

Residents' Voice



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President's Address

Dear Member

Despite growing concern from residents and councils, urban planning in Victoria is continuing to deteriorate. Planning policies are still guidelines, not rules, and developers are still driving the planning system for personal gain, not net community benefit.

Recent ABS figures confirm that M2030 is having no effect on focusing growth in desired areas and protecting other areas. Together with the 2008 Audit of Melbourne 2030, this puts paid to any pretence that M2030 is achieving any of its goals. So we have all the pain of a poorly implemented 'consolidation' plan but none of the projected benefits.

Population growth has been the excuse to quietly "re-badge" Melbourne 2030 as "Melbourne @ 5 Million". All reference to the M2030 Implementation Reference Group (on which SOS had two representatives) has been deleted from the accessible part of the DSE/DPCD website, including its 4 very critical reports.

The Minister has been calling-in many large-scale proposals, bypassing the planning system

and council or community scrutiny.

Ironically, most of the private "fast-tracked" projects aren't proceeding because speculative developers just want to increase land value, or for financial reasons (<http://www.theage.com.au/national/states-priority-projects-placed-on-a-fast-track-to-nowhere-20090904-fbg9.html>)

Undemocratic proposed planning changes include the new Activity Centre zone, the new residential zones, the Major Transport Projects Facilitation Bill and the government-appointed Development Assessment Committees (which will remove control of planning decisions in activity centres from councils).

By calling in projects and relaxing planning guidelines while removing any public oversight, the Government has shown no understanding that increasing oil prices, climate change and a growing population mean we need **more** careful and democratic planning, not less.

All this has transformed community dissent. While the formation of SOS was the main reaction to the new "performance-based" planning regime in the mid-90s, in response to the current government's mishandling of planning policies (and of other major issues like Bay dredging, the north-south pipeline, desalination plant, unfair infrastructure levies, etc), dozens of local activist groups have sprung up, mostly part of the Planning Backlash network. Yet the Minister continues to renege on promises to meet with various community planning and development groups.

And community confidence in local government has suffered due to improper processes at some councils, highlighted by the Ombudsman's scathing report on Brimbank Council (based largely on information provided through years of research and tenacious effort by Marilyn Canet, a council watcher and SOS member). The government sacked Brimbank Council but so far there have been no repercussions for the ALP political figures involved.

In response, SOS has maintained its media presence and continued to lobby for better planning policies, with substantial submissions on the New Residential Zones and the reviews of the Planning Act and VCAT (http://www.sos.asn.au/submissions_policy). Even the Planning Institute in its VCAT submission noted the bias of many VCAT members. It is encouraging that new VCAT head Justice Bell seems sympathetic to the need for reform of VCAT (particularly regarding expert witnesses and reversing the negative standing of VCAT in the eyes of the community).

SOS has also been actively engaging with a number of Councilors wanting better council processes for planning and democratic community consultation. But the only real hope for improving the planning regime is for minor parties and independents with sustainable planning policies to win enough seats in the next State Parliament to make a democratic difference.

Ian Wood, President

THE LATEST PLAN TO HALT THE SPRAWL:

HIGH DENSITY HIGH-RISE HOUSING ALONG TRAM & MAJOR ROAD CORRIDORS ?

http://www.bedp.asn.au/papers/docs/Transforming_Australian_Cities_Report_July_09.PDF

Melbourne City Council chief designer Rob Adams has a vision for 4-8 storey high-density mixed use development along tram corridors and major arterial roads. It's backed up with research by SGS (the company that did most of the research for the Eddington inquiry which recommended an east-west \$19 billion road tunnel underneath central Melbourne).

Because activity centres are said to only be able to house an extra 40-50,000 residents, the Adams model claims to provide a solution to housing the city's continuing spiral of population growth, fuelled by internal and external immigration.

Aerial survey analysis allegedly reveals that 6-8 storey development on just 6% of the city's land area (along major road and tram routes) could provide housing for most of the extra 1.8 million people projected to live in the city by 2030. This theoretically should leave the other 94% of the "suburban hinterland" relatively untouched - except that it could be "greener with more trees, water recycling and solar panels on every roof."

