Committee Secretary,
Standing Committee on Environment and Heritage,
House of Representatives,
Parliament House,
Canberra. ACT. 2600.

14th. April, 2000.

Dear Sir/Madam,

re INQUIRY INTO PUBLIC GOOD CONSERVATION - IMPACT OF ENVIRONMENTAL MEASURES IMPOSED ON LANDHOLDERS.

I have obtained a copy of the terms of reference for the above Inquiry and note that it relates to measures imposed by either State or Commonwealth Government but omits measures imposed by Local Government.

I seek clarification that, since Local Government is an arm of State Government, submissions relating to measures imposed on landholders by Local Government will be admissible under the terms of reference.

This issue is most important as there are severe impacts on landholders as a result of public good conservation measures being imposed by Local Government **in addition** to those measures imposed by State Government.

I await your response.

Yours sincerely,

Anne Stoneman,
673 Heidelberg-Kinglake Rd.,
Hurstbridge. Victoria. 3099.

SUBMISSION TO HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE.

15TH. May, 2000.

Thank you for the opportunity to make a submission to the Inquiry into public good conservation - Impact of environmental measures imposed on landholders.

I am aware that the Terms of Reference refer to either State or Federal Governments. However my submission, in part, will refer to Local Government as Local Government is an arm of State Government.

"It is the intention of Parliament that the provisions of the Local Government Act 1989 be interpreted and every function, power, authority, discretion and duty conferred or imposed by or under this or any other Act on a Council, be performed or exercised so as to give effect to the purposes and objectives of Councils." (Nillumbik Shire Council Annual Report 1998/1999.)

It is on the basis that Local Government is ultimately responsible to State Government under the provisions of The Local Government Act 1989 that I request my submission be accepted and considered.

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SUMMARY.

This submission will address the impact of public good conservation and environmental measures imposed on private landholders.

The main points are as follows:-

- **Brief background information given to demonstrate how landholders are severely disadvantaged by the imposition of arbitrary and rigid controls and misuse of power.**

- **Denial of natural justice and loss of proprietary rights of ownership through application of unjust enrichment policies.**

- **Compensation to be paid to private landholders whose land has been 'commandeered' for public amenity.**

- **Recommendations.**

For the purpose of this submission I wish to provide some background information.

BACKGROUND.

(Part 1 - THE MELBOURNE METROPOLITAN PLANNING SCHEME. (MMPS).

Public good conservation measures were imposed on private landholders in 1971 with the introduction of the MMPS and its restrictive controls.
The document 'Planning Policies For The Melbourne Metropolitan Region' is is a report which outlines the planning scheme and its objectives.

Despite the rhetoric contained within about public consultation, and a six month period in which to lodge objections, **the key stakeholders**, **i.e. the private landholders who would be affected, were never notified, and many were unaware of its existence until too late.**

The document summary states that *"The preparation of the report has been guided by a number of policy directives and related investigations and in particular one in which the Government indicated that Melbourne should be encouraged to follow a corridor type of development with urban development confined to 'growth corridors' separated from each other by 'green wedges' of open country protected from urban development*."

The Report goes on to say that *"financial policies will be needed if the principle of urban corridors and non urban wedges is to be followed effectively.*
These policies should be as equitable as possible and aimed towards reducing the disparity between urban and non urban land benefits and costs.
The principle of no compensation for land use zoning is maintained."

The Report states that **"*The principle has been clearly accepted*" (by whom?)**
"that the zoning of land for the purpose of regulating land use in the community does not carry with it a right to compensation, provided the existing use rights in the land are preserved.
The reservation of land for public purposes, however, where this results in the owner having no reasonably beneficial use, does carry a right to compensation by the community."

The Regional Planning Objectives outlined in the Report states that ***"planning restricts some rights, but it also confers benefits which could not be attained without the restrictions."***

That statement, made in 1971, foreshadows the injustices which would impact on landholders, on land use, and on their rights of ownership. Landholders, many of whom were unaware of the implications of planning schemes, could have little comprehension that this planning scheme would ultimately devastate their future plans.

With the stroke of a pen and a few lines drawn on a map, people who had made a responsible and legitimate attempt to plan for their own and their family's future would see their long term aspirations go up in smoke.

