

Amendment C88 - On-Luck Chinese Nursing Home

Responsible Director: Acting Director Planning & Environment

File No. Amendment C88

The ultimate destination for this report is: COUNCIL AGENDA

SUMMARY

In 2001, the Chinese Community Social Services Centre Inc (CCSSC) successfully obtained Commonwealth Government funding for the development of the "On Luck" Chinese Nursing Home on a 2.4 hectare site at 177 – 179 Tindals Road, Donvale. The settlement date for the sale, originally scheduled for November 2002 was delayed until 16 June 2003. In October 2002, the Melbourne Metropolitan Strategy, Melbourne 2030, was implemented in Amendment VC16. VC16 established an Urban Growth Boundary that delineated urban land from green wedge land and whereby the site at 177 – 179 Tindals Road, Donvale was designated as land in the Green Wedge. On 13 June 2003, Amendment VC18 was gazetted which prohibited the development of a nursing home on land within the Green Wedge.

On 4 March, 2004, the Minister for Planning prepared and approved Amendment C39 to the Manningham Planning Scheme. The amendment altered the Schedule to Clauses 52.03 and 81 to allow the use and development of a 60 bed nursing home.

CCSSC has written to the Minister for Planning to request a ministerial amendment to approve a proposal for a further 120 beds and an additional 36 car spaces. DPCD has prepared amendment C88 and is seeking comments from Council about the proposal in accordance with Section 20 (5) of the Planning and Environment Act 1987.

It is proposed to send the officers' comments in Attachment 1 as Council's response to the proposal.

1. BACKGROUND

- 1.1. In 2001, the Chinese Community Social Services Centre Inc (CCSSC) applied to the Commonwealth Department of Health and Aged Care and successfully obtained the Approved Provider Status for residential aged care. In August 2002, the CCSSC entered into a contract of sale for the 2.4 hectares of land at 177 - 179 Tindals Road, Donvale with a condition that the single dwelling condition be removed.
- 1.2. The CCSSC presented conceptual plans of the proposed nursing home and addressed Council officers' concerns to Council in September 2002. With support from Council, the single dwelling restriction was removed from the land, thus allowing the development of the "On Luck" Chinese Nursing Home on the land.
- 1.3. On 8 October 2002, Amendment VC16 was introduced to implement the Melbourne Metropolitan Strategy, *Melbourne 2030*. Amendment VC16 altered the Manningham Planning Scheme by establishing an Urban Growth Boundary that delineated urban land from green wedge land.

- 1.4. In November 2002, the CCSSC was allocated 60 high care places (nursing home beds) and a capital grant of \$1.1 million by the Commonwealth Government to set up "On Luck" Chinese Nursing Home at 177 - 179 Tindals Road, Donvale.
- 1.5. The settlement date for the sale, originally scheduled for November 2002, was delayed until 16 June 2003 by the vendor due to subdivision issues. At the end of May 2003, the schematic design for the nursing home was finalised. On the 18 June 2003, the CCSSC's architect met with Council officers for pre-lodgement advice regarding a planning permit application.
- 1.6. On the 13 June, Amendment VC18 was gazetted. The amendment introduced core planning provisions for all Melbourne metropolitan green wedge land. The amendment introduced Clause 57 into the Manningham Planning Scheme to protect metropolitan green wedge land from uses which would diminish its agricultural, environmental, conservation, landscape, natural resource or recreational values. The subject land was on green wedge land in which case a nursing home became a prohibited use.
- 1.7. On 24 November 2003, Amendment VC22 introduced the Green Wedge Zone and the Rural Conservation Zone in the Victorian Planning Provisions and amended Clause 57 of 17 planning schemes.
- 1.8. On the 19 May 2004, Amendment VC23 came into operation and the land was rezoned from Environmental Rural Zone Schedule 3 to Rural Conservation Zone, Schedule 3. In addition to Clause 57, the change in zone also prohibited the use of the land for a nursing home.
- 1.9. On 4 March, 2004, the Minister for Planning prepared and approved Amendment C39 to the Manningham Planning Scheme. The amendment altered the Schedule to Clauses 52.03 and 81 to allow the use and development of a 60 bed nursing home on 159 Tindals Road, Donvale. It should be noted here that all amendment documentation relating to the proposal has given the address as Lot 1 on Plan of Subdivision 504753 at 159 Tindals Road. Council's data base shows the property is actually located at 177 - 179 Tindals Road, Donvale. The correspondence from the former Minister for Planning was that Amendment C39 was intended only to accommodate a nursing home of 60 (high care) beds. The amendment required the development to be completed by 31 December 2007.
- 1.10. Senior officers, Mayor, Deputy Mayor, planning consultants and a representative from CCSSC were invited to a meeting with the Department of Planning and Community Development (DPCD) on 11 December 2009.
- 1.11. Officers received documentation from consultants on 17 December 2009 requesting informal comments. No time frame was provided.
- 1.12. Before officers were able to provide comments, a formal letter arrived from DPCD dated 15 January 2010.
- 1.13. An infosum was provided to Councillors on 22 January 2010 advising of DPCD's request for comments and included a copy of DPCD's letter.
- 1.14. DPCD has prepared Amendment C88 and has written to Council on 15 January 2010 seeking comments in accordance with section 20 (5) of the Act. Initially 14 days for a response was given, however this has been extended to 10 February 2010 following a request from Council for additional time to consider the matter.

