

# **Excessive Bulk and Scale of Built Form in the Green Wedges.**

A discussion paper

Alan Thatcher

20<sup>th</sup> August 2018

## Table of Contents

|                              |   |
|------------------------------|---|
| The Issue                    | 1 |
| Case Studies                 | 2 |
| Planning permit applications | 2 |
| Planning amendments          | 5 |
| Discussion                   | 5 |
| Excessive built form         | 5 |
| Existing planning provisions | 6 |
| Solutions                    | 7 |

## The issue

The Nillumbik Green Wedge is characterised by its natural and agricultural character. This underpins the very purpose of the Green Wedge zones. If this rural landscape is to be maintained and protected into the future then decisions of future land use and development need to complement and enhance the rural environment.

The municipal planning scheme provides the basis for the council to make decisions on all future land use and development, not otherwise determined by the State Government (e.g. major infrastructure), in the Green Wedge.

We have identified a number of issues we see as important for consideration to planning provisions for future land use and development in the in the review of the Nillumbik Green Wedge Management Plan. One of these issues is excessive bulk and scale of built developments and their associated infrastructure that is a rapidly emerging issue in the Green Wedges.

What this means in practical terms is that planning permits are being approved for developments in the Green Wedges that are dominated by buildings (e.g. places of worship, tourist facilities) that along with the impact of associated infrastructure (e.g. access roads, car parking and the like) are effectively changing the Green Wedges from rural to urban areas.

It is an issue that has yet to impact on Nillumbik's Green Wedge but is currently having a rapidly increasing impact on some other Green Wedges, in particular the South East and Mornington Peninsula Green Wedges.

The underlying problem is that the planning scheme permits a wide range of discretionary uses in the Green Wedge Zone (GWZ) and Rural Conservation Zone (RCZ) that involve the construction of buildings and associated infrastructure which can conflict with the values of the Green Wedge. For this reason there is an urgent need to amend the planning scheme to restrict the bulk and scale of buildings in the Green Wedge.

There is no shorthand way of understanding this issue without reference by the reader to the Nillumbik Planning Scheme. It is central to all decisions on future land use and development in the Nillumbik Green Wedge. The planning scheme can be accessed at <http://planningschemes.dpcd.vic.gov.au/schemes/nillumbik>.

To understand the extent of this issue, reference should be made to Clause 35.06 Rural Conservation Zone and the discretionary uses under the **Table of uses (Clause 35.06-1)**. Section 2 of that clause defines the discretionary uses subject to a planning permit application. The range of these potential uses is listed in Appendix 1 and it can readily be seen the vast array of uses potentially involving some form of building. This list is even greater than might be understood at first glance as the last listed item is **Any other use not in Section 1 (as of right) and Section 3 (prohibited uses)**. In planning terms these are known as 'Innominate' (unnamed) uses.

Graphic examples of this issue are to be found in several of the Green Wedges, particularly in, but by no limited to, the South East Green Wedges where 'Places of Worship' are being approved that are of a bulk and scale that is inappropriate to the purpose of the Green Wedges. Similarly there are tourist developments where the bulk and scale of the proposed buildings and associated infrastructure dominate the land use thus effectively urbanizing the areas.

In July this year, the Victorian Civil and Administrative Tribunal (VCAT) upheld an appeal by the proponent for a \$20 million spa and restaurant development in the Mornington Peninsula's Green Wedge against the decision of the local council to refuse to approve a planning permit. The details of this application are detailed later in this paper.

If this trend of large scale built development is allowed to continue it will lead to the loss of the Green Wedges by 'death by thousand cuts'. The Green Wedge could effectively be dominated by buildings and associated infrastructure and end up as little more than a façade of trees screening large developments.

