



Submission from

The Warrandyte Community Association (WCA)

to the Planning Panel hearing, 10-12 October 2018, objecting to the proposed

Manningham Planning Scheme Amendment C117

Presented by

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on behalf of the WCA

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Be Ready Warrandyte – Living with Bushfire Risk is a project of Warrandyte Community Association Inc.

Introduction

C117 is a proposed amendment to the Manningham Planning Scheme which contains the following elements:

- Modifications to Clause 21.07, Green Wedge and Yarra River Corridor
- Modifying 22.19, concerning outbuildings, so that it applies to the RCZ as well as the LDRZ.
- A new clause 22.20, concerning 'non-residential developments in the Green Wedge'.

We believe that the most significant clauses in this amendment lack clarity in relation to their intended effect on the Green Wedge and would result in

- increased stakeholder and community uncertainty and
- more disputes to be settled at VCAT.

It is nevertheless clear to us that the underlying purpose of C117 is to allow an extent of built form development to take place which is contrary to the essential purpose of the Green Wedge.

We suggest also that the issue of the future of agriculture addressed in this amendment are common to all Green Wedges, and inasmuch as they need addressing, a local planning scheme amendment is not the appropriate vehicle but rather need to be considered by the State Government.

We therefore submit that the Panel should advise the Council to abandon the amendment in its present form. Our submission is in three parts:

- The first part refers to the essential context for this discussion, namely the long term basis of the Green Wedges as established in the entire State Planning Scheme.
- The second part addresses the Rural Areas Land Uses Position Paper and its proposed inclusion as a reference document.
- The third part addresses the particular clauses of the amendment to demonstrate the ways in which the amendment is problematic in its phrasing and design, and why we believe that it subverts the purposes of the Green Wedge.

Our initial analysis of this complex amendment was based on the documentation on exhibition. We note that substantial changes have been made, especially to 22.20, but they do not alter our essential position.

The Basis of the Green Wedges

Victorians are indebted to Sir Rupert Hamer, Premier of the State and before that Minister for Local Government, who forty seven years ago had the vision and the practical commitment to incorporate into the State's planning scheme the establishment and ongoing protection of twelve 'green wedges', separated by defined urban growth corridors.

Since that time these green wedges have been an integral part of Melbourne's urban planning. They are a crucial limitation on uncontrolled urban sprawl. Most importantly, they are designed to provide open space, preserve rural landscape, be the "lungs of Melbourne", and to conserve native vegetation and wildlife habitat. They are a vital part of keeping Melbourne liveable.

Although the inevitable commercial pressure to allow urban encroachment has occasionally succeeded we still have our green wedges, although the pressure continues. Legislation introduced by the Bracks Government in 2002 strengthened an urban growth boundary to clearly mark the limits of urban expansion.

The Rural Conservation Zone, which is the chief zone in the Manningham Green Wedge and the one targeted by this amendment, is defined in clause 35.06 of the State planning scheme, which includes the following in its 'purposes':

- *To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.*
- *To protect and enhance natural resources and the biodiversity of the area.*
- *To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.*
- *To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.*
- *To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.*

In assessing applications to develop in the RCZ the decision guidelines include this provision, at 35.06-60:

Whether use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.

Clause 11.06 of the State Planning Scheme, concerning Settlement in the Green Wedges, recognizes 'tourism' in this 'strategy':

Support existing and potential agribusiness activities, forestry, food production and tourism.

What tourism uses might be appropriate in the RCZ? Clause 57.01, Core Planning Provisions, relates to all Green Wedge Land. It lists a range of tourism related uses, including function centres, residential hotels and restaurants, and imposes the condition that they

'Must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery'.

The intention is clearly to ensure that tourist development does not erode the fundamental character of the Green Wedges by insisting that it be associated with another use which is directly appropriate within the Green Wedge. To relax this condition would risk development which erodes the very characteristics which make the Green Wedges an attractive tourist destination.

The WCA supports the clear intention of the current planning scheme in regard to the Green Wedges and objects to any amendments which are contrary to that intention.

Furthermore, in the context of recent VCAT judgements which we believe have been contrary to the intention of the planning scheme we believe that there is a need for clarifying amendments to protect the Green Wedges from emerging threats of excessive built form development. For example, while a 'Place of Worship' is an allowed use in the Green Wedges, we think it is obvious that what the scheme envisaged was a rural church serving the local community – not a 500 seat facility with a 23 metre towers serving the nearby metropolis, recently approved in the South Eastern Green Wedge.