In March 1978, a Committee of Inquiry presented the then Premier of Victoria with their Report into Town Planning Compensation.
A Bill entitled "Public Works and Planning Compensation Bill" was introduced in December 1978 but ultimately lapsed.

A similar Bill should be immediately introduced which includes provision for compensation for private landholders forced to provide the amenity of their land for the public benefit.

BACKGROUND.

(PART 2) - THE NEW FORMAT NILLUMBIK PLANNING SCHEME.

The Nillumbik Shire Council was formed in 1994 as a result of the amalgamation process.
The first elected Council was sacked after an Inquiry in 1998 because it failed to deliver good governance.

Councils were required to prepare New Format Planning Schemes and an independent Panel and Advisory Committee was appointed to consider over 700 submissions.

The planning scheme at this date (15/5/00) is still awaiting Ministerial approval.

The Department of Infrastructure in it's submission to the Panel expressed concern ***"with the broad use of the Environmental Rural Zone (ERZ) in most of the non urban areas of Nillumbik."***

It notes that ***"The concept of the 'green wedge' is one which is heavily promoted by the Nillumbik Shire Council in both its Municipal Strategic Statement (MSS) and zones and overlays, and one which forms the cornerstone of its strategic direction."***

The submission also notes that ***"the concept of a 'green wedge' is not a concept recognized by the State Planning Policy Framework." (SPPF).***

The submission states that ***"All future land use and development will enhance the aesthetic qualities of the urban and rural environment, responding in part to the character defined by land form, vistas and vegetation cover.***

Vast tracts of private land in the Shire have been placed in the Environmental Rural Zone.

The terms and conditions of the ERZ are set by the State Government and are part of the Victorian Planning Provisions (VPP's) which cannot be changed by Councils.

However, the location and extent of the ERZ **is** determined by Councils and **the previous sacked Council placed much of the Shire in this Zone.**

The VPP's state the purpose of the ERZ is ***"To conserve and permanently maintain flora and fauna species, soil and water quality and areas of***

historic, archaeological and scientific interest and areas of natural scenic beauty or importance so that the viability of natural eco-systems and the natural and historic environment is enhanced.

To encourage development and the use of the land which is in accordance with sound management and land capability practices, and which takes into account the environmental sensitivity and the bio-diversity of the locality." (35.02 VPP's).

There is also extensive application of Environmental Significance Overlays (ESO), particularly ESO1.

The application of the ESO1 is based on the NEROC report.("Sites of Faunal and Habitat Significance in North East Melbourne," - Beardsell 1997).

The Panel Report (P 115) states that ***"A further concern is the way the NEROC report has been translated into the Nillumbik scheme……the difficulty is that <u>the purpose of NEROC was to identify sites of significance, not to create planning controls."</u>***

Despite this criticism, the NEROC report, through the ESO1 and its river and creek schedules 2-4 **increasingly impose planning controls on private land.**

Controls are also being implemented through conditions on permits, which will, in future, include applications for new farming activities in the ERZ.

Agriculture is no longer as-of-right in the ERZ but as a Section 2 use,
will require a permit for new uses and also for the resumption of an extinguished existing use right. (A gap in farming of 2 years extinguishes existing use rights). (63.06 General Provisions).
The VPP's (31.01-2) state that ***<u>"because a use is in Section 2 does not imply that a permit should or will be granted.</u>***

A recent permit application in the ERZ required an estimated 60% of the farm to be conserved behind fences ***"constructed to a standard to repel livestock."***
This and other stringent conditions, such as a revegetation program, which **must** use indigenous planting stock of local provenance, with works to be carried out by a suitably qualified or experienced person, **prescriptive requirements as to**

placement of trees, shrubs and grasses, even the depth of topsoil and mulch, and the amount of water and fertilizer to be administered not only represented enormous expense for the owner but would also render the farm useless.

Other landholders in the ERZ should heed this misuse of power with alarm.

Landholders are being denied reasonable beneficial use of their land by the implementation of public good conservation and environmental measures.

PUBLIC GOOD CONSERVATION - THE IMPACT OF ENVIRONMENTAL MEASURES IMPOSED ON LANDHOLDERS.

When my husband and his brother purchased this property (approx. 75acres) in 1955, it could be subdivided into 5acre lots.

