

**SUBMISSION BY SAVE OUR SUBURBS INC
TO THE MINISTER FOR PLANNING
ON THE
RESCODE ADVISORY COMMITTEE'S REPORT
20 DECEMBER 2000**

**5 March 2001
Executive Summary**

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Save Our Suburbs has major concerns with a number of critical recommendations made by the ResCode Advisory Committee in its report of 20 December 2000.

We support some recommendations, and would support others if they were clarified or modified. Those matters are dealt with in [Part A](#) of this submission.

We set out our opposition to certain recommendations together with suggested solutions to problems which the committee's recommendations do not address. These matters are dealt with in more detail in Part B of this submission. We have set out in Schedules 1 and 2 to the submission detailed comments on proposed Clause 55 and on the proposed standards.

In summary,

We support:

- the primary position given to neighbourhood character in the report;
- the recommendation that specific provisions should be added to the Victorian Planning Provisions (VPPs) and the concept of adding the schedule to the residential zones to allow councils to trigger a planning permit for a single dwelling on nominated lot sizes;
- the subdivision provisions, in particular the specific ability to impose building envelopes;
- the requirement to meet standards for overshadowing and overlooking for single dwellings;
- the building height limit of 9m;
- moves towards closing planning loopholes which enable subdivisions and multi unit development by stealth;
- the rejection of the 'as of right' dual occupancy concept;
- and the introduction of energy rating for new dwellings

We oppose:

- continued reliance on discretionary controls, when the key objective of the new code is to deliver certainty;
 - retention of the Good Design Guide standards ;
 - the potential provided for those standards to be worse;
 - mixing land use policy with siting standards eg. suggesting a five-fold increase in density in certain areas;
 - enabling private surveyors to decide overlooking and overshadowing matters for single houses which would consequently extend the role of the Building Appeals Board;
 - and, the failure to permit residential amenity controls from being altered by a neighbourhood character overlay.
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PART A.

CLARIFICATION OR MODIFICATION REQUIRED

Subject to clarification and/or modification, we support in principle those recommendations which involve the Neighbourhood Character Overlay and design standards for single dwellings.

Neighbourhood Character Overlay

We support the general concept of the neighbourhood character overlay, however, we oppose the committee's recommendation that while that overlay *'has the ability to vary all standards in the proposed code it is not envisaged that the controls over basic amenity issues would be altered'*. (Part 3, p 7).

We also see barriers to its speedy implementation because of costs to Councils and the community, both in time and financial resources.

Clarification is required as to whether it is intended that there should be provision for GDG standards, including amenity standards, to be amended for areas protected by a neighbourhood character overlay. The usefulness of the NCO to actually deliver an improved protection for neighbourhood character and amenity is illusory if it cannot vary all standards, including amenity standards.

We believe it is imperative that standards be improved over GDG standards generally, particularly for areas within a neighbourhood character overlay.

We do not believe 'neighbourhood character' should be limited to streetscape issues involving such matters as the front setback, roof form, front garden planting and front fence. Other key neighbourhood character and amenity considerations also should be taken into account, ie side and rear setbacks and overlooking and overshadowing.

Support for the NCO is based on the assumption that it will protect neighbourhood character and amenity and not be used as the catalyst to create a two class system. We are concerned that areas without the protection of a neighbourhood character overlay will be targeted for inappropriate development. We believe that would be contrary to the government's election policy promise to *'make neighbourhood character the mandatory starting point for designing and assessing any proposed new housing'* and Amendment VC9 which requires neighbourhood character to be taken into account when planning applications are considered for the development of multi- units.

The committee envisages that only a small number of areas might attract the NCO (Part 3 p.6 and 7). Therefore it is likely to be of limited application. In some municipalities, where substantial areas already have a heritage overlay, the additional work, time and cost involved in adding a NCO will be a barrier to its acceptance. There must be an expedited and simplified way forward for municipalities to translate work on local variations into either NCOs or local policies.

Design standards for single dwellings

We welcome the committee's recognition that design standards for single houses should be improved, in particular the recognition that standards are required for overshadowing and overlooking. However, the recommendation that GDG standards should be applied to single houses means that improvement is less than it could be. Those standards are not good enough when applied to medium density developments.

PART B.

THE PROBLEMS

In the main our submission examines the recommendations provided in Part 3 of the report which contains the detailed proposals on how the committee's recommendations might be implemented.

We have not addressed the commentary contained in the report except where we believe it is necessary to explain our position in regards to a particular recommendation.

