Residents' Voice

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President's Address

The state election on November 27 is vital. We have a crisis of democracy in the planning that shapes Melbourne. In the name of jobs and economic growth, the government consults only industry and development experts, but not the community or local councils.

The Planning Department has been preparing a series of changes to zones, state planning rules and the Planning Act itself that have either already been introduced or stalled until after the election.

If approved by the Minister, these changes will further deregulate town planning to the degree where councils and residents will lose any control of decisions over major developments.

However, the amendments to the Act must go through Parliament so it is essential on November 27 to vote for a government and a planning minister who will engage democratically with local councils and residents, and be prepared to ensure that the planning department follows the will of the Parliament rather than its own agenda.

SOS will publish a comparison of party responses to our Planning Position Statement 2010, in a special newsletter just before the election.

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Ian Wood, President

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Planning Act Changes after the election will compound the threat from VC71/Clause 16

An independent Working Group (dominated by housing industry groups and without any community representatives) was finally set up in September to finalise reforms to the Planning and Environment Act mooted in the draft Bill released last December.

The group was given 90 days to recommend to the Minister how these "reforms" should be legislated - that report is due the week AFTER the election! And it doesn't even have to be made public.

Despite all the critical feedback from community and professional organizations, the Planning Department has recommended only three major changes to the Act:

* enable the Minister to authorise private developers to undertake planning scheme amendments (eg for re-zoning to allow more high-rise development).

* introduce a fast track planning permit application process for "simple, low impact applications", to be assessed not by planning staff but by council CEOs (who have no planning experience)

* introduce a new unaccountable and non-transparent assessment process for "State significant development".

10 storey development like this all along major public transport corridors is now policy

Key sustainability issues vital to the future of Melbourne have been ignored - eg, updating and defining ESD provisions in the Act to ensure greater resilience for Melbourne in the face of challenges like climate change, peak oil, traffic congestion, water and energy use.

The changes to the Act also fail to address the complexity and lack of certainty inherent in the discretionary assessment process, something all parties have long complained about. The need for stronger planning enforcement is also ignored.

Instead, we see an increasing lack of transparency and accountability.

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Ministerial discretion, already excessive, will be increased. Councils will no longer have the power to abandon amendments but merely make recommendations - the Minister will have the final say. This will be a huge shift in power between State, council and community.

The combination of these changes to the Planning Act plus State Planning Policy Amendment VC71 (gazetted without parliamentary debate on 20.9.10) will enable private interests to identify strategic major development sites along public transport routes and design planning scheme amendments to allow them to be intensively developed.

Amendment VC 71 rearranges and changes planning scheme clauses 11-19. Clause 16 provides for the identification of high-density development sites in a huge variety of locations all across Melbourne *(see box below).*

Other pending changes to be introduced after the election include the New Residential Zones and the Review of Parking Ratios.

Soon, for most development projects, residents' appeal rights will be a thing of the past and councils will have no say in determining permits in activity centres where there will be no height limits. The minister won't have to justify decisions on projects he has "called in" nor even make public any panel reports on such cases.

Clause 16.01-3: Strategic redevelopment sites

Objective: To identify strategic redevelopment sites for large residential development in Metropolitan Melbourne.

Strategies

Identify strategic redevelopment sites that are:

- In and around Central Activities Districts.
- In or within easy walking distance of Principal or Major Activity Centres.
- In or beside Neighbourhood Activity Centres that are served by public transport.
- Along tram, train, light rail and bus routes that are part of the Principal Public Transport Network and close to employment corridors, Central Activities Districts, Principal or Major Activity Centres and around train stations.
- In or near major modal public transport interchanges that are not in Principal or Major Activity Centres.
- Able to provide 10 or more dwelling units, close to activity centres and well served by public transport.

Policy guidelines

Planning must consider as relevant:

- *Melbourne 2030* (Department of Sustainability and Environment, 2002).
- *Melbourne 2030: A planning update Melbourne @ 5 million* (DPCD 2008).

The "Maddenisation" of Lygon Street, East Brunswick, Under Clause 16, this intensity of development could occur all along major public transport routes….

And even for those who just live on a middle-ring suburban bus route, expect more 4-5 storey blocks next door under new changes to the planning act and state planning policy

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SOS Update...

The SOS website upgrade is nearly finished, complete with photos; find our latest planning updates and submissions, and contact us for further information:
http://www.sos.asn.au
For community activist news across Victoria:
http://www.marvellousmelbourne.org/drupal/?q=node/6

Problems with Major Projects in NSW - deja vue for Victoria….

ABC Stateline NSW 11.9.09: how major projects legislation circumvents planning controls and democracy ***http://www.abc.net.au/stateline/nsw/content/2006/s2683929.htm***

Because of the parlous condition of NSW planning laws, leading planning lawyers there say they advise property developer clients with contentious projects to bypass local councils and go straight to the Planning Minister, so they won't receive close scrutiny! This will be the sort of planning regime we can expect in Victoria if the mooted changes to the Planning Act are passed early next year.

