



Warrandyte
Community
Association



November 29th, 2013

The Project Manager
Middle Yarra River Study
Level 10, 1 Spring Street
Melbourne, Victoria, 3001
via email to: middleyarrastudy@dtpli.vic.gov.au

Re: Submission to the Middle Yarra River Corridor Study

Dear Sirs:

The Warrandyte Community Association (WCA) appreciates the opportunity to make a submission to this very worthwhile effort to identify potential improvements in the planning provisions for the Yarra River environs. We congratulate the State Government for undertaking this important study.

By way of an introduction, the WCA has over 400 members and represents the concerns and issues of the local residents of Warrandyte to our two local councils (Manningham and Nillumbik) and to the State Government. One of the WCA's primary objectives is to work to protect the unique environment of Warrandyte, of which the Yarra River environs is a critical part. The WCA would like the opportunity to meet with the Department and Planisphere to provide more information and background to our comments as detailed below.

We will address our comments and suggestions by the chapter of the draft report.

Chapter 3

We agree with Planisphere's description of the unique character and environment of the Warrandyte township (Character Type 4) and concur that one of the primary threats to these special values is built form that is not "designed to remain visually recessive to the topographical and landscape character" and "over-development of lots and potential loss of mature vegetation and canopy trees as a result." We also agree with the statement that, "the potential visibility of buildings on the northern banks of the river, due to vegetation removal or bulky, inappropriate design, is a key concern." This concern is very important, as these sorts of inappropriate developments have occurred in the past, and there is little to stop them from occurring in the future as will be discussed later.

We are encouraged that in the Conclusion of this chapter, it is stated that this study will address the issue of the impact of inappropriate buildings that impact on the landscape character and

environment. We wholeheartedly agree that it is very important to ensure buildings and structures “are designed to be ‘immersed’ within the landscape.”

Chapter 4

In our email to the Study organisers on September 13th (see Attachment A), we made two suggestions. The first was that Planisphere, potentially with staff members from DTPLI, take a trip down a section of the Yarra River to see, first hand, the very special environment and visual amenity of the Yarra River environs. Regrettably, Planisphere did not take up our suggestion even though it is stated on page 33 about viewing the river from a kayak or canoe that,

“Although fewer people experience the river in this way, it is perhaps the most significant viewing opportunity, where the river in its most natural state can be experienced and the most isolated locations explored.”

I have kayaked the Yarra from Homestead Road to the exit of the Pound Bend tunnel and it is hard to describe how special it is to be paddling in environs that appear to be completely remote, seeing a koala scrambling along the riverbank or a platypus swimming on the surface of the river. And just when you’re feeling very serene and immersed in the natural environment, you come across a sprawling house on the river bank with a manicured lawn or a huge house on the ridgeline staring down at you. I don’t see how it is possible that Planisphere could have ‘taken this viewing experience into consideration’ without having been on the river themselves. It’s simply not possible as so many viewpoints are only accessible by boat.

Therefore, we would respectfully request that the State Government strongly encourage Planisphere to undertake such a trip, and as stated in our email, the WCA would be more than willing to help organise the logistics. There is a fully qualified and experienced company, Adventure Canoeing, who could easily organise such a trip. This point is our response to the first two Questions for the Community on page 43.

The other point we would like to raise is in regards to some of the comments on page 41 with regards to Viewpoint 8. The statement that, “Within the town centre, buildings can be seen nestled among the trees of these northern banks and are constructed on the ridgeline.” is rather curious. We agree that there are a number of double story houses built on top of the ridge, but they are not ‘nestled among the trees’. They protrude above the ridgeline and are the sort of eyesore that should be strongly discouraged or prevented in the planning scheme. We will supply some photos of these ridgeline houses when we meet including some ‘before and after’ photographs.

We completely agree with the following statement on page 41, that

“The views of the river afforded throughout Warrandyte are an iconic and intrinsic part of the township’s character and essential to the township’s value as a visitor destination. ... This is a rare opportunity to witness the river in a relatively naturalistic setting, from numerous vantage points.”

The WCA is of the very strong opinion that planning changes are needed to maintain these iconic views.

Chapter 5

The comments below serve to answer the two Questions for the Community at the end of Chapter 5 as well as making some additional observations.