## Case studies

### Planning permit applications

Summarised below are examples of recent large scale applications in the South East and Mornington Peninsula Green Wedge (as at Jul 18)

| Property   | Zoning | Site area<br>ha | Building max<br>height | Total building<br>footprint<br>Sq metres | Total building<br>area as<br>percentage of<br>site | Total<br>impervious<br>area<br>Sq metres | Total<br>impervious<br>area as<br>percentage of<br>site |
|--|--------|-----------------|------------------------|--|--|--|---|
| <b>Produce Market, 84 Harwood Rd, Bangholme</b>                                  | GWZ    | 36.97           | 10                     | 19,529                                   | 5.28   | 66,429                                   | 23.24   |
| <b>RSSB Aust P/L<br/>Place of Worship<br/>2 Boundary Rd, Carrum Downs</b>        | GWZ    | 26.3            | 11.25                  | 11,835                                   | 4.5  | 46,025                                   | 17.5  |
| <b>Coptic Church, 785 Thompsons Rd, Lyndhurst</b>                                | GWZ    | 21.68           | 23.3                   | 15,000                                   | 6.9  | 24,500                                   | 11.3  |
| <b>Hiltonia Hot Springs development, 282 Brown Rd, Fingal</b>                    | GWZ    | 14.87           |                        | 2,772 <sup>(2)</sup>                     | 1.9  | 12, 053 <sup>(1)</sup>                   | 8.1   |
| <b>Residential Hotel, Orchard and Winery in Brumbys Road, South Warrandyte</b>   | RCZ    | 2.354           | 3<br>storeys           |  |  |  |   |
| Buddhist Temple, 105 Taylors Rd, Skye  | GWZ    | 2.21            | 10.62                  | 2,173                                    | 9.8  | 4,609                                    | 20.8  |
| Kingston City Church, 448-450 Heatherton Rd, Clayton South                       | GWZ    | 0.68            | 10                     | 2,824                                    | 41.4   | 5,426                                    | 79.6  |
| St George Jacobite, Syrian Orthodox Church 419 Centre Dandenong Road, Heatherton | GWZ    | 0.603           | 12                     | 833                                      | 13.8   | 3074                                     | 51  |

Source: Defenders of the South East Green Wedge Incorporated

<sup>(1)</sup> The building and impervious figures do not include the existing development on the site which consist of the Hiltonia Homestead and seven cottages

The first five listed examples (bolded) are described in more detail below.

#### Bangholme Fruit and Vegetable Wholesale Market proposal in the City of Greater Dandenong.

This is a proposal for a \$15M wholesale fruit and vegetable market on Green Wedge land in the City of Greater Dandenong. The proposed development originally included construction of three fresh produce market sheds, flower/plant shed, fish market shed, three warehouse buildings, sterilisation facilities, market services and supply building, waste services building and an administrative office building. Most of these buildings were 10 metres in height and in the recent revision together with internal roads and parking, would result in a total impervious area of approximately 23% of the subject site.

The Minister for Planning has recognised the potential issues of the nature of this large built development in the Green Wedges and called-in the application for the following reasons:

*"The Minister for Planning considers that the proposal raises a major issue of policy and may have a substantial effect on the achievement and development of relative planning objectives associated with the Green Wedge Zone.*

*In the interests of protecting Victoria's green wedge zones from inappropriate development, it's appropriate for the Minister **to ensure the character and biodiversity of the area is adequately protected.***

*It's also important to ensure the site, which has potential for agricultural, environmental, historical, landscape, recreational and tourism purposes, is put to the best possible use.*

*This also falls in-line with Plan Melbourne 2017-2050, which includes clear policy to strengthen the protection and management of green wedges."*

The Advisory Committee held a panel hearing in July 2018 and will report to the Minister for Planning on its recommendations.

The Radha Soami Satsang Beas (RSSB) place of worship development and associated activities in the City of Frankston.

This application by Radha Soami Satsang Beas (RSSB) was for their Australian headquarters. It consists of a boulevard entrance, vast dominant buildings, a large parking area, internal roads and extensive areas of lawns. The main hall, two ancillary administrative buildings and a guest dwelling are all two storeyed constructions.

The floor area of the main building is 4,800m<sup>2</sup> with up to 700m<sup>2</sup> for an auditorium to seat 500. The building would cater for upwards of around 3000 people, a use proposed only twice a year.

The ancillary buildings have a collective footprint of 2,000m<sup>2</sup> and, being two storeys, have a combined floor area of 4,000m<sup>2</sup>. The total of all the buildings exceeds that of the Bunning's Frankston building. A barn is an additional 1,500 square metres.

