Residents' Voice

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President's Address:

Key performance indicators cut from Plan Melbourne

The pro-development focus and lack of transparency & accountability of the final version of Plan Melbourne (May 2014) shouldn't be under-estimated.

Under Direction 7.5: "Monitor Progress and Outcomes", a number of important performance indicators previously included in the draft version have been left out of the final document. These were all vital parameters in measuring how well development under Plan Melbourne might achieve its goals. These missing Performance Measures include:

- proximity to public transport,
- travel time variability and delay,
- air quality,
- protection of landfill distances,
- community participation.

Under Direction 7.1: "Drive delivery and facilitate action", further reforms target the State Planning Policy Framework, municipal strategic statements and even overlays and particular provisions. As Direction 7.1 concludes, "Central to these further reforms will be the development of a change program **shifting the focus of planners from a regulatory mindset under the current system to a facilitative mindset that encourages development** consistent with the directions of Plan Melbourne and Regional Growth Plans".

All up, Plan Melbourne and other planning reforms like VicSmart and the New Zones represent an overhaul of the entire planning regime, all without any participatory community consultation or independent public debate.

And there is increasing concern about Melbourne's high population growth, which is exacerbating the shortfall in infrastructure, worsening unemployment and beginning to reduce individual living standards.

With increasing political pressure to reduce the high skilled migration rate to help cut unemployment (especially for youth), and with growing infrastructure needs and increasing international pressure for Australia to act on greenhouse emissions, a high population growth rate of 2%pa for Melbourne is very unlikely to continue for the next 20 years or more. Yet this continued high growth spiral is the assumption Plan Melbourne is built on.

SOS believes a planning policy based on a high-growth scenario that's unlikely to continue is a recipe for disaster. We should diversify our economy and not rely to such an extent on the construction industry.

** For the current problems with immigration visas, see: http://www.theage.com.au/comment/lax-immigration-policy-hurting-australian-job-seekers-20140807-1019tr.html*

NOTE - The Great Population Debate between Kelvin Thomson MP and Lord Mayor Robert Doyle - 5.30 to 7pm, Monday October 13, Deakin Edge, Fed. Square

Stop Press!

VCAT fee hike cuts appeals

The Age revealed on Sept.18 that the June 2013 tripling of fees for lodging VCAT appeals has resulted in appeal numbers dropping by a third over the last financial year. [http://www.theage.com.au/victoria/planning-disputes-at-vcat-plummet-on-the-back-of-fees-hike-20140918-10iuho.html

Attorney-General Robert Clark says this is due to planning reforms reducing the need for appeals. However, cases appealed to VCAT during the last 12 months would be based on existing planning controls when the permits were first applied for – that is, prior to planning reforms like new zones and Plan Melbourne being introduced.

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Furthermore, SOS has a lot of anecdotal evidence that many objectors are no longer appealing cases to VCAT if their council decides to grant a permit. But these figures can't be checked because VCAT hasn't released annual Planning List case statistics since 2009 - even the yearly data released until then has been removed from the new VCAT website.

The annual case data used to contain a detailed breakdown of cases into objector appeals, refusal appeals, conditions appeals and appeals against a council's failure to decide an application in time.

This breakdown was also shown for each council and suburb, and whether cases were lost, won, or partially won (ie, with extra conditions).

Transparency and accountability are lost when a controversial public institution like VCAT fails to release its performance record. SOS is pushing for a return to the annual publication of VCAT case data.

Get an SOS sign!

Our corflute signs are $20 and measure 900 x 600mm (SOS members get one for $15).
To order, go to: http://sos.asn.au/vic/get-a-sign-oppose-inappropriate-development/ and call 9513 9674, or email us via the Contact Form

SOS supports council challenge to East-West Link

In mid-July, SOS sent this urgent letter to Moonee Valley and Yarra City Councillors:

"Save our Suburbs Inc. strongly opposes the East West Link proposal because of its potential damage to the fabric of inner city life, and because building more freeways attracts more traffic and soon creates more congestion than before. This is confirmed by Melbourne's own experience with the Monash Freeway, the Westgate Bridge, etc.

But building rail links in parallel with freeways attracts commuters back to rail, lowers rail costs/head and frees up arterial roads for those who need to use them – trucks, commercial vehicles and multi-destination vehicles. This is explained scientifically by the Downs-Thompson Paradox:

http://en.wikipedia.org/wiki/Downs-Thomson_paradox

SOS is a city-wide community-based group dedicated to the maintenance and improvement of urban residential amenity in its widest interpretation. That includes improving the quality, extent and frequency of public transport and minimising traffic congestion with its resultant economic, social and health impacts, including particulate air pollution which kills hundreds each year in Melbourne.

Our stance does NOT include more freeways.

Moreland City councillors are holding a special meeting tonight to consider a legal challenge to planning approval for the East West Link. We urge you to contact them and lend your support. We also encourage you to join this legal challenge".

Yarra Council decided to support Moreland's legal challenge to the validity of the EW Link process. Moonee Valley council did not. For more detail: http://www.theage.com.au/victoria/legal-challenges-to-the-east-west-link–potent-threat-or-a-political-posture-20140809-101us1.html

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Implementation of the new Residential Zones

On July 1, those councils still waiting for their choice of zone allocation to be approved were subjected to a "neutral conversion" – the General Residential Zone was imposed across all of their existing residential zone areas.

This involved two dozen councils, including some which had applied as early as late last year for their new zoning amendments to be approved.