2. PROPOSAL/ISSUE

- 2.1. CCSSI has written to the Minister for Planning for a ministerial amendment under Section 20 (4) of the Planning and Environment Act 1987 whereby the Minister can intervene to prepare and approve an amendment. Although the land is within the green wedge, the amendment will not need to be ratified before each House of Parliament after it is approved as there is no subdivision of land.
- 2.2. CCSSI is seeking planning approval for a further 120 beds in a new two-storey extension to the existing nursing home. An additional 36 car parking spaces for staff and visitors is proposed. CCSSI expects that the Commonwealth Government will, in the near future, make available offers for further nursing home beds.
- 2.3. The CCSSI has stated that “the enclosed sections indicate that in order to maintain a similar ground floor level to the existing facility the new building will be benched into the existing ground level by up to almost a full storey. The effect of this is to reduce the visual impact and bulk of the proposal on the landscape generally and when viewed from adjoining neighbour’s properties. Additional screen landscaping along the northern side will further veil or screen views to the building from the north”.
- 2.4. CCSSI has justified the development in the green wedge by the following arguments:
 - 2.4.1 The land is currently used as a nursing home and it cannot support any other rural uses. The site is bordered by a house on one side and the Donvale Christian College on the other.
 - 2.4.2 The Chinese-speaking aged population in Melbourne is growing rapidly and is predicted to increase by 325% between 2001 and 2026. There is currently a shortfall of 220 aged care places for Chinese-speaking aged population in the Eastern Melbourne Metropolitan Region and this is expected to increase.
 - 2.4.3 There is no vegetation or environmental issue at stake.
 - 2.4.4 The site does not adjoin a public reserve or park.
 - 2.4.5 The site is not near a public infrastructure facility dependent on a non-urban location.
 - 2.4.6 There is growing demand for Chinese-speaking nursing home beds in Melbourne Metropolitan Region.
- 2.5. DPCD has prepared Amendment C88 and has written to Council on 15 January 2010 seeking comments in accordance with section 20 (5) of the Act. A response is required by 10 February 2010.
- 2.6. Council officers’ concerns about the proposal are provided in Attachment 1 and are summarised below:
 - 2.6.1 There are a number of outstanding matters relating to the initial development, particularly in relation to the construction plan for roadworks and drainage, which will be further compounded by the new development. These matters should be resolved prior to DPCD considering the new proposal.

- 2.6.2 Planning Process. A more transparent process would be to rezone the land to a Special Use Zone as was followed with the Donvale Christian School. An upper limit on the number of beds should have been included within the Schedule to the zone. The Incorporated Document should not be used as a means to enable the Minister for Planning to amend the Development Plan in the future without requiring a further planning scheme amendment.
- 2.6.3 The proposal substantially intensifies the use and development of the site which is inconsistent with the Rural Conservation Zone and objectives for the Green Wedge under *Melbourne 2030*. The proposal sets a precedence to intensify or expand other non-conforming uses within the Green Wedge, such as the Calvary Bible College.
- 2.6.4 The specific conditions placed in the Incorporated Document should limit the expansion of the existing use by placing an upper limit on the maximum number of beds. The document in its current form does not provide certainty for Council or surrounding residents about the future development of the site.
- 2.6.5 The Development Plan should seek to ensure that Ecologically Sustainable Design outcomes are achieved and that an integrated approach is undertaken in relation to siting, topography, landscaping and that the amount of earthworks is minimised.
- 2.6.6 A detailed traffic and car parking assessment is required.
- 2.6.7 The current building does not have a formal point of discharge.