This application was approved by the City of Frankston and affirmed by VCAT after an appeal by objectors.

A seven-storeyed Coptic Church application in the City of Greater Dandenong.

The application provides for a double storeyed Coptic Church in white coloured rendered bricks that would accommodate 500 people and cover 2,357m<sup>2</sup>. The building would have a height of 13.5 m, a dome of 20.8 m and two towers each reaching 23.3 m. In addition, the development includes the following other uses:

- Priests dwelling that covers 298m<sup>2</sup> and contains six bedrooms.
- Sports complex building covering 1,441m<sup>2</sup>.
- Plant nursery, storage shed and office and retail shop, covering 2,656m<sup>2</sup>.
- Horse stables covering 8,174m<sup>2</sup>.
- Car parks with 179 spaces.
- Soccer pitch, standard site covering 7,140m<sup>2</sup>.

The City of Greater Dandenong approved the planning application which is subsequently the subject of an appeal to VCAT by objectors.

A proposed Hiltonia hot springs development at 282 Browns Road, Fingal in the Mornington Peninsula Shire.

The proposal is a large-scale tourism development, involving built works and associated infrastructure to the estimated value of \$19.5 million on a 14.87 ha site in the Green Wedge Zone. It proposes:

- Hot spring pools and change facilities;
- A main entry hub of 5 wings including a main reception and lounge building, restaurant and outdoor dining, "wellness centre" (day spa ancillary to hot springs), amenities, bath & change facilities, VIP amenities and bath & change facilities, deliveries, storage and administration;
- Ancillary buildings including garden pavilion, massaging showers, mud treatment and showers, sauna building, massage, showers and sauna VIP pavilion, and Turkish baths;
- Car parking and access roads.

The Shire refused the permit application and the proponent has subsequently made an appeal to VCAT. The decision by VCAT was released in July 2018 and the tribunal approved the proposed development, rescinding the refusal by the Mornington Peninsula Shire.

Residential Hotel, Orchard and Winery in the City of Manningham

This was an application to build a 3 storey, 49 Room Hotel and a Winery with an associated vineyard in Brumbys Road, South Warrandyte.

The application was rejected by the Council and, on appeal by the applicant, rejected by VCAT. Despite recognizing that the main purpose of the vineyard was to provide a garden outlook for the hotel the Tribunal accepted the validity of the winery, finding that there was no requirement for a

winery to source all or any of its fruit from its own vineyard. And the Tribunal was also not concerned that the hotel was a valid 'in conjunction with, (the winery) use, even though the scale of the winery was dwarfed by the hotel. The member said that there was no requirement for any relative size consideration in determining in conjunction-ness.

The principal reasons for rejecting the application were its overall inappropriate bulk and scale, and problems with the road and traffic.

There is an [article](#) about this on our website, also the [VCAT decision](#).

## **Planning amendments**

### City of Manningham C117

The Warrandyte Community Association (WCA) considers that, as currently proposed, this Planning Scheme Amendment will permit future economic and tourism developments detrimental to the central values underpinning the Green Wedge, namely the conservation of natural environment and the character of the open rural and scenic non-urban landscapes.

One purpose of the RCZ is that agricultural use should be consistent with the conservation of the environmental and landscape values of the Green Wedge. The same qualification should apply to any proposed economic and tourism development.

It is the contention of the WCA that the proposed criteria for assessment of non-residential uses is too open to interpretation and, from the experience in other Green Wedge areas, 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 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.

## **Discussion**

### **Excessive built form**

All these applications share in common the development of large-scale built facilities and associated infrastructure (e.g. access roads and parking) on Green Wedge land.

The figures submitted for hard surface coverage do not illustrate the extent of the built form coverage. For example, in the places of worship and the spa development the built facilities are generally scattered across the site and directly impact on or exclude other uses such as nature conservation and broadscale agricultural land use and hence the rural landscape character fundamental to the Green Wedges.

