specific sites	Unsure – not relevant to our submission

26. Car parking	Unsure – not relevant to our submission
27. Earth and energy resources	Unsure – not relevant to our submission
28. Adverse uses	Unsure – not relevant to our submission
29. Service Stations	Unsure – not relevant to our submission
30. Car wash	Unsure – not relevant to our submission
31. Motor vehicle sales	Unsure – not relevant to our submission
32. Telecommunications facility	Unsure – not relevant to our submission
33. Licensed premises	Unsure – not relevant to our submission
34. Gaming	Unsure – not relevant to our submission
35. Land adjacent to road	Unsure – not relevant to our submission
36. Bicycle facilities	Unsure – not relevant to our submission
37. Post boxes	Unsure – not relevant to our submission
38. Residential development	Agree – Important see submission detail
39. Metropolitan Green Wedge	Agree – Important see submission detail
40. General provisions	Agree – Important see submission detail
41. Decision guidelines	Agree – Important see submission detail
42. Referral and notice provisions	Agree – Important see submission detail
43. General terms	Agree – Important see submission detail
44. Land use terms	Agree – Important see submission detail
45. Land use terms (battery)	Unsure – not relevant to our submission
46. Nesting diagrams	Agree – helpful to see flowcharts
47. Incorporated documents	Agree – If applicable to our submission
48. Practice Notes	Agree – asset in conjunction user manual
49. Technology	Agree – best use applicable
50. Section 173 Agreements	Agree – SEE BELOW

SECTION 173 AGREEMENTS

This type of agreement is cumbersome, expensive, complicated and hard to vary, remove or reverse. It is the favoured document of councils as it supposedly removes the requirement for oversight by council that contravention of a planning permit condition requires.

Section 173 Agreements rarely contain less than around 30 pages and need to be prepared by lawyers. This is a needless expense that is universally carried by the Applicant.

It costs the council nothing to abrogate their responsibilities to a legal document. There must be a better way to control use and/or ongoing ownership issues. A Section 173 Agreement is a 20th Century solution sitting in the 21st Century application environment.

Nillumbik PALS commends our submission to the process of the reform of the VPP.

If there is an opportunity for additional consultation please contact the writer via email or telephone: damian@crockgroup.com.au or (0412) 066 666

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Nillumbik PALS
1 December 2017