3. PRIORITY/TIMING

- 3.1. Council is required to forward comments about the proposal to DPCD by 10 February.

4. POLICY/PRECEDENT IMPLICATIONS

- 4.1. On 8 October 2002, the Metropolitan Strategy, *Melbourne 2030*, became a document that planning authorities must consider when assessing planning scheme amendments and planning permit applications. These provisions are incorporated in the State Planning Policy Framework within the Manningham Planning Scheme in Clause 12. Policy 2.4 states that *Melbourne 2030* will protect the green wedges for non-urban uses and encourage proper management of these areas. Policy 6.3 is to "improve the coordination and timing of the installation of services and infrastructure in new development areas" and initiative 6.3.5 is "to assess the needs for child care, aged care and other community services and augment the capability of existing services so that these are effectively delivered in newly developed areas".
- 4.2. In the Local Planning Policy Framework, Clause 21.07 contains Council's green wedge and Yarra River corridor objectives and strategies. Clause 21.14 contains Council's community health and well-being objectives and strategies.
- 4.3. The proposal does not fit in with the objectives for the green wedge, however it is supported by the objective to provide for the proportion of Manningham aged residents which is rapidly increasing.

5. CUSTOMER/COMMUNITY IMPACT

5.1. The proposal will help to address the current shortfall in nursing home accommodation.

6. FINANCIAL RESOURCE IMPLICATIONS

6.1. The Minister for Planning is preparing and approving the amendment and there are no additional costs other than the time spent by officers in assessing and commenting on the proposal.

7. SUSTAINABILITY

7.1. The "On Luck" nursing home is one of a number of non-conforming uses that currently exist within the Green Wedge. The proposal is for a substantial increase in the size of the development. Substantial issues in relation to sustainability have already been raised in Section 2. These issues are proposed to be addressed through the approval of the Development Plan and Incorporated Document.

8. CONSULTATION

8.1. DPCD has prepared Amendment C88 and has written to Council on 15 January 2010 seeking comments in accordance with section 20 (5) of the Act. There will be no further opportunity for consultation.

9. CONCLUSION

10.1. The proposal is contrary to the objectives for the Green Wedge, however the proposal will meet an identified need for additional nursing home accommodation in Manningham. Officers' comments are provided in Attachment 1.

OFFICER'S RECOMMENDATION

That in response to the proposal to expand the On Luck Chinese Nursing Home Council

- (A) acknowledge that Manningham's population is ageing and that there is a need for additional nursing home beds;**
- (B) draw attention to a number of issues raised by Council in relation to the original proposal in 2004 that were not adequately addressed by the Department of Planning and Community Development (DPCD) in the approval of the Development Plan;**
- (C) advise DPCD of its concern about the planning process and tools being proposed; and**
- (D) endorse officer comments as outlined in Attachment 1.**

"Refer Attachments"

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ATTACHMENT 1

**MANNINGHAM CITY COUNCIL COMMENTS
ON-LUCK CHINESE NURSING HOME****General Planning Concerns**

Council Officers have generally expressed their in principle objection to the proposal to expand the existing nursing home by an additional 120 beds. The proposal seeks to substantially intensify the use and development of the site which is considered inconsistent with the Rural Conservation Zone (RCZ) and the Conservation Values of Schedule 3 to the RCZ, Clause 21.07 of the Municipal Strategic Statement and the Metropolitan Strategy - *Melbourne 2030*.

Whilst the detail of the proposed development will be considered as part of the Development Plan to be submitted at a later date, there are concerns about aspects of the design as depicted in the drawing plans, not the least being that the proposed expansion will significantly increase the footprint of the existing building. This includes concerns about the impact the proposed building will have on the amenity of surrounding residents and the visual amenity of the surrounding area, the limited response to topographical constraints, the amount of earthworks required and traffic and drainage issues.