The WCA believes that C117 as proposed will result in planning policy that will see future economic and tourism opportunities being allowed that are to the detriment of the very values that underpin the purpose of the Green Wedge, namely the conservation of natural environment and the character of the open rural and scenic non-urban landscapes.

The Reference Document

It is evident that the Rural Land Uses Position Paper provides the background and basis for the proposed amendment. It is in effect a strategy document without saying so.

Clause 57

The major thrust of the position paper is concern about constraints on proposed land use and development caused by Clause 57. It lists the following land uses in relation to which the 'in conjunction with' condition should be waived:

- Cellar doors
- Boutique breweries, cideries and distilleries
- Farm gate and produce sales
- Dining experiences (non compliant with Clause 57)
- Event and function spaces
- Accommodation (non-compliant with requirements of Clause 57)
- Arts experiences
- Day spa and indulgence product
- Leisure and recreation

It then lists the conditions that an application relating to one of these uses should satisfy for clause 57 not to apply – which are nothing more than existing provisions of the planning scheme.

This is really an extraordinary proposition to associate with a local planning policy amendment. It is a proposition not incorporated into the actual amendment, of course, because it is clearly beyond the scope of a local policy. To seek to remove the constraints of Clause 57 and the 'in-conjunction' requirement is to negate an essential purpose of the Green Wedges by enabling the built form and associated infrastructure to dominate rather than be subordinate to the natural or agricultural environment.

Making tourism development subordinate to rural values should be seen as adding value by providing an experience in a rural setting. Otherwise the development will facilitate urbanisation and the loss of the Green Wedge.

These comments were made based on the document on exhibition. We note that most of the negative references to Clause 57 have now been deleted from the proposed reference document, but we also note that its 'CONCLUSION' still includes this dot point:

Clause 57 seeks to protect productive agricultural land and is not always applicable or compatible with existing or proposed land use scenarios within Manningham.

Site specific rezoning

The position paper also refers to the possible use of options for site specific rezoning. Any intention to go down this pathway would of course trigger the requirement for a proposed

planning scheme amendment. It would then be the subject of rigorous examination through exhibition, public submissions and potentially a Planning Panel hearing.

Given that a major complaint of the paper is with clause 57, which is beyond the scope of a local amendment to change, this reference to site specific rezoning is presumably indicative of the Council's desire for even greater freedom to make their own decisions about commercial developments in the Green wedge, unconstrained by the planning scheme.

Since it does not relate to the actual content of the amendment it would appear out of place in a reference document to the amendment.

As with the Clause 57 comments, we note that the reference to 'Site specific rezoning' has also been deleted. Obviously we think this improves the document, but we worry that the intent revealed in the exhibition version remains.

Agriculture

A significant theme pursued in the position paper relates to a decline of productive agriculture. It is true that traditional agriculture in the Green Wedges is facing a range of issues, notably including a lack of scale compared with larger industrial operators. The answer according to this paper is essentially to give up on agriculture and replace it with other commercial developments.

We reject this answer. Agriculture is a fundamental component of the Green Wedges. A part of preserving the green wedges is the promotion and maintenance of agriculture.

It is our position that both existing and new agricultural businesses should be proactively supported and encouraged by the Council and State Government. There has been a developing trend for writing off agricultural land use as unsustainable by proponents of development because of this limited commercial focus, which fails to recognize the value to the city and the State of the green wedges. This needs to be reversed in thinking about future land use planning and development for agricultural land use in the Green Wedges.

In many cases across the Green Wedge landowners run well managed hobby farms with a limited amount of extensive animal husbandry, most often cattle, but it can be any farm animals that are of interest.

Increasingly there will be niche operations that sell their produce at farmers markets. Others may run some form of intensive horticulture.

Also, it is becoming common for landowners to support conservation of the natural environment.

These are all uses that maintain the values of the Rural Conservation Zone. These activities need to be encouraged and supported by the State and Local Governments.

Manningham unilaterally opting out of agriculture is not the answer.

Should not be a reference document

The Rural Land Uses Positions Paper is a defacto strategic planning document which has never been subject to proactive community consultation. We do not consider putting this complex amendment on exhibition amounts to sufficient consultation on such substantial matters.

