

# SAVE OUR SUBURBS

## RESIDENTS GUIDE TO OBJECTING (Sept.05)

In September 2001, a new system for regulating housing development came into force called Rescode, which replaced the former Good Design Guide. However, like the GDG and most of the rest of the planning regime, its controls are discretionary - ie, council planners can decide how stringently to apply the guidelines depending on the particular context of the site, amenity considerations and local municipal policies. Each Rescode guideline lists the factors that the council must consider in making a decision.

### What is Rescode?

- Rescode is the system for regulating housing in Victoria. It is a comprehensive set of guidelines that provide for siting controls on overshadowing, overlooking, front and side setbacks, wall and building heights, etc, as well as helping to protect neighbourhood character. Rescode provisions are set out in clauses 54-56 of each Planning Scheme and are mirrored in the Building Regulations (Part 4 - siting).
- A planning permit is required where lot sizes are less than 300 m<sup>2</sup> (or up to 500 m<sup>2</sup>, depending upon the Council's policy) for all multi- or single unit developments, developments in designated heritage areas and extensions. For most other works only a building permit is required

### What is the difference between a building permit and a planning permit?

1. A building permit is issued for works to be done on the site, which must comply with the Building Code of Australia. The BCA is available at most libraries or by subscription online. Notification of neighbours is usually not required except after a permit has been granted if protection works are required for adjoining properties. The building permit must still comply with Rescode siting and design provisions (unless a Council allows a dispensation called a "consent and report").
  - A private building surveyor can issue a building permit. The council should be notified within 14 days of the permit issuing.
  - Neighbours do not have rights of objection or appeal if they disagree with the granting of the building permit.
2. Where a planning permit is required, a notice of an application for a planning permit is usually displayed on the site. Immediate abutting neighbours are also usually informed by mail. Council must notify residents unless it is certain that no person will suffer any detriment.

- The planning permit can only be issued by your Council.
- If you disagree with the Council's decision you may appeal it at VCAT (the Victorian Civil and Administrative Tribunal). Once a Council has decided to grant a permit, it cannot rescind that decision even if it was erroneous, except by applying itself to VCAT to have the permit cancelled or amended.

Council may issue a permit or refuse the application whether or not any objections have been received. If there are objections and the Council issues a notice of decision to grant a permit, the objector(s) may lodge an appeal against the Council decision with VCAT

Alternatively, if the Council refuses the application; the applicant can appeal the Council decision at VCAT, in which case all objectors can elect to become third parties to the appeal.

### **What to do once you are aware of a planning application.**

- You have 14 days from the date of the notice to act, although it is unlikely that a council will make a decision that quickly - sometimes it takes months, despite the statutory limit of 60 days. It is legal to formally object right up until council makes a decision but the earlier you act, the more effective your objection is likely to be.
- Take note of the details from the application notice including the application number and date of notice.
- Go to your local Council planning department and ask to view the file for the application number shown on the notice. Take a pen and paper to record details and use a centimetre ruler to check measurements against the scaled plans
- Request a copy of the plans and details lodged by the applicant. Most councils allow you to copy documentation from files on a copier set aside for public use at the council offices. Sometimes copies are refused if the applicant claims copyright protection but the Ministerial Practice Note of December 1999 states that you are entitled to copies of the plans for assessment purposes.

### **What if you believe the proposed development is inappropriate?**

You may have concluded after studying the developer's proposal that it does not comply in significant ways with *Rescode* or other aspects of the Planning Scheme (zone or overlay requirements or specific policies).

In addition, your Council may have a *Residential Policy Code* based on its assessment of neighbourhood character. Check to see how the proposal measures up.

Experience has shown that where developments fail to meet the required standards it is generally for the following reasons:

- Height and mass/bulk are visually unacceptable.
- The development overlooks and /or overshadows adjoining residences. This may impact on/affect neighbouring residences or other units in the same development. It should be noted that shadow diagrams indicate shadows cast at the equinox (22 March or 22 September) as an “average” estimate of shading. Shadowing at the winter solstice (22 June) is the time of year when solar penetration is most desirable but unfortunately this carries no legislative weight, although adverse effects on the energy efficiency of adjoining properties can be argued (Rescode standard A7).
- Car parking and traffic. It is not desirable to have multiple vehicle crossings as they reduce the availability of kerb side street parking. Garage doors should not be a dominant element of the building frontage. Ideally motor vehicles should enter and leave the site in a forward direction, especially for multi-unit developments. Tandem car parking rather than side by side parking is one indication of overdevelopment.
- Private open space is insufficient. Forty square metres in total is the theoretical minimum, with one part being at least 25m<sup>2</sup> with a minimum dimension of 3m so that the space is practically useable. Private open space should not be located in street set-backs at the front of dwellings.
- The proposed development does not integrate with the neighbourhood character. Important characteristics include roof form, building height, building materials, landscape and fencing.
- The density of the development is excessive.