In regard to the places of worship, there are not only large proposed church buildings but also associated accommodation facilities, caretaker residences, and other proposed uses. The issue here is not with the places of worship but the bulk and scale of the proposed developments and the adding of other uses such as sports grounds that are secondary to the purpose of the land use.

The proposed Hilltonia spa development highlights the misleading relationship between the built form footprint and actual impact on the subject site. The **Mornington Peninsula Localised Planning Statement** states that larger scale tourist-based development "must maintain a low overall development footprint". The Hilltonia proponents said that their development achieved a low footprint with site coverage of buildings and hard surfaces of approximately 8%. But in terms of impact on land use this is highly misleading as this footprint is just the direct area covered by buildings and hard surfaces and not the area effectively excluded or so fragmented by the scattered nature of the development from other land uses consistent with the purpose of the Green Wedges. The diagram (Appendix 2) shows that this is a much greater area, being in the order of at least 40% of the subject site. In addition, this figure probably does not include

outhouses; pump stations, trenching etc needed to support the development. It appears that “footprint” is taken to literally mean the area actually covered by buildings not the area impacted by the built development.

The scattered nature of these proposed developments also greatly increases the potential, where there is abutting agricultural land, for detriment to the running of surrounding farming and agricultural land use in the area.

In summary potential detrimental impacts of excessive bulk and scale of built form and associated infrastructure are:

#### Loss of rural landscape character

- Extent of buildings and hard surfaces

#### Impacts on agriculture

- Fragmentation of agriculture on the subject site.
- Detrimental impacts on agricultural land use on adjoining properties.

#### Flora and fauna

- Loss of native vegetation communities and associated fauna.
- Severance of wildlife corridors.

### **Existing planning provisions to limit built form in the Green Wedges**

#### In conjunction

One way in which the planning scheme seeks to control the extent of built development in the RCZ relates specifically to ‘Residential hotels’ and ‘Restaurants’. These are “Section 2 uses” in the RCZ and are subject to the condition (contained in Clause 51.02<sup>1</sup>) that:

- **A residential hotel** must be used in conjunction with Agriculture, Natural systems, Outdoor recreational facility, Rural industry or Winery and have no more than 80 bedrooms.
- A **restaurant** must also be used in conjunction with Agriculture, Natural systems, Outdoor recreational facility, Rural industry or Winery. No more than 150 patrons may be present at any time.

This is commonly thought to mean that a residential hotel or restaurant must be sub dominant to a land use that is consistent with the values of the purpose of the Green Wedges.

But a recent ruling by [VCAT](#) has thrown that interpretation into confusion. The application for a Residential Hotel, Orchard and Winery in the City of Manningham involved a proposal to demolish an existing dwelling and construct a three storey building (for the hotel and winery) on a 2.35 ha on land zoned RCZ3.

The VCAT Tribunal found that:

*....the vineyard and orchard is primarily a garden or landscaped setting for a Residential Hotel. It might be associated with fruit production for the Winery.....In any event, the vineyard and orchard is unresolved in details and cannot be said that the land is to be used for the purpose of Agriculture.*

The Tribunal then went on to say that:

*It therefore follows that the Winery must be or will be the separate use of land if the Residential Hotel is not prohibited under clause 57<sup>2</sup>.*

Whilst the Tribunal found that the “*built form will be a large and imposing element in the surrounding landscape*”, it found that the Winery was a bona fide use and was not dwarfed by the Residential hotel. As such, the proposal met the ‘in-conjunction’ test.

<sup>1</sup> Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions.

<sup>2</sup> Clause 57 is now Clause 51.02

The problem is that the Winery as proposed in this application is just a building. A Winery is defined in the planning provisions as:

*Land used to display, and sell by retail, vineyard products in association with the growing of grape vines and the manufacture of the vineyard products. It may include the preparation and sale of food and drink for consumption on the premises*

We would argue that it could be reasonably expected that in including the in-conjunction condition for the Green Wedge zones that the State Government would have been viewing the Winery as both the buildings and the vineyards. Normally the vineyards would be the dominant element of land use and characterise the rural scenic landscape fundamental to the Green Wedges. The Tribunal found that sales of vineyard products could be met with products produced off site.