However, the model is based on a series of assumptions and omissions which are likely to undercut its effectiveness. Despite all the bluster about action over climate change and drought, the government has still not mandated recycling and solar technology even for current renovated or new dwellings. And developers are not likely to abandon the lucrative infill development market in the suburbs under free market conditions.

Secondly, the policy is supposed to protect heritage areas by keeping them out of the high-rise scenarios - but many of the routes earmarked for change are in heritage overlay areas.

The schematics accompanying the Adams plan show 6-8 storey buildings along both sides of

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Community win at VCAT over Corner Hotel liquor license

Former SOS president Ian Quick has been vindicated by a recent landmark VCAT judgment that upheld community arguments about protecting residential amenity. The decision set benchmark conditions for any expansion of licensed premises or extension of operation times in residential areas (*Swancom P/L v Yarra CC [2009] VCAT 923*).

The Corner Hotel application sought to amend the existing planning permit to extend beer garden trading hours from 11:30pm to 3am and increase the number of patrons from 750 to 1300.

The application triggered the still relatively new decision guidelines in cl. 52.27 of all planning schemes. These require consideration of the impact of operation hours or patron numbers on the amenity of the surrounding area, as well as the cumulative impact of existing licences plus the proposed licence on the amenity of the area.

The VCAT decision focuses on the consideration of the 'cumulative impact' of licensed premises in an area, outlining 3 key considerations:

- density of licensed premises;
- mix & type of licensed premises;
- existing amenity levels.

The detail of the assessment of cumulative impact on amenity should be proportionate to the level of concern raised by these issues.

The decision reviews background material and research, and proposes an assessment process to consider cumulative impact. It also discusses related issues such as the limited use of site inspections to consider behavioural issues; applying the Charter of Human Rights; the

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major road links and tram corridors like Lygon and Brunswick streets. The proposed buildings rise sheer from the street with no setback from the footpath. At the rear, they step down to interface with 2 or 3 storey medium density areas beyond, and then down again to the existing 1-2 storey residential areas.

disconnect between liquor licensing and planning; and wider state policy for licensed premises.

The Member ruled that an increase in numbers, while not specifically mentioned in the reasons for applying s52.27, still require s52.27 to be applied due to its purpose and decision guidelines:

"The triggering event for a permit under cl 52.27 should be widely and purposively construed [9]. An express purpose of cl 52.27 is to ensure that the impact of licensed premises on the amenity of the surrounding area is considered. Moreover, the words that precede the 3 dot points in the "Permit Required" part of cl 52.27 (as set out above) are relevant to the those dot points. By reference to these words, it is clear that the permit trigger is intended to apply to the whole use of the land to sell or consume liquor under a licence, not just a limited aspect of the use."

The decision highlights the fact that operators of licensed premises in an area where amenity problems already exist can no longer rely on an internally-focused noise and amenity plan in support of a planning application for late trading hours and significant increases in patron numbers. The purpose of cl 52.27 and the decision guidelines is to focus on external amenity issues and cumulative impacts so operators of licensed premises must address these broader amenity impacts beyond their immediate control. *

"buildings rise sheer from the street with no setback"

But given the relatively narrow width of arterial roads being considered, even if there were enough trams and buses to efficiently transport the new inhabitants and existing commuters and shoppers, this would only add to existing traffic congestion and pollution unless street parking was banned to allow 2 unimpeded lanes in each direction - but significant onsite or underground parking would need to be provided to cater for local businesses and residents.

This would mean re-building whole retail strips and creating a long series of worse traffic bottlenecks before built form along major corridors was fully re-built. It may also involve compulsory acquisition of land abutting arterial roads - a power the Minister could well have under the undemocratic changes to the Planning Act foreshadowed by the Department.

This "battery-hen" approach also ignores the fact that vibrant city and community centres evolve organically and rarely work well if designed from the top down. We could physically squeeze more people in, but at what cost to community function and cohesiveness, and the social and psychological health of the inhabitants? These relatively narrow transport corridors where people conduct business and interact socially are likely to become over-shadowed wind canyons. Witness the soulless and sterile community desert of Docklands!