Since it contains recommendations and policy positions which are not contained in the amendment and which are in conflict with the Planning Scheme we suggest that it is not qualified to be a reference document – although for the WCA this point is moot, since we object to the entire amendment.

Detailed commentary on C117

We do not comment here on every change or addition, only those thought to be particularly problematic.

21.07: Green Wedge and Yarra River Corridor, modified clause

21.07-1 Overview

Two changes are made here. The first adds 'tourism-related activities to the list of things which the 'area' 'includes'. The second is to add 'economic development activities' to the final paragraph, so that it reads as follows:

A key challenge for Council is to balance competing interests between use of land for rural living, biodiversity protection, agricultural pursuits and economic development activities.

We submit that the planning scheme does not currently and should not require that a balance must be found between green wedge assets and economic development activities. To suggest balance is to shift the fundamental purpose of the green wedge.

The Planning Scheme must not allow any commercial development proposal which adversely affects green wedge values.

21.07-1 Economic development issues

First change here is adding this claim:

Traditional, agricultural land uses have been declining over recent years and , with now (sic) occupying only a small proportion of the total land area of the Green Wedge.

The thrust of C117 is to relax the Planning Scheme to allow more ‘tourism-related’ development. Although it is not explicit, evidently the above wording is added as an implied argument in favour of replacing the supposed decline in agriculture with other commercial enterprise. We submit that this is an inappropriate response. Agriculture is in accord with the rural nature of the area – commercial developments are not. Insofar as this is an issue, the appropriate response is to look for ways to halt and if possible reverse any decline in agriculture.

Furthermore, we question the value of adding this kind of unsupported observation in the Planning Scheme. It does not contribute to decision making.

There are a number of key tourism assets within Manningham’s Green Wedge, which attract visitors both locally and across Victoria.

The intention of this statement may be to imply that since tourism already delivers value to Manningham that this is an opportunity to be exploited. This statement is so vague that it could be neither supported nor denied, and in any case it could not assist with the task of assessing a development application.

Tourism offerings should be increased where land use conflicts can be minimised and any adverse amenity and environmental impacts are appropriately considered.

To whom is this exhortation directed? What form should these tourism offerings take? The Green Wedge zones, and their accompanying schedules, specify which uses are permissible and under what conditions. Is this provision supposed to modify the use schedules? Is it an attempt to achieve the effect of re-zoning without attracting the negative attention that would be attracted by a re-zoning?

The assumption here is that such adverse impacts are acceptable to some unspecified degree. Saying that adverse impacts must be ‘appropriately considered’ amounts to no guidance at all to applicants, Council officers or VCAT.

Balancing the expansion of business and commercial activity with the protection of the natural environment is a key strategic challenge

That 'balance' idea again. It implies a kind of equivalence between business expansion and conserving the green wedge environment.

This statement should be thoroughly rejected. In the Green Wedge protection of the natural environment is the ruling principle. No doubt Council officers are regularly confronted by powerful appeals to be permitted to put commercial developments on land in the Green Wedge, but the proper response to this is not any kind of balance. It is to protect the green wedge against precisely that kind of pressure, by upholding and applying the Planning Scheme.

Commercial activity should complement and enhance the landscape and visual character and environmental significance of these areas. The focus will be to promote appropriate business activities, which use best practice sustainable land management techniques and provide benefits to the local economy.

What does 'focus' mean in this context? And what are 'appropriate' business or commercial activities? Are they somehow established independently of the zone schedules? Note that removed from the 'focus' in the existing clause was to 'protect and support the viability of existing agricultural activities.' As an addition to the planning scheme this type of clause should be rejected because it is vague and will give rise to expensive arguments.

21.07-6 Economic development issues

This is one of a series of 'strategies' to achieve a number of 'objectives':

Cluster tourism development opportunities to enhance strategic position.

Does this mean anything? We note that this exact incomplete sentence appears in the Position Paper as an 'opportunity', which doesn't add much value.

More significantly, 'cluster' is undefined within the amendment, but we know what they mean from the proposed reference document:

There is a strong existing tourism cluster around the Ringwood-Warrandyte Road between Warrandyte and Warrandyte South. Opportunities exist to concentrate tourism land uses around this cluster. (p 10)

Recently a proposal to build a 49 room hotel in conjunction with a winery in this area was rejected at VCAT following objections by residents and community groups. It seems clear from the thrust of this amendment that such a proposal would be welcomed into a 'cluster'.