Planning Process

An issue of particular concern to officers is the planning process being used. For greater transparency it is considered that a consistent approach by DPCD is preferable to assess and approve any proposals for the expansion of non-conforming uses in the green wedge. If consideration is to be given to allowing the expansion of the nursing home, a similar process should be followed as that undertaken by the Donvale Christian College at 141-165 Tindals Road, Donvale. Specifically, the land should be rezoned to a Special Use Zone with inclusion of a condition for use of a nursing home, placing an upper limit on number of beds allowed. A Master Plan should also be developed for the site to provide for greater certainty, transparency and consistency. It is also considered that the surrounding community should be given the opportunity to comment on the proposal.

Manningham has a number of community/commercial uses within the Green Wedge which pursuant to the Rural Conservation Zone are non-conforming uses including educational centres e.g. Calvary Bible College, restaurants and function centres which are unable to expand under the current provisions. It is preferable that consideration of the future expansion of these centres should be able to be dealt with in a similar manner. The planning process being used for the nursing home sets an undesirable precedent and is considered an inappropriate use of the planning tools.

Explanatory Report

- Please note that our records indicate that the actual address for the subject land is 177-179 Tindals Road, Donvale (this should be corrected on all of your documentation).
- The proposal is clearly inconsistent with the Policies 2.1 and 2.4 in the Metropolitan Strategy. The fact that the use is located close to the periphery of the green wedge and that the current use exists does not provide justification for the expansion of the centre. Manningham has a number of non-conforming uses within the green wedge and the current controls applying to these sites do not support any expansion of these uses where they do not meet the condition. The Metropolitan Strategy is clear in its intent to provide "...better protection for green wedges through tougher planning controls over use and development, the introduction of the urban growth boundary, changes to planning provisions and changes to legislation."
- Allowing further expansion of this use may set an undesirable precedent for other similar proposals to be considered in the green wedge in future. If consideration is to be given to allowing the expansion of the nursing home, a consistent approach should also be

considered for other non-conforming uses in the green wedge which have a community benefit.

- The proposal is also considered inconsistent with Policy 9.1 as the amendment will not achieve a better planning outcome as it does not provide any certainty for the community about the future development of the site. As noted above, the amendment in its current form does not provide a limit on the number of beds allowed. Further the amendment allows for the Development Plan to be amended by the Minister without the need for a further amendment.
- The Explanatory Report incorrectly references Clause 21.05 which relates to land in residential zones. The report needs to be amended to make reference to Clause 21.07 Green Wedge and Yarra River Corridor. Whilst the actual detail of the development will be considered as part of the Development Plan to be submitted at a later date, it is clear that the land does have topographical constraints and will impact on the visual amenity of surrounding residents and from Tindals Roads. Clause 21.07 included objectives "To minimise the extent of earthworks..." and "To achieve developments which are site responsive and which complement the topography and environmental qualities of an area."
- The Explanatory Report does not make reference to Clause 21.10 Ecologically Sustainable Development.

Incorporated Document

- The Incorporated Document should limit the expansion of the existing use by including a maximum number of beds that considers the concerns raised by Council Officers especially the building footprint, setbacks and response to topography. Further the Incorporated Document should not enable the Minister to amend the Development Plan. It is considered that any future expansion of the centre should be considered through a planning scheme amendment to enable a comprehensive strategic assessment process to be undertaken. The document in its current form does not provide any certainty for Council or surrounding residents about the future development of the site.
- The Development Plan should seek to ensure that Ecologically Sustainable Design outcomes are achieved and that an integrated approach is undertaken to site and design the proposal to have regard to the topography of the site, minimise earthworks, provide appropriate opportunities for landscaping and to minimise visual intrusion.
- The Development Plan should also include appropriate decision guidelines to reflect the objectives of the current planning zone, overlay and other incorporated documents, including the Site Design Guide for Residential Development on Bushland Fringes, 1995 (Note: this guide has been updated and is awaiting Ministerial authorisation of Amendment C54 to give statutory weight to the new document).

Traffic

- Council Officers would expect a detailed traffic and car parking assessment to be required for such a large expansion. It should deal with the adequacy of the access to the property from Tindals Road, opportunities for turning into the property including the need for dedicated turning lanes, circulation within the site.

Drainage

- The current building does not have a formal point of discharge. Drainage is currently being dealt with through a small wetland and overland flow over the adjoining property.
- The proposed site coverage of buildings and hard standing surfaces would have a significant impact on the adjoining property.