PROBLEM 1 : Certainty - the need for some mandatory standards

In its report, the committee repeats the mantra of five years: that the controls provided in the *GDG* are not the problem but *'the way in which they have been used'*. (Part 1 p 24).

We believe the *GDG* has failed because its standards are discretionary and inadequate and we support higher standards which are mandatory, not discretionary. Certainty can be achieved by mandatory standards. This can be done by allowing Councils to fix their benchmarks, or by the State setting them. There should be mandatory standards on height, site coverage, side and rear setbacks, height of walls on boundaries, length of walls on boundaries and the amount of private open space. At the very least, certainty would be better achieved if site coverage, height, length of walls on boundaries and setbacks were mandatory.

Continued reliance on discretionary controls which allow developers to achieve maximum site yield for minimal compliance with those standards, will continue to outrage the community and will not deliver the certainty that residents, developers, councils and the state government want.

SOLUTION 1.

Impose improved and mandatory standards on elements (other than the non-specified and subjective neighbourhood character elements) such as height, site coverage, rear and side setbacks, length and height of walls on boundaries.

PROBLEM 2. :Mixing policy with siting requirements

The committee's draft fails in several respects to distinguish broader land use location policy from siting standards in the following respects :

(a) Five-fold increase in density (SB1.3) provides for a five-fold increase in density within 400 m of a railway station, shopping centre or a tram stop. By comparison, under the *GDG*, an average suburban block of 600 sq m can be redeveloped with 3 units. The committee has recommended that that same block could be redeveloped with 5 units. We believe the increase in density is excessive and that the designated 400 m distance from a railway station, shopping centre and a tram stop would enable large-scale redevelopment of almost all residential areas throughout the inner and middle suburbs of Melbourne.

We believe, too, that such a recommendation is at odds with Minister Thwaites' December 1999 invitation to all applicable municipalities to apply for the option to replace the arbitrary provisions of the *GDG* relating to density, building heights and setbacks within a 7 km radius of the GPO, with new locally responsive provisions.

(b) The controls should better define "neighbourhood character" so that it is clear that the residential amenity is being protected and the text only refer to siting and not other policy objectives. The text does not delineate between, on one hand, broad policy and on the other, siting requirements, neighbourhood character and residential amenity.

SOLUTION 2 (a)

Delete **SB1.3** reference. The document is intended to provide siting standards not direct the locations for higher density developments.

SOLUTION 2(b)

A number of text changes are suggested to Clause 55 which are set out in **Schedule 1** attached which we believe would better address the intention to protect neighbourhood character and amenity.

PROBLEM 3 : Retention of GDG standards

We believe that by recommending that the *GDG* standards should be retained, the committee has rejected thousands of complaints by residents about that discredited document.

That concern was reaffirmed by feed-back from the community road-testing sessions to the ResCode reference group that there had been no support by participants in those sessions for retaining GDG standards.

That widespread distrust of the GDG is even acknowledged by the committee's own report which states that after rejecting an option to retain the GDG and VicCode 1, the committee had concluded:
'... that the Good Design Guide has become so tainted in the eyes of the community that it would not be a solution that would be accepted by the community at large.' (Part 1 p.84)

The report went on:

'Also Councils are seeking a new model and this option would be difficult to reconcile with those who are expecting a code that provides greater certainty'. (Part 1, p 84)

SOS believes that after correctly judging public opinion, the committee has chosen to disregard it by recommending the retention of GDG standards regarding:

- setbacks to the side and rear boundaries
- walls on boundaries
- height of walls on boundaries
- site coverage
- overshadowing
- overlooking

We are also concerned by the committee's recommendation that not only should standards start from the inadequate GDG benchmark but there should also be provision to vary those standards up or down.

We believe the recommended retention of GDG standards will not achieve the State Government's stated aims of certainty and consistency. (A Sensible Balance, 13 December 1999). As a consequence, residents, developers, Councils and the Victorian Civil & Administrative Tribunal will continue to face the same problems as they do now. It is inevitable that if the GDG standards are retained and subject to discretionary appraisal, residents' anger and frustration with the State's housing design guidelines will be further aggravated.

It was that high level of dissatisfaction with the State's planning system, and the GDG in particular which led to the formation of SOS in February 1998.

SOLUTION 3.

Standards should be increased to restrict the impact of new development on in-fill sites. However, there should be flexibility to enable building designers and architects to show why a particular standard should be reduced. (See **Schedule 2** attached for detail)

PROBLEM 4. : The role of the private building surveyor

SOS is concerned by the report's recommendation that private building surveyors could determine whether, in many instances, a building permit should be issued for a single house after deciding whether the new development would overlook or overshadow the property next door.

