

Planning provisions for Melbourne's green wedges

November 2003

This advisory note provides information and advice about:

- the *Planning and Environment (Metropolitan Green Wedge Protection) Act 2003*
- Core Planning Provisions for Metropolitan Green Wedge Land
- the application of zones to green wedge land.

What is green wedge land?

Green wedge land is defined under the *Planning and Environment Act 1987* as land that is described in a metropolitan fringe planning scheme as being outside an Urban Growth Boundary (UGB).

A metropolitan fringe planning scheme is a planning scheme applying to any of the following municipal councils:

Brimbank, Cardinia, Casey, Frankston, Greater Dandenong, Hobsons Bay, Hume, Kingston, Knox, Manningham, Maroondah, Melton, Mornington, Nillumbik, Whittlesea, Wyndham and Yarra Ranges.

What is the *Planning and Environment (Metropolitan Green Wedge Protection) Act 2003*?

The *Planning and Environment (Metropolitan Green Wedge Protection) Act 2003* provides protection for metropolitan green wedge land by establishing additional procedures for planning scheme amendments affecting that land. These procedures are:

- Authorisation from the Minister for Planning is required to prepare an amendment to a metropolitan fringe planning scheme that would

amend or insert a UGB or amend or insert a provision that relates to or affects green wedge land.

- Ratification by Parliament is required for any amendment to a metropolitan fringe planning scheme that has been approved by the Minister that:
 1. amends or inserts a UGB; or
 2. has the effect of altering or removing any controls over the subdivision of any green wedge land to allow the land to be subdivided into more lots or into smaller lots than allowed for in the planning scheme.

What are the Core Planning Provisions?

The Core Planning Provisions (CPP) are included as a new Particular Provision, Clause 57, in the *Victoria Planning Provisions* and 17 metropolitan fringe planning schemes. The CPP set out prohibitions and restrictions on certain uses and subdivision of land in a non-urban zone between the UGB and the outer boundary of the 17 metropolitan fringe planning schemes (green wedge land).

The CPP **do not** apply to:

- Land inside the UGB.
- Land outside the 17 metropolitan fringe municipalities.
- Land in an urban zone (for example, townships in green wedge areas).
- Land in public land zones (except the Public Conservation and Resource Zone).
- Land excluded by the schedule to Clause 57.

The schedule to Clause 57 identifies specific sites where the CPP do not apply.

How do the Core Planning Provisions and the Planning and Environment (Metropolitan Green Wedge Protection) Act relate?

The CPP affect the use and subdivision of non-urban land outside the UGB.

The Act affects proposals for planning scheme amendments that affect the location of the UGB and land outside the UGB. A proposed amendment to change the schedule to the CPP would be affected by the Act and would require the authorisation of the Minister.

What do the Core Planning Provisions control?

The CPP control some land uses. The use controls are set out in Clause 57.01. A use listed in the table to Clause 57.01 is prohibited if:

- there is no condition opposite the use in the table; or
- a condition opposite the use is not met. If the condition opposite the use is met, the use is not prohibited.

Uses that are prohibited outright include warehouses, offices and shops. Uses that are prohibited unless they meet certain conditions include dwellings, restaurants, schools and residential hotels.

The use controls need to be read in conjunction with the land use terms and nesting diagrams in Clauses 74 and 75 of the planning scheme to be understood. If a use is listed in the table to Clause 57.01 and that use includes other uses, the same restrictions or prohibitions apply to those other uses unless they have been specifically excluded. For example, 'Retail premises' is a prohibited use. Other uses included in the 'Retail premises' nest are also prohibited except 'Manufacturing sales', 'Market', 'Plant nursery', 'Primary produce sales', and 'Restaurant' which are specifically excluded.

The CPP also affect the subdivision of land. The creation of lots smaller than the minimum subdivision area in the zone is prohibited unless the subdivision is the re-subdivision of existing lots or a subdivision to create a lot for a utility installation.

How do the Core Planning Provisions affect other parts of the planning scheme?

The CPP **do not** replace or change the existing zones and overlays. Rather, the CPP apply an additional requirement affecting subdivision and how land may be used.

A responsible authority cannot issue a permit for a use or subdivision that is prohibited by the CPP, even though it may be allowed in the zone or an overlay.

A use or subdivision that is not prohibited by the CPP must continue to meet other requirements in the scheme.

Can the Core Planning Provisions be changed?

No, the CPP can only be amended by the Minister.

An amendment that proposes to change the zoning of land to a zone in which the CPP do not apply or to change the schedule to Clause 57 would require authorisation from the Minister before it could be prepared. An amendment that changes the schedule to Clause 52.03, Specific Sites and Exclusions, in a way that affects land outside the UGB would also require authorisation from the Minister.

An amendment that alters the UGB would require both authorisation from the Minister and ratification by Parliament.

How do the Core Planning Provisions affect existing uses, permits, permit applications and special planning scheme provisions?

- Existing lawfully established uses can continue to operate and existing permits (which have not expired) can still be acted upon as provided in Clause 63.
- Clause 57 includes a transitional clause for permit applications for use which were not decided before the CPP were introduced. This clause enables applications made before 13 June 2003 (the approval date of Amendment VC18) for uses that would otherwise be prohibited or restricted by the CPP to continue to be processed and assessed.

The transitional clause does not apply to permit applications for subdivision.

- Clause 52.03 in planning schemes is used in extraordinary circumstances to allow site specific proposals. The CPP **do not** override any special provisions set out in Clause 52.03. An amendment to a planning scheme to include a reference to a new specific proposal on green wedge land in the schedule to Clause 52.03 would require the Minister's authorisation to prepare. If that specific proposal also had the effect of altering or removing any controls over the subdivision of any green wedge land to allow the land to be subdivided into more lots or into smaller lots than allowed for in the planning scheme, the amendment would also need to be ratified by Parliament.

- The schedule to Clause 57 in some planning schemes exempts some Special Use and Comprehensive Development zones allowing specific developments from the CPP.

Application of zones to green wedge land

The Green Wedge Zone and Rural Conservation Zone were introduced into the *Victoria Planning Provisions* in Amendment VC22. These zones are able to be applied to suitable areas across Victoria and are particularly appropriate to green wedge land.

The Green Wedge Zone

The Green Wedge Zone is appropriate to recognise and protect non-urban land outside the UGB in the metropolitan area for its agricultural, environmental, historic, landscape or recreational values, or mineral and stone resources.

The zone provides opportunity for most agricultural uses and limits non-rural uses to those that either support agriculture or tourism, or that are essential for urban development but cannot locate in urban areas for amenity and other reasons (such as airports, waste treatment plants, land fills and reservoirs). A dwelling requires a permit and is restricted to one dwelling per lot.

The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation.

The Rural Conservation Zone

The Rural Conservation Zone should be applied to conserve, maintain and enhance the environment. The zone recognises the opportunity for agricultural production while seeking to also protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values. The zone could also be applied to rural areas degraded by environmental factors such as salinity or erosion. Tight restrictions apply to development and the range of discretionary uses is limited. A schedule to the zone requires specific environmental values of the land to be listed.

In the metropolitan green wedge area, the CPP apply in addition to the Green Wedge Zone and the Rural Conservation Zone.

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