## **You wish to object to the proposal.**

In general terms the basis for your objection will be that:

1. The information contained in the planning application is inaccurate or misleading,
2. The proposal does not accord in significant ways with the guidelines of Rescode and/or other specific state or local policies in the Planning Scheme
3. The proposal does not accord with a planning or legal requirement e.g. a single dwelling covenant.

You should detail the specific areas of non-compliance and therefore the reasons for your *objection*. *Photographs can often be useful to support your objection eg of the proximity and layout of adjoining properties and habitable room windows, significant trees that may be affected, narrow lanes difficult to negotiate, etc*

It is important to note that in most cases the applicant is legally entitled to develop land zoned for residential use for medium density housing. What you may object to is the form and extent of the proposed development.

## **You wish to maximise your objection with Council**

- Consult your neighbours for their views. Letterbox or door-knock the local area. If others share your opinion, help them lodge their objection.

- **Objections should be made individually outlining specifically how each of the issues affect you.**
- Ideally they should not be pro-forma and NOT in petition form - a petition legally counts as only one objection. But a pro-forma is better than nothing!
- Be objective in your analysis - don't allow emotion to prevail. Opposing a proposal because you 'don't like it' is not strong planning grounds and will be ignored by both the Council and VCAT.
- Identify all areas of conflict with Council policy - very important!!

The Council may call a **conciliation meeting**, chaired by a council officer. Consider what you might find acceptable - a compromise is often better than holding out for the impossible and then losing without gaining any concessions at all. It is better to stay a party to negotiations than allow others to decide for you.

Secure any concessions in writing and do not withdraw your objection unless this is provided. Even this is not enough - the only legally binding document is the permit together with any conditions if specifies, so you need to get the agreement of the council to include all concessions and compromises in the draft permit. This will be reflected in the NOD or notice of decision which will be mailed out to all parties once the council makes its decision..

Make your *Ward Councillor/s* aware of the residents' concerns and seek his/her assistance and support, when Council considers the matter. Your local Councillor should also be present at the conciliation meeting.

Find out what procedure your Council adopts in processing planning applications. The Council may decide the application by:

A Planning Sub Committee:

Some Councils have Planning Sub-Committees which meet to consider applications and in turn make recommendations to the full Council. Or the committee may have full delegated powers of Council.

This Sub-Committee will rely largely on a report outlining the proposal. The Council's Planning Department prepares this report for the Councillors.

You are entitled to a copy of the report before the meeting and you should check it closely because inaccuracies and incorrect assessments are not uncommon and you need to be able to objectively refute them. Persons with an interest in a proposal being considered at the meeting are usually able to address the Sub-Committee. You and your neighbours should take the opportunity to do so.

Under delegation to Council officers:

In this situation the planners have the delegated authority of the Council to make the decision on behalf of the Council.

*Whatever the method of decision. inform your Ward Councillor of your concerns. If there is a planning committee, ensure all Planning Committee councillors are aware.*

## **What to do if Council refuses the Application.**

The Applicant may decide to abandon the proposal or may decide to *Appeal the Decision* to the *Victorian Civil Administrative Tribunal (VCAT)*.

In the event of the latter course of action, *Objectors* can elect to appear or be represented in support of Council if they choose. *VCAT* will notify you of the appeal date and seek to know if you wish to appear. Alternatively, objectors may rely on Council alone defending their refusal.

*Note: If the Council officers recommended approval and the Council overturned the officer's recommendation it is not advisable to rely upon the Council alone.*

*Council's grounds of refusal do not always cover the extent of concerns that the objectors have regardless of whether it was a delegate or Council decision*

## **What to do if Council determines to issue a Notice of Decision (NOD) to Grant a Permit.**

The Council is indicating that if there were no objections, they *would issue a permit*. You may persist with your objection by lodging an appeal with *VCAT* against Council's decision within 21 days of the dispatch of the NOD.

You are entitled to run your own case or you may employ an advocate who is usually a consultant town planner or a lawyer. You can obtain a list of Consultant Town Planners from the Royal Australian Planning Institute, and a list of accredited specialist planning solicitors from the Law Institute of Victoria, or contact the SOS committee for referral advice. If you elect to use an advocate you should engage them early in order to ensure adequate time for the preparation of your case and their availability on the hearing date, especially where expert witnesses may be required because evidence must be circulated at least 2 weeks prior to the hearing date.

If you wish to understand how *VCAT* operates, contact the registrar of *VCAT* and ask to be forwarded explanatory notes describing how hearings are conducted. Or just refer to their website.

If you can, spend an hour or two observing how *VCAT* cases are run. Planning cases are open to the public and are heard at 55 King Street, Melbourne on the 5th Floor.

## **To find out more:**

- Contact your local Council planning department
- *VCAT*: [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)
- Planning Schemes and other planning information is available from the Department of Environment, Land, Water and Planning (*DELWP*):  
<https://www.planning.vic.gov.au/>