It appears that no provision has been made for those affected by the development to have any say in the matter.

Private building surveyors are paid for the services they provide to their clients. The existence of that relationship provides the potential for 'conflict of interest' issues to arise. At present, SOS is contacted continuously by residents who believe their homes will be overlooked and overshadowed by large, single houses built close to or on their boundary. Those residents are invariably distressed to discover that VicCode 1 provides them with minimal opportunity to object to such adverse effect upon their amenity.

We oppose any increased role for private building surveyors in assessing single dwellings under **clause 54** for compliance with GDG standards, without substantial modification to notification and appeal rights being made available to adjacent owners. In recent years, many adjacent owners and Councils have had to deal with enforcement problems involving private building surveyors.

SOLUTION 4.

We believe neighbours of proposed single house developments should be notified, should have access to building plans and appeal rights. In particular, the following need to be addressed :

- Amendment to the Building Act 1993 to allow access to building plans. Currently many municipal building surveyors, and private building surveyors will not allow access to plans without the consent of the owner. This technique was effectively used for several years to thwart access to information in planning applications. This issue must be resolved.
- Notification and appeal rights must be made available to the abutting neighbour who is affected by the proposed development. We are not suggesting notice at large, rather notice to the neighbour(s) for whom the building surveyor is exercising the assessment against the standards set out in clause 54 ie walls on boundaries, overlooking, overshadowing height of walls, or height overall etc. Experience has shown that it is often the abutting neighbour who can identify errors or omission in the plans. If no notice is given, the first one knows of the development is when the builder commences. The notification process could be similar to that required for building protection works.
- There must be provision for an appeal, and not to the Building Appeals Board.

ROAD TESTING

The Report envisaged that the proposal presented in the Report *"would be subject to extensive consultation with key stakeholders"*. It also recognised that *"some of these standards may need to be reviewed."* (Pt 3 p.4)

The DOI has conducted information sessions which were called "road testing". However, a more realistic road testing would involve taking a selection of sites in each municipality and apply the controls to see what, if any changes to the outcomes would result when compared to a *GDG/Vic Code 1* outcome. We see great benefit in this exercise, as if it were done under the auspices of the DOI it could be a cost effective educational tool for local government, the development and design industries, and provide the assurances the community at large is seeking.

SCHEDULE TO THE RESIDENTIAL ZONE

Individual Councils should be able to trigger a planning permit requirement that varied lot sizes, depending on the context ie predominant lot sizes, topography etc and not be limited to the 450 sq m or 600 sq m sizes recommended.

CONCLUSION

Residents have long believed that the Good Design Guide and VicCode 1 have permitted inappropriate development that has degraded neighbourhood character and residential amenity.

Expectations are high that ResCode will better protect '*neighbourhood character, amenity and environment of Victoria's residential areas than the existing rules*', (as stated in the Minister for Planning's covering letter, contained in the ResCode Advisory Committee's report). However, we believe that those aims will not be achieved if the State Government accepts the recommendations that SOS opposes.

Schedule 1

All references in this schedule are to Part 3 of the Report.

Proposed Clause 55 (p.26-27)

- The purpose should add the reference to "amenity" as well as remove reference to broader locational policies. These clauses should solely relate to design standards - not direct the location of the dwellings. That role is for local and State housing policy. To do otherwise repeats the same problem created by the 7 km ring in the GDG.

Purpose

To promote well designed residential development that respects the character and amenity of the neighbourhood (delete reference to ..and is located etc.)

Application

- Element 1 (p.29)- delete reference to " Location". Element 1 should refer only to form and site constraints.
 - Delete reference to first sentence on p27. "Respecting the character of an area does not mean preventing change". It is argumentative and tendentious.
 - cl 55.03-1 (p.29) Element 1 heading delete reference to "Location"
 - OB1.1 (p.29) add reference to "amenity" after neighbourhood character
 - OB1.3 and 1.4 (p.29) - delete as they do not relate to form and site constraints
 - SB1.3 (p.29) Higher density development : delete this standard altogether. It clearly falls into the policy location set and is not appropriate for this part of the VPPs . This code should not seek to identify and define what constitutes higher density development, nor its location. It should refer solely to the form and design standards.
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Schedule 2

All references in this Schedule are to Part 3 of the Report

1. Potential for standards to be worse

In Clause 54 (Part 3 p.18-25) for each standard the 'Decision guidelines' provide a discretion to permit a worse standard than that specified. This reinforces the notion that the recommended standards will be the likely starting point with the potential for them to be further diminished. We oppose any reduction in standards, which already are inadequate.