The Low Density Residential Zones (LDRZ) in Manningham and Nillumbik still currently have a minimum lot size of 0.4 Hectares for at least 6-7 more months. It is vital to the special environment of Warrandyte and the visual amenity of the Yarra River corridor that this minimum lot size remains unchanged. If the minimum lot size were to change to 0.2 hectares, riverside lots in North Warrandyte, in particular, would be subject to subdivision resulting in significant land clearing and additional riverfront houses ruining the sense of remoteness and natural environment present on most stretches of the Yarra River near Warrandyte today. We would respectfully request that this report recommend that the current 0.4 Hectare minimum lot sizes remain in place.

We find the choice of VCAT decisions cited near Warrandyte to be rather curious. The case cited had to do with signage facing Yarra Street that is not visible from the river, or even the walking path along the river, and therefore, is not particularly relevant to this study. The WCA would recommend the Middle Yarra River Corridor study instead include the following two cases which are both directly relevant to protection of the environmental and scenic values of the river around Warrandyte.

246 - 250 Research -Warrandyte Road Subdivision, Building Extension and Boundary Realignment¹

These cases involved subdividing a 0.4 Hectare block on the northern side of the Yarra overlooking the village of Warrandyte and very popular walking path. In addition, the applicant sought approval for an existing house to have an extension built. Later, a new two story house was built on the 2nd lot after the subdivision was approved.

At the time, the WCA and local neighbours actively opposed the application, but were unable to identify planning controls sufficient to prevent the proponent from being successful at VCAT. One of the arguments raised by the WCA was that the proposal was not consistent with the ESO2 objectives, which included:

- To protect the environmental significance of the Yarra River environs.
- To protect and enhance views from and to the river, riparian area and nearby parkland.
- To protect and enhance a sense of remoteness along the river and its environs.
- To protect the river and its environs from visual intrusion caused by inappropriate siting and design of buildings
- To protect areas along the Yarra River and the river itself from visual intrusion caused by inappropriate design and siting of buildings.
- To protect and enhance vistas from and to the river, its banks and nearby parkland.
- To protect and enhance a sense of remoteness.

In addition, the WCA argued that the proposal was inconsistent with a number of the Decision Guidelines including:

¹ Hipwell v Nillumbik SC [2004] VCAT 1159 (15 June 2004) and Hipwell v Nillumbik SC [2004] VCAT 1920 (30 September 2004)

- The need to screen buildings and works as viewed from the Yarra River and land on the opposite side of the river.
- The impact of the location, bulk and external appearance of any building or works on views from and of the Yarra River and environs.
- The need to encourage building design which is in keeping with the character of the area including:
 - the need to keep the height of all buildings and structures to a minimum
- The need to minimise views of buildings and structures from the Yarra River and its environs.

While the WCA recognised that the ESO2 had not been applied to this block of land, it was clearly meant to as such objectives and decision guidelines are meaningless when applied to the land shown on the ESO2 map which indicates the ESO2 only applied to about 10 metres of land on each side of the riverbank owned by Melbourne Water. As Melbourne Water is not in a position to build houses and apartment buildings, much less on a ten metre wide ribbon of land next to the Yarra River, the ESO2 map was obviously an administrative error. Unfortunately, VCAT did not see it this way and interrupted our argument very early on, stating the ESO2 did not apply to this land, and instructed to move along to our next argument.

38 Osborne Road North Warrandyte Subdivision and later, building envelope enlargement²

The original application was to subdivide a two acre block of mostly high quality native vegetation to enable the building of two houses. The original VCAT appeal by the applicant was unsuccessful after strong opposition by Nillumbik council and the WCA who were able to engage an expert native flora and fauna assessment pro-bono. However, after the initial refusal, the applicant simply re-jigged his application a bit and resubmitted it, and the 2nd time they were successful. In 2007, the new owner of one of the blocks successfully received approval to build a larger house and clear more native trees well beyond what VCAT had approved.

This VCAT decisions shows that the planning controls to protect the visual amenity and environmental values of Yarra River environs are insufficient. The WCA strongly urges Planisphere to examine, consider and include both of these cases in their VCAT & Planning Panel Decision Findings section.

The second suggestion in the previously referred to email from the WCA to the Middle Yarra River study 2 ½ months ago concerned the obvious error, or 'loophole', in the Nillumbik planning scheme mentioned in the Research Road VCAT discussion above (which also applied to the Osborne Road case). It is disappointing that this issue is not mentioned at all in draft report despite the WCA raising the issue to the authors' attention. The objectives and decision guidelines contained in the ESO2 are the sort of provisions that should be applied to all private land abutting the Yarra River, or easily seen from the Yarra (i.e. on top of ridgelines). One could argue such provisions might be more appropriate in an SLO, but whether they are in an SLO, or an ESO, such clear objectives and decision guidelines need to apply to land that is next to, or visible from, the Yarra River.