While the Tribunal did rule to uphold the refusal of the planning application by the Manningham City Council, the interpretation of the 'in-conjunction' condition in this case clearly shows that the State Government needs to tighten the meaning in line with meeting the purpose of the Green Wedge zones.

It is also important to note that changes to the planning provisions made by the Planning Minister in 2013 has meant that in the Rural Conservation Zone there is no minimum lot size limitation for tourism uses such as Residential hotels and restaurants. Whereas in the Green Wedge Zone one of the conditions of these uses is that:

*The lot on which the use is conducted must be at least the minimum subdivision area specified in the schedule to this zone. If no area is specified, the lot must be at least 40 hectares<sup>3</sup>.*

This can greatly increase the pressure for tourism development in the Rural Conservation Zone.

#### RCZ Decision guidelines

There are many other potential discretionary uses involving built form as evidenced in Appendix 1.

The control of these uses is assessed by the application of the Decision guidelines (Clause 35.06-6) and these relate to general, rural, environmental, dwelling and design and siting issues. For example, under general issues it requires consideration of (inter alia):

- Whether the use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.
- Whether the site is suitable for the use and development and the compatibility of the proposal with adjoining land uses.

The pressure on municipal statutory planners in terms of work load means that little time is available to adequately follow these decision guidelines and it is left to any objectors to individual planning permit application to raise these issues.

The result is that, as illustrated by the above case studies, many built developments are approved that effectively result in the cumulative urbanisation of the Green Wedge.

## Solutions

In planning for residential development in urban areas, Victoria's Planning Provisions contain 13 standards include *Building height, Site coverage, and Permeability*. Collectively these standards are known as ResCode<sup>4</sup>.

It is our contention that a similar approach needs to be adopted for the Green Wedges with the application of standards for built form and associated infrastructure consistent with meeting the purpose of maintaining and enhancing the rural character of the Green Wedge zones.

---

<sup>3</sup> In the GWZ 40 hectares is the default minimum subdivision size. This can be varied by a municipal council by seeking approval for an amendment to its planning scheme from the Planning Minister.

<sup>4</sup> Planning Practice Note 27 Understanding the Residential Development Standards (ResCode), June 2015.

The reason for this is that the intent of the Green Wedge planning provisions is far too open to differing interpretations, as is evident in all the examples of excessive bulk and scale documented earlier.

The key factors in excessive bulk and scale issue are building height and site coverage.

There is a need for the State Government to incorporate into the Victoria Planning Provisions requirements for height and site coverage limits for non-agricultural developments to the Green Wedge, Green Wedge A, and Rural Conservation Zones, and Clause 57 of the planning scheme.

Building height is relatively easy to understand conceptually with the height usually being associated with number of storeys. But as the examples show above, in a rural context it is not only the number of storeys but also structures such as spires that may be associated with Places of worship.

The issue of site coverage is much more complicated. If it is based just on the total footprint of all buildings and associated infrastructure then it suffers from the same deficiency as discussed earlier for the Hilltonia spa development in the Mornington Peninsula Shire. In such cases the total footprint may be low but the built form and associated infrastructure are spread over the site effectively excluding or fragmenting the rural land use values fundamental to the purpose of the Green Wedges.

It is for this reason that we strongly advocate for the use of a **rural building envelope**.

An example of the application of a building envelope in a municipal planning scheme can be found in the City Of Busselton in Western Australia. It defines a building envelope as:

*.....an area of land within a lot marked on a development guide plan, subdivision guide plan or approved as part of a development application, outside of which development is not permitted. It is required that all building works, including structures appurtenant to buildings such as carports, garages, verandahs, patios, outbuildings, rain water tanks, retaining walls, above ground effluent systems, and associate batter and fill be contained within the envelope.*

The concept of maximum site coverage, expressed as a rural built form envelope, needs to be addressed in the Nillumbik Planning Scheme. The single largest zoning in the Nillumbik Green Wedge is the Rural Conservation Zone – Schedule 3 (RCZ3) that has a minimum sub division size of 8 hectares. Certain principles to making this calculation would need to apply and would include the requirement to:

- Protect the rural Green Wedge values of the site.
- Protect the rural Green Wedge values of surrounding properties.
- Within the limitations of (1) and (2) establish the envelope for a given proposed built form use.