There have also been no legal controls foreshadowed to prevent continued infill over-development in the suburbs (the most profitable projects - more attractive surroundings, cheaper to build per unit). This negates the "94% untouched" claim for existing suburbs.

"No increase in public open space" is envisaged despite provision for many more people. There are also no plans to curtail private transport subsidies (eg free parking, car salary packages) to encourage more use of public transport.

The existing Melbourne 2030 strategy hasn't failed "because it was unable to be implemented fast enough" (Corridor Report) but because there were no tough controls to prevent random infill destroying suburban character or to direct higher density growth to activity centres and require such centres to be located at major public transport nodes

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with parallel provision of improved physical and social infrastructure.

Most inner city tram lines are already running over capacity. The Adams plan relies partly on more tram stops, yet public transport operators are reducing them. And there are no plans to fund the extension of tramlines to link with major railway stations to improve modal change and increase the efficiency of the public transport system as a whole.

More intense development along most bus routes should be ruled out. It will just add to existing traffic congestion along most corridors because they're not wide enough to take an additional "bus only" lane. Buses and trams alone cannot provide efficient mass transit.

Some supporters of the high-rise corridor plan point to Curitiba in Brazil, but there the city plan included wide avenues with 5m building setbacks to accommodate dedicated bus lanes to enable high frequency bus services for a rapidly growing city. That won't work in inner Melbourne, which was originally laid out as a train- and tram-linked city with few arterial avenues wide enough to cater for bus lanes (with the exception of several middle-suburban roads like the Burwood, Nepean & Maroondah Highways and Dandenong Road.

Even if these problems were solved, inner city high-rise corridors would ruin much of Melbourne's character and heritage, historically centred along tram lines. And more housing isn't enough. There will need to be extra infrastructure and social services - doctors, teachers, pre-schools and day-care and maternal health centres. How will the greening of the "94% untouched" suburban hinterland be funded (more trees, water recycling and solar technology, etc)? Developer levies? Or is this just window-dressing to sell the plan?

At the very least there must be parallel plans developed at the same time for the greening of private and public spaces (including rooftops - see SOS Eddington submission) and to improve integrated rail links as well as to limit infill development in the suburbs.

But Adams is correct in saying further conventional development will only reinforce the existing trend under the present planning regime towards non-sustainable growth and encroachment of the Urban Growth Boundary onto valuable rural and arable land.

Part of the solution at least must be to mandate greener planning regulations to foster more high-density sustainable housing projects near mass transit nodes and on regeneration sites - such as the award-winning K2 in Windsor and Christie Walk in central Adelaide. Any solution is going to require legislative change and financial assistance - but that's happening anyway so it should be directed to solutions that maximise residential amenity for all and integrate with policies on climate change and water and energy conservation.



Christie Walk in central Adelaide - 27 green low-energy households on a mere 2000 m²
<http://www.urbanecology.org.au/christiewalk/>

Even if the Adams' plan worked, it would only be a decade or so until further population increase forced the need for greater adaptation. We don't have infinite resources and space. Given the serious long-term impacts of climate change, drought and the increasing cost of oil, at some stage we must also assess the carrying capacity of the state.

City Plans in cities like Vancouver and Curitiba worked so well because the community was actively involved in their design on an ongoing basis. The Victorian government must also use participatory consultation to transparently incorporate community input into urban and transport planning for Melbourne. *

The solution is political...

In the face of escalating community and council criticism, the state government and planning minister are continuing to undemocratically deregulate and side-

line the planning regime when common sense alone tells us that unprecedented global warming, population growth and rising oil prices mean that we need more carefully considered and coordinated planning, not less.

SOS doesn't back any particular political party, but we do support planning policies that promote a sustainable city and protect residential amenity while still allowing for some higher density in appropriate locations with adequate infrastructure. That SOS support has extended on occasion to urging a vote for particular candidates in local or state elections, such as Clifford Hayes ("Reclaim Residents Rights") who stood for Brighton at the last state election.