This concept lacks integrity. In the green wedges development clusters are the townships. The place for the 49 room hotel, if there be demand for such a thing, which is doubtful, is in

Warrandyte, or Wonga Park, not in the Green Wedge. This is merely a device to subvert the urban growth boundary, and it must be rejected.

Section 17 of the Planning Scheme, 'Economic Development', contains this 'Strategy':

Locate commercial facilities in existing or planned activity centres

In the Manningham Green Wedge the 'activity centres' are the townships. If the intention of the amendment is to create new activity centres it deserves a more explicitly planning approach than is evident in this amendment..

For a bigger picture, consider Plan Melbourne. Direction 1.4:

Support the productive use of land and resources in Melbourne's non-urban areas.

Non-urban land uses in the green wedges and peri-urban areas should be carefully planned and managed to avoid irreversible land-use change and support their ongoing productivity.

Also, Policy 1.4.1 Protect agricultural land and support agricultural production:

Councils need support to maintain the long-term economic and social value of agricultural production

With this amendment, Manningham appears to be giving up on agriculture. As discussed previously, this must not be allowed.

Proposed expansion of the scope of Clause 22.19 (Outbuildings in the Low Density Residential Zone) to apply to outbuildings in the Rural Conservation Zone (RCZ)

It is the proposition of the WCA that this proposed revision of the clause is structurally poorly done and that for people that are unfamiliar with the planning scheme and may encourage people to equate the RCZ with the LDRZ and have expectations for residential development in the Green Wedge that are quite unfounded in the planning scheme.

In addition to our in principle objection to linking the RCZ and the LDRZ, we have issues with the content of 22.19.

It is noted that in *Clause 22.19-3 Policy* the existing clause reads it is policy that:

*Numbers of outbuildings are **limited and that buildings are co-located**, to reduce the scattered visual impact of buildings on the landscape*

It is proposed to be changed to read that:

*Numbers of outbuildings are **minimised** to reduce the scattered visual impact of buildings on the landscape*

For some unknown reason the co-located requirement is dropped. This may be appropriate in the LDRZ where the land use is urban. However in the case of the RCZ it could result in an increased detrimental impact of the extent of built form and associated infrastructure (e.g. roads and power) on the rural landscape. We are arguing in Clause 22.20 the potential for scatter of buildings must be contained by the stipulation of maximum site coverage and an associated building envelope for all proposed uses involving built form and associated infrastructure.

Proposed insertion of a new local planning policy in Clause 22.20 to guide non-residential uses in the Rural Conservation Zone (RCZ)

The criteria for assessment of non-residential uses is too open to interpretation, and based on experience in other Green Wedges will inevitably lead to increased development with bulk and scale of the built form and associated infrastructure (e.g. car parks and access roads) effectively resulting in increasing urbanisation of the Green Wedge.

The criteria lack necessary specificity for Council planning officers to make objective evidence-based decisions about the merits of a given proposed application for a commercial or tourism use.

Clause 22.20-1 Policy basis includes this statement:

Opportunities exist to support sustainable commercial and tourism-related land uses that enhance and reinforce the environmental and biodiversity values of the Green Wedge, and minimise the removal of native vegetation and other landscape impacts.

This reads like the introduction to a prospectus. Was Brumbys Road such an opportunity? Did it 'enhance and reinforce the environmental and biodiversity values of the Green Wedge'? Without support this statement is gratuitous, and without more explicit references to land uses it is vague and problematic.

However, we suppose that this statement relates to the reason for C117: so that Council can say yes to function centres and 49 room hotels. It is clearly a strategic statement which does not belong in the LPPF. It is hard to see how it relates to the exercise of discretion. It is confusing because it is misleading. The intention here is to allow uses which are presently not allowed without explicitly saying what they are. We suggest that confuses the way discretion might be exercised

22.20-1 Policy basis also states that:

Non-residential uses in the Green Wedge need to be responsive to the environmental and landscape values.

This is just rhetoric and does not provide any useful guidance to statutory planners responsible for interpreting the planning scheme. **Non-residential uses in the Green Wedge need to be subordinate to environmental and landscape values, not responsive.**

Responsive would appear to be a variation on the 'balance' proposition put in 21.07.

In *22.20-2 Objectives* it says:

To support non-residential land uses that avoid environmental degradation and enhance the environmental significance and ecological function of the Rural Conservation Zone.