The last point we would make is that Planisphere should evaluate the planning protection for the Yarra River environs contained in the Banyule, Manningham, Nillumbik (and other) planning schemes and recommend that the most clear, concise, and effective planning protection provisions

² Murphy & Assoc v Nillumbik SC [2003] VCAT 814 (30 June 2003), VCAT P1302/2004 (26 November 2004) and Nillumbik Planning Application 219/2007/05P to enlarge the building envelope and increase native vegetation removal

be included in all three council planning schemes, as a minimum. This would provide a uniform approach that would be welcome from proponents and community members alike.

Conclusion

The WCA is very much in support of the discussion and points raised on the Conclusion page. In particular, the WCA would like to comment on the following three statements in the draft study's conclusions.

- *“A range of zone and overlay controls have been implemented in each municipality to protect the river corridor. However, the levels of protection varies between municipality.”* As we have previously commented, we would like to see the ‘best’ controls from the 3 councils, or even other councils along the Yarra, adopted across the three councils involved in the Middle Yarra study.
- *“VCAT decisions show that there is a need for clearer, stronger and more consistent policy and controls along both the Yarra River and Maribyrnong River corridors.”* The WCA supports this statement and believes the two VCAT cases we have cited provide even more justification for this statement.
- *“For some parts of the river corridor within places of particular sensitivity, or where development pressures are evident (or possible in the future), mandatory maximum building heights and setbacks may be warranted.”* The WCA agrees with this, but would suggest going even further by stating that places, like Warrandyte, definitely warrant such planning restrictions including more restrictions on the building of houses on ridgelines overlooking the Yarra River.

As stated previously, the WCA would like to meet with both Planisphere and the Department with regards to our submission. We will make contact soon to arrange a convenient time. In the meantime, please do not hesitate to contact the undersigned if you have any questions or comments.

Yours Sincerely,



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Appendix A

From: Jonathan Upson [mailto:jonathanu@iprimus.com.au]
Sent: Friday, 13 September 2013 9:05 AM
To: 'middleyarrastudy@dtpli.vic.gov.au'
Cc: 'Dick Davies'
Subject: Middle Yarra Study

The Warrandyte Community Association (WCA) commends the State Government for funding this important study.

The WCA is in complete agreement with the project's purpose to:

- Prepare new and/or revised planning policy and controls to manage the built form and appearance of development.
- Support better decision making through siting and design guidance to protect and enhance of the valued qualities of the river corridor.

We would like to meet with Planisphere and the appropriate State Government representatives to go over our suggestions and specific concerns. In the meantime, we would like to make two suggestions.

There is a 'loophole' in the Nillumbik planning scheme which has resulted in several inappropriate dwellings being built on ridgelines overlooking the Yarra River and in at least one subdivision along the banks of the Yarra. The WCA raised this issue to Nillumbik Council a number of years ago, but they did not have the resources to fix this loophole. Very briefly, the ESO2 planning overlay contains some very appropriate and useful language about minimising building heights, maintaining the feeling of remoteness along the Yarra River, etc. Unfortunately, the ESO2 overlay map only applies to the few metres of Yarra riverbank owned by Melbourne Water. The ESO2 map does not apply to the privately owned residential blocks, and VCAT has refused to consider this was an obvious mistake. It is incredibly unlikely that Nillumbik meant to apply such provisions to 6-7 metres of land along the riverbank as it's not very likely Melbourne Water is going to build houses on this land. While one can argue an SLO might be a more appropriate planning control, the point is that such language is necessary somewhere in the planning scheme and must apply to the residential blocks adjoining to, or visible from, the Yarra River. We would be pleased to provide more details when we meet.

We would also suggest that Planisphere take a canoe or kayak trip down the Yarra near Warrandyte to fully appreciate the scenic beauty and feeling of remoteness that exists today (but unfortunately is interrupted by the occasional large dwelling). I'd be happy to facilitate, potentially with Yarra Riverkeepers, or a trip can be arranged with a local company, Adventure Canoeing. While the views from the walking paths in Warrandyte are very important, so are the views along less accessible parts of the river. One really needs to be on the river to appreciate them.

In the meantime, we would like to be kept informed and involved in the community consultation undertaken as part of this project.

Regards,

Jonathan Upson
Vice President, WCA

cc. Dick Davies, President, WCA