In the City of Busselton this applies to their following planning zones, Low Density Residential, Rural Landscape, Conservation and Bushland Protection. In the case of the Bushland Protection Zone the building envelope is limited to a maximum of 1,500m<sup>2</sup> but can be increased marginally subject to meeting specific conditions. In the Conservation Zone the city has determined that all development shall be contained in an envelope that to the satisfaction of the Council:

- Maximises the preservation of remnant vegetation;
- Maintains the landscape values of the site and general area; and
- Ensures there is no adverse or potential impact on watercourses, wetlands, river or estuary systems or groundwater.

Experience shows that ultimately the best solution needs to be as prescriptive as possible with maximum site coverage within a rural building envelop. This parameter may be expressed as a percentage of the site or as an area.

It is proposed that the State Government establishes the planning provision for the GWZ and RCZ requiring a **rural building envelope** and sets a percentage or absolute figure based on the default minimum subdivision sizes for these zones that is 40 hectares in both zones. Individual

municipal councils could then seek to modify these default requirements through amendments to the zone schedules.

The need for such a rural building envelope comes even more pressing considering that in the Rural Conservation Zone, unlike the Green Wedge Zone, there is no minimum lot size designated and any proposed development on small lots poses even greater challenges of ensuring against excessive bulk and scale of built form development.

Alan Thatcher

20 August 2018

The second of a series of discussion papers produced under the aegis of the Warrandyte Community Association, Friends of Nillumbik and Green Wedge Protection Group in the interests of providing information as a basis for discussion of issues important to the future protection of the Nillumbik Green Wedge

**Appendix 1 Discretionary Uses subject to a planning permit application in the Rural Conservation Zone** (the Clause numbers are pre VC148 where changes were gazetted by the State Government on 31/07/2018)

| Use  | Condition  |
|--|--|
| Animal boarding  |  |
| Agriculture (other than Animal keeping, Apiculture, Intensive animal husbandry, Racing dog training, Rice growing and Timber production. |  |
| Car park   | Must be used in conjunction with another use in Section 1 or 2   |
| Dependent person's unit  | Must be the only dependent person's unit on a lot.<br>Must meet the requirements of Clause 35.06-2   |
| Dwelling (other than bed and breakfast)  | Must be the only dwelling on the lot. This does not apply to the replacement of an existing dwelling if the existing dwelling is removed or altered (so it can no longer be used as a dwelling) within one month of the occupation of the replacement dwelling. Must meet the requirements of Clause 35.06-2.                                    |
| Emergency services facility  |  |
| Freezing and cool storage  | Clause 57.01 <sup>5</sup> requires that the condition that "The goods must be agricultural produce, or products used in agriculture".  |
| Group accommodation  |  |
| Host farm  |  |
| Landscape gardening supplies   |  |
| Market   |  |
| Primary produce sales  |  |
| Primary school   |  |
| Racing dog keeping – if the Section 1 condition to Animal keeping is not met<br>Racing dog training                                      | Must meet the requirements of Clause 52.42   |
| Recreational boat facility   |  |
| Renewable energy facility (other than Wind energy facility)  | Must meet the requirements of Clause 52.18   |
| Residential hotel  | Clause 57.01 requires the condition that this use "Must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery. Must be no more than 80 bedrooms".  |
| Restaurant   | Clause 57.01 requires the condition that this use "Must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery. No more than 150 patrons may be present at any time. If used in conjunction with Function centre, the total number of patrons present at any time must not exceed 150". |
| Rural industry (other than Abattoir and Sawmill)   |  |
| Rural Store  |  |
| Secondary school   |  |
| Utility installation (other than Minor utility installation and Telecommunications facility.   |  |
| Wind energy facility   | Clause 57.01 requires that this use "Must not be on land in a Rural Conservation Zone".  |
| Winery   |  |
| Any other use not in Section 1 or 3.   |  |

<sup>5</sup> Clause 57 is now Clause 52.01

Appendix 2 - Indicative envelope for built form and associated infrastructure