Solution : Improve the standards, or do not allow relaxation of the standards

2. Site coverage:

We oppose the committee's recommendation that site coverage for single dwellings and multi-unit developments should be increased to 80% = 300 sq. m. (SA2 p.20-21 and SB2.6 p.32) from 55% set by VicCode 1 and 60% (with exceptions) set by the GDG. No justification has been offered for this increase.

We believe that the proposed sliding scale 60% = 500 sq m to 80% = 300 sq m. when combined with the 9m height standard (SA3 p.21 and SB2.5 p.32) will not result in any material change to the GDG sanctioned maximum site coverage for two or three storey developments.

Solution : Site coverage should be 60% as the standard for both clause 54 and clause 55 and that SA3 and SB2.5 should be amended accordingly to 60%. Decision guidelines could then be utilised by the developer/designer to justify greater site coverage on context grounds.

3. Walls on boundaries:

The 50% referred to in SA5 (p.22) and SB3.2 (p.35) reflects E6T3 of the GDG, though with some slight modifications. As the proposed standards both account for building against an existing or simultaneously constructed wall, without restriction, the reduction to 25% would be a reasonable compromise. The implications for walls on boundaries using the 50% figure is materially greater for smaller lots.

Solution : The length of walls on boundaries should be reduced to 25% in SA5 and SB3.2.

4. Daylight to existing windows:

Proposed standards SA7 (p.23) and SB3.3 (p.36) replicate E6T8 of the GDG which does not provide adequate protection for existing windows. The standard should be modified to increase the setback from the existing window. That would provide more daylight and aspect to the sky for the existing residence.

Solution : Increase the standard by reference to a light court of 6 sq m and a dimension of 2 m clear to sky for both SA7 and SB3.3.

5. Overshadowing:

The proposed standards SA8 (p.23-24) and SB3.5 (p.36-37) effectively replicate E6 T10 of the GDG which is unacceptable. As that standard refers to the lesser of the proportion of adjacent open space, or 40 sq m, and makes no reference in the decision guidelines to an assessment of how that space is used, the consequent amenity impact on adjacent dwellings is often considerable, particularly for smaller lots where loss of sunlight can be greater in absolute terms.

Solution : Limit the reduction in overshadowing to 25% instead of the 50% referred to in SA8 & SB3.5.

Increase the minimum number of sunlight hours to 5 hours.

Add to the decision guidelines in SB3.5, reference to 'the extent and form of development of adjacent lots' to make it consistent with SA8.

Add to both SA8 and SB3.5 'including the function and location of the adjacent open space' to the first dot point of the decision guidelines.

6. Overlooking:

The 9 m rule provided by E7 of the GDG has been retained in a modified form in SA9 (p.24) and SB3.6 (p.37) The ability to allow an increase in the amount of direct views in clause 54 or 55 is unacceptable. Furthermore, we do not support any potential for excluding screening for upper level windows just because they are designated on the plans as bedroom windows. Such an exclusion does not take into account any change in use of dwellings.

Solution : The language of SA9 and SB 3.6 should be modified to direct a design that avoids direct views within 15 m and within a 60 degree arc.

The decision guidelines relating to SB3.6 should also include the fourth and fifth dot points of SA9, ie *'the extent and form of development on adjacent sites'* and *'the degree to which the adjacent development has reasonably anticipated the location of adjacent development in locating its secluded open space'*.

7. Private open space:

SB4.7 (p.39-40) replicates E9T1 of the GDG.

As the current provision of open space for multi units is inadequate, the standard should be able to be improved, not made worse. That should also apply to single dwellings.

Solution : Private open space standards for single dwellings and multi units should be increased, not decreased.

The standards should refer to the amounts identified as 'secluded private open space', not just private open space.

8. Carparking:

Provision of car parking should be certain. This is not achieved by the reference to a reduction of parking provision *"where residents are likely to have low car ownership"* and the reference to the provisions of car parking on a shared basis (SB4.10 (p.41)).

The requirement to provide only 2 car spaces (no matter how large the single dwelling is) is inadequate. (SA 12 p.25).

Solution :

Reference to "where residents are likely to have low car ownership" in SB4.10 should be deleted.

Council ought be able to modify the car parking requirement to suit the actual circumstances of the municipalities.

9. Storage:

No equivalent for storage has been included in clause 54 in respect of single dwellings.

Solution :

SB4.11 (p41) should be replicated in clause 54.

In relation to storage for multi units, the requirement should be mandatory, not discretionary.