In NSW, SOS has stood its own political candidates and last year in Melbourne, SOS supported then-SOS president Ian Quick for a seat on Yarra Council. But because of three dummy candidates all cross-preferencing in his ward, he was squeezed out.

But the community still got the last laugh - his preferences elected an independent and threw out the sitting Mayor, an "independent" strongly aligned with the ALP who intended her to be re-elected on dummy preferences.

Yarra now has 3 real independents, 3 ALP councilors and 3 Greens. *



On the hustings in Yarra, Nov. 2008

Warning on deals between developers and objectors

Residents should beware of doing deals with a developer to withdraw their objections in return for improvements to plans before the Council. After the developer gets the permit, there's nothing to stop them applying later for approval of the original design as an amendment to the permit. Objectors are then back to square one - they have to object again to Council and will still end up at VCAT (with or without council on their side) if they want to try and defeat or modify the amended proposal.

Our advice is never do a deal with a developer that involves withdrawing your objection unless the changes you're offered are guaranteed. And that implies a VCAT decision or a legal control like a s173 agreement or a covenant.

Here's a recent case in point:

Kukas v Stonnington CC & Ors VCAT 342 (4 March 2009) confirmed that agreements to modify designs are not binding on the developer - once the permit is obtained, the developer can re-submit the original design for planning approval.

In this case a permit was originally sought for a 4 storey apartment building in South Yarra. The 4th storey was removed from the plans after negotiations with objectors. Approval was granted for 3 storeys without objection. Construction commenced but a new application was then made for permission for the (virtually identical) 4th storey. The objectors appealed to VCAT.

The Tribunal stated: *We have given careful consideration to what we regard as the unfortunate circumstances forming the background to this application.*

We appreciate that the objectors feel unfairly treated or 'duped' but, at the same time, it appears that the agreement did not legally prevent further planning applications being made in respect of the same land, although the objectors may have thought it did. As a matter of law, we find that we are empowered to consider the grant of a permit for the development sought, and this was not contested by any party.

From a public policy point of view it is an unfortunate outcome which will erode the public's faith in the planning system if the developer's methods become a widespread practice. It is significant to note that while the developer was able to get some of the objectors to withdraw their appeals, they required a covenant restricting any further development on the site in future. A situation where parties feel they need lawyers to draw up covenants to ensure agreements are honored isn't in anybody's interest.

[Developer Planning Update, March 09, Vol 2 No 1. Clem Newton-Brown]

So residents should remain as objectors and if they're not happy with the Council's decision on the application, they should lodge their VCAT appeal within 21 days and *then* negotiate. If the developer is serious about meeting valid residents' concerns, a VCAT mediation should quickly reach an agreement which VCAT can endorse as a formal Consent Order.

Sometimes objectors accept a permit approval from Council with tighter conditions, rather than trying to win a better deal at VCAT. But if you don't appeal you run the risk that the developer will file their own appeal against the conditions after you are out of time (permit applicants have 60 days in which to appeal).

You'll still be a party to their appeal but the hearing will be limited to only discussing the disputed conditions.

These different timeframes that objectors and developers have in which to lodge an appeal is one of the many unfair provisions of the appeal process which SOS has drawn to the attention of the current VCAT review see *SOS VCAT submission* http://www.sos.asn.au/submissions_policy

AND ANOTHER WARNING:

Don't rely on Council to argue your case for you at VCAT!

Even if Council also opposes a permit, it has no legal duty to support you as a ratepayer, only to support its assessment of the application based on its own interpretation of the Planning Scheme. While you will share some concerns, your grounds will differ in some respects - YOU need to argue them at the Tribunal. And no, VCAT isn't perfect, but it IS possible to win your case, or at least get concessions or better conditions.



Renewing Your SOS Membership

WE'VE had some inquiries about renewal of memberships using EFT or credit cards (direct funds transfer).

However, our web expert says there could be problems matching up the identity of members depositing money with their details because they may not be able to include a comment field (depending on which bank they use).

Memberships could be paid online with credit cards but the system would have to be expertly set up and maintained and we haven't had any demand.