Again how does this provide any guidance to statutory planners? The existing RCZ Decision guidelines already provide that such matters to be considered.

It also says this:

To ensure that development including new buildings, access, earthworks and alterations to existing buildings, do not detract from the landscape and scenic values of the Rural Conservation Zone.

'Ensure' is a roundabout way of stating a condition, also this condition is too general – but we note that more useful provisions are included further down under 'Design and siting'.

*To ensure **the provision of appropriate** access is appropriately provided to any proposed non-residential use.*

What does this actually mean? It would appear redundant given the existing Decision guidelines in the RCZ. We note that the phrasing here has been improved by removing the superfluous 'appropriate', but the substance has not.

22.20-3 Policy proposes:

The overall cumulative impact of land uses on the natural environment, surrounding land uses and other sensitive interfaces is minimised

How is an assessing officer going to interpret this? Of course this is what we want, but where is the guidance about how to assess 'cumulative impact'? Amendments to the Planning Scheme should make it easier to interpret, not harder.

We note that this policy has been deleted . But we note the reference to ‘cumulative impact’ under the ‘Environment’ heading:

The cumulative impacts, including clearing of native vegetation, waste disposal/sewer capacity, increased access requirements, siting and proposed earthworks or environmental degradation, should not detract from the environmental significance of the area.

We think that consideration of ‘cumulative impacts’ is vital, and important enough to justify developing an assessment method to provide specific guidance to decision making, including a protocol for assessing impacts on native vegetation.

Uses are encouraged that enhance and promote sustainable land use practices and enhance the environmental values of the Rural Conservation Zone.

Again the encouragement! Is this a function of the Planning Scheme? How does this work? And how do these ‘uses’ relate to the zone schedules?

Uses that contribute to the economic or tourism development and employment opportunities within Manningham are encouraged in appropriate locations.

This ‘policy’ may capture the spirit of C117. It’s about economic development, it features encouragement and it wants to allow uses that it does not define or relate to the zone schedules. And of course, ‘appropriate locations’ are undefined, but one supposes it is referring to the aforementioned ‘clusters’.

Design and Siting

We note that the 4 dot points in the exhibition version have been replaced by 7 new ones.. We think they are steps in the right direction but we would like to see them further developed, for example with more specific bulk and scale and envelope controls.

The ‘Design and Siting’ criteria are crucial and just not strong and specific enough to achieve the overall purpose for the built form of discretionary uses to be subordinate to the rural land uses that protect the natural environment and character of open rural and scenic non-urban landscapes.

The proposed criteria highlighting aspects such as setbacks, visual impacts and consistency with height and scale of existing development miss the major point of any new development **not fragmenting** existing rural land uses or potential for the future use for rural land uses for nature conservation or agriculture.

The WCA would like to discuss with the Council the potential for **the application of an envelope for the built form and associated infrastructure** in the Manningham Green Wedge. Such a building envelope could be applied to the RCZ and include provisions for a **maximum site coverage** that protects the values of existing land use and future potential for land use for nature conservation and agricultural land use.

A more detailed discussion of this issue of excessive built form and development is available at <http://www.greenwedge.warrandyte.org.au/wp-content/uploads/2018/08/Bulk-and-scale-discussion-paper.pdf>

Conclusion

Although this amendment lacks clarity its essential themes are clear, both from the amendment itself and the reference document:

- Agriculture is declining, so the recommended response is to allow more commercial uses on Green Wedge properties.
- It regards clause 57 as problematic. It would like Council to be able to approve function centres and the like without requiring any associated agriculture.
- It would like to be able to create quasi townships called clusters, outside the urban growth boundary.

Agriculture is a fundamental element of the Green Wedge. It is true that there are economic issues, to do with scale and property values, with agriculture in all the wedges. This is a significant issue which requires a significant response from both State and local government. A local amendment to one green wedge is not such a significant response.

This entire amendment is, in effect, a proposal to erode the Green Wedge. We therefore submit that

1. The Panel advise the Council to abandon the amendment in its present form.
2. Council should be asked to articulate a strategy, in consultation with the community, which is consistent with the predominant purposes of the Green Wedge and the Rural Conservation Zone, and
3. It is recommended to the Minister that the State Government initiates an expert inquiry into how agriculture can be supported and encouraged in Melbourne's Green Wedges.

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