High-rise development that exceeds council height limits near stations will become the norm under proposed new planning laws

"Transformation" of VCAT

New VCAT President Justice Iain Ross has released a 3yr plan to "transform VCAT". There are four initiatives that SOS believes are most significant:

NB: All of these recommendations below are scheduled for introduction between June 2010 & June 2011 and none require additional funding:

4. An amendment to Planning Practice Note 1 to provide a right of reply during VCAT hearings.

35. A proper complaints mechanism. From 1 Sept 2010 all new complaints about Members will be investigated and responded to within 6 weeks of lodgment.

40. Access to audio recording of hearings for a $55 fee

42. Establish a broad based Community Consultative Council to advise VCAT on an ongoing basis.

77. After a further consultation process, provide the Attorney-General with recommendations by Justice Ross for legislative reform by the end of March 2011.

<http://www.vcat.vic.gov.au/CA256DBB0022825D/page/Listing-Home+Page+News-Transforming+VCAT?OpenDocument&1=Home~&2=~&3=~&REFUNID=~>

But on the negative side - to "streamline" VCAT operations, appeals over projects worth >$5mill are now fast-tracked (the Major Projects List). Minor projects are also now fast-tracked (Short Cases List). VCAT claims the new processes won't disadvantage any parties, but in practice residents are complaining that they have much less time to find professional assistance to prepare their cases.

We need your help…

To help our efforts for planning reform we need to document planning cases involving flawed process. Your experience with the assessment of development applications could be invaluable. We'd appreciate brief case histories like the one below (see others on our website):

Inner city hotel - expansion of premises

This council assessment was deeply flawed - incorrect zone and location description, failure to give notice ("internal renovation only, no off-site impact") despite a significant 25% increase in floor space for patrons and consequent parking implications for the site & its residential neighbours.

Parking and its local impact is an integral part of an application assessment but Council's only action to remedy their flawed decision to grant a permit was to suggest that the applicant could apply retrospectively for a parking waiver.

By this stage the renovations were nearly complete and neither Council nor the objectors were prepared to appeal for cancellation or amendment of the permit because of possible costs (especially against Council)

Some advice on "Extensions of Time" for Planning Permits

Concerned about that monstrosity down the road that somehow managed to get a planning permit, but hoping it'll never actually be built?

Sometimes that's just what happens, usually for economic reasons - the permit just gets extended every year or two, or the property is on-sold to new owners who have different intentions for the site.

But Council have a right NOT to keep extending a planning permit if there have been relevant changes to their planning schemes since the original grant of the permit. A new application might then have to be assessed against the updated planning scheme.

In this case, despite what some pro-development council staff have told local residents, a Council could not be liable for costs if they refused an extension of time for an existing permit and were taken to VCAT by the permit holder. In fact, none of the relevant VCAT case references (below) even mentioned the possibility of costs against a Council.

The issues set out in Kantor v Murrindindi (Supreme Court) are still the main guidelines for deciding whether an extension of time for a planning permit should be granted:

- has there been a change of planning policy?
- is the landowner trying to "warehouse" the permit?
- are there any new relevant circumstances?
- how much total time has elapsed?
- was the original time limit imposed adequate?
- what economic burden will the landowner suffer?
- the probability of a permit being granted if a new application is made.

However, if any relevant new state or local planning policies involve activity centres or transport corridor higher-rise development, there could be fewer constraints on the proposal than originally applied. For example, check any new Urban Development Framework, structure plan or re-zoning.

References:

* Minawood Pty Ltd v Bayside CC [2006] VCAT 2097 (11 October 2006): http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VCAT/2006/2097.html (probably the most interesting)

* Perillo v Yarra CC [2004] VCAT 2469 (8 December 2004) http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VCAT/2004/2469.html

* Maino v Nillumbik SC [2002] VCAT 970 (3 Sept 2002) http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VCAT/2002/970.html

* Joseph v Corangamite SC [2006] VCAT 2169 (24 Oct 2006) http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VCAT/2006/2169.html

How the city hurts your brain....

(adapted from the Boston Globe)

Scientists examining how cities affect the brain have found that just being in an urban environment impairs ourbasic mental processes. After a few minutes on a crowded city street, the brain is less able to remember and has less self-control. One of the main reasons is a stark lack of nature.

The natural environment is surprisingly beneficial for the brain. Studies show that hospital patients recover more quickly when they have a view of trees, and that there is less domestic violence in apartments with green views.

Even slight changes - planting more trees in the inner city or creating urban parks with a greater variety of plants - can significantly reduce negative side effects of city life. The mind needs nature, and even a little can be a big help.

A city is so over-stimulating that we need to constantly redirect our attention so that we aren't distracted by irrelevant things. The increased mental demands of being in a city subvert our resistance to temptation even as it surrounds us with it, from fast-food to fancy clothing store.

But the very same crowded streets and crushing density of people that trigger lapses in attention and memory also correlate with innovation and the concentration of social interactions largely responsible for urban creativity.

So the goal of planning must be to find ways to mitigate the psychological damage of the metropolis while preserving its unique benefits.

Read the whole article:
http://www.boston.com/bostonglobe/ideas/articles/2009/01/04/how_the_city_hurts_your_brain

SOS comment: This is intuitively what most of us sense. Clearly, urban planning policies should be required to consider the physiological and psychological aspects of development when ESD and amenity issues are assessed, especially for medium and higher density proposals.