It was purchased with the intention of it eventually providing the means to fund both their retirements.

It was retrospectively rezoned by the MMPS in 1971. (MMPS described previously).

The land was not purchased in the hope that it would achieve urban zoning but with the <u>legitimate expectation</u> that it would always be as-of-right to subdivide into 5acre lots.
<u>After all, it was purchased sixteen years prior to the 1971 MMPS</u>.

In that planning scheme, the land was placed in a Landscape Interest A zone.

According to the document 'Planning Policies for the Melbourne Metropolitan Region,' page 83 states ***"That zoning has been applied where land has considerable interest in terms of natural features or habitat, but where a degree of change or development could occur.***
The form of planning control proposed for this zone is less stringent than for the conservation zone and provides for a broader range of permitted and discretionary uses."

The New Format Nillumbik Planning Scheme now places this property in the ERZ, **<u>imposing arbitrary and rigid controls which deny reasonable beneficial use of the land</u>.**

The Panel Report (P73) states that ***"It is important to understand that 'conservation' is in itself a land use."***
The difficulty is that it is a land use that has been <u>imposed to the detriment of landholders for the perceived benefit of the public good.</u>

Wielding the big stick only serves to create dissension rather than harmony and co-operation.

The Panel also says it is ***"hard pressed to understand why some submitters have such different expectations." (P74, Panel report.)***

The reason is fairly obvious when taking into account that-

- 84% of the population live in suburban or township residential areas.
- Only 16% of Nillumbik properties are larger than 1 hectare.

- 1% only of Nillumbik land holdings are larger than 40 hectares.

(Nillumbik Environmental Incentives Working Party Report, March 1996.)

There is the **undemocratic expectation** by the majority of urban dwellers and the residents of rural townships that landholders in the rural areas of the Shire **provide private land for public amenity - a 'pseudo' national park - and without compensation.**

Private landholders, particularly long term landholders, are forced to bear the financial burden and endure the tremendous personal cost to their health and well being, by being **forced to provide their land for a *de facto* flora and fauna reserve and habitat link.**

Through implementation of unjust enrichment policies, our land has been arbitrarily appropriated as public open space, a huge 'theme' park, ideologically known as the 'green wedge.'

In the process, private landholders have been denied natural justice, deprived of their proprietary rights of ownership as well as suffering the continual stresses associated with efforts to prevent any further erosion of their democratic rights.

The rights of the individual is one of the cornerstones of our society.
That these rights be upheld is surely a democratic and constitutional requirement.

Compensation must be paid to private landholders whose land has been commandeered for the public good.

Aside from assessing the huge financial cost of being prevented from exercising the rights in existence at the time of purchase, **it is impossible to quantify the cost of public good conservation and the impact of environmental measures imposed on landholders.**

Who can quantify the cost of endless hours of intensive labor enhancing their property?

Who can quantify the cost to the landholder of the loss of certainty previously enjoyed, the loss of certainty of providing for their future?

Who can quantify the cost of being stripped of proprietary rights?

THE ISSUE OF COMPENSATION FOR PRIVATE LANDHOLDERS FORCED, TO THEIR DETRIMENT, TO PROVIDE THE AMENITY OF THEIR LAND FOR PUBLIC BENEFIT IS ONE WHICH SHOULD BE PLACED ON THE AGENDA OF ANY DEMOCRATIC GOVERNMENT WITHOUT DELAY.

In these days of ‘user pays’, if private land is required for public amenity then landholders must be adequately compensated.

RECOMMENDATIONS.

I make the following recommendations with the expectation that they can be used to achieve a more equitable outcome for the private landholder.

- That Federal and/or State Governments establish a fund to compensate landholders disadvantaged by public good conservation and impacted by environmental measures imposed by Federal, State or Local Government.

- That a fair and equitable method of compensation such as I understand is applied in the United States, be applied in Australia.

For example, if the land is worth, say $1,000 per acre as farmland, and is worth, say $10,000 per acre developed, then the landholder is paid the difference as compensation which in this example is $9,000.
I suggest a similar method be introduced into legislation.
All affected parties would need to reach satisfactory agreement.

- That the rights of ownership be restored and upheld.

- That legislation be introduced to require that individual landholders be notified by registered mail of any proposal directly affecting their land.

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