Some of these 24 councils have since experienced a sudden surge in development applications in residential areas that may later come under the more restrictive Neighbourhood Zone once zoning amendments have been approved by the Minister.

As to the content of the new zones, giving councils a bit more power to vary local controls for better neighborhood protection was appropriate but for these controls to be effective, councils should have

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been required to specify not only mandatory heights but minimum lot size and the maximum number of dwellings per lot. Specifying both is necessary to maintain reasonable local dwelling density and protect green open space. Some councils have specified subdivisions into multiple lots with a minimum lot size of 250-400 sqm, so an existing 1000 sqm suburban block could be subdivided into 3 or 4 lots.

For the benefits of green backyards, see: *www.actpla.act.gov.au/__data/assets/pdf_file/0015/13704/Tony_Hall_-_Death_of_the_Australian_Backyard_paper.pdf*

Rescode is a set of minimum state planning standards, not a "one size fits all" code. So Rescode variations to suit different areas are appropriate and councils should have also been required to include extra locally-appropriate variations in the new zone schedules. Instead, most councils have failed to include any extra variations but even where they have, most are discretionary guidelines that just allow more scope for argument at VCAT and provide only an illusion of extra protection.

* For a detailed discussion of the implications of the New Zones, see: *http://www.sterow.com/?p=4099*

Help for residents to argue on Rescode guidelines at VCAT

- VCAT debunks Chak Lai Li decision

By Ian Wood, President SOS & Member PIA

Rescode specifies objectives, standards and decision guidelines for development application assessments. Objectives describe the desired outcomes that must be achieved, standards specify the requirements to meet those objectives, and the guidelines cite the issues Council must consider in deciding if an application meets the objectives.

But is an objective automatically met just because the corresponding standard is met?

VCAT's interpretation in *Chak Lai Li v Whitehorse CC (Red Dot) [2005] VCAT 1274 (30 June 2005)* was that because standards contain requirements to meet the objective, meeting a standard must mean that the corresponding objective has been met.

However, the 2004 Department of Infrastructure practice note "*Understanding the Residential Development Standards*" argues the opposite - if the particular features of a site or neighbourhood mean that applying a standard wouldn't meet the corresponding objective, an alternative design solution to meet the objective is required.

That DOI interpretation was upheld by VCAT in Lamaro v Hume CC & Anor [2013] VCAT 957: "*Chak Lai Li ….. contains no discussion or interpretation about where the decision guidelines fit in or the use of the words "should" and "must" at the beginning of clause 55 under the headings 'operation' and 'requirements'.*"

Under "Requirements", Rescode says development MUST meet all objectives. The decision guidelines must also be considered, and they apply to both the quantitative and qualitative parts of an objective.

The purposes of Clauses 54 & 55 include encouraging residential development which is responsive to the site and the neighbourhood and provides reasonable standards of amenity for existing and new residents.

As the Tribunal in *Lamaro* concluded, mere application of quantitative standards doesn't necessarily achieve the purpose of clause 55, because a qualitative judgment must be made in each neighbourhood and site context.

Consequently, objectors can now use this decision to argue their case better at VCAT (and with councils) against inappropriate designs that fail to adequately consider local character and site context

NOTE: **Perforated Metal Screening** with its regular pattern of closely-spaced round holes is one example where a standard can be technically met but where the objective isn't. PMS is occasionally used in residential developments to reduce overlooking. Most types technically meet the Rescode overlooking standard of 25% or less openings, but are effectively transparent when viewed from more than a few metres away because of the diffraction effect created by the rows of regularly-spaced spherical holes.

Thus occupants have an unimpeded view during the day through a window or balcony fitted with perforated metal screening, while the reverse is true at night. Maximum transparency occurs when viewing from a dark area to a more brightly lit one.

Consequently, perforated metal screening is used mostly for the screening of large facilities like multi-storey car parks, where light and air can enter while the interior is screened from view.

** For more detail on the diffraction effect of perforated metal screening, see: www.sos.asn.au/files/APP.2-PMS.pdf*

** For more detail in arguing on Rescode at VCAT: http://www.sos.asn.au/category/help-arguing-rescode-amenity-standards-vcat*

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Beware s89 VCAT appeals

Once a permit has been issued, an objector who wasn't notified of the granting of the permit for some reason can only appeal against the permit under s89 of the Planning and Environment Act.

However, this is very different to a standard s82 objectors' appeal. Under s89, you first have to prove you have standing - ie, that you weren't notified under s52 of the council's intention to grant a permit and so didn't have a chance to appeal.

But secondly, to be able to actually overturn the permit, you have to also prove you'd suffer substantial disadvantage arising from the grant of the permit [s91(3)(b)] - AND that it would be just and fair to cancel the permit [s91(3)(c)].

It is far harder to prove these extra requirements than mount an ordinary challenge under s82 to a council's intention to grant a permit.

If you can't prove substantial disadvantage and that it would be fair to all parties to cancel the permit, the developer may ask for costs to be awarded against you because your appeal may be construed as "frivolous and vexatious". So objectors should always get legal advice before lodging a s89 appeal.

The best way to avoid the problem altogether is to make sure you are notified when a permit decision is made - contact Council every few weeks to see how the assessment is proceeding and when a decision is likely to be made.

That way, if the council's Notice of Decision (NOD) doesn't turn up within a few days of the expected date, you'll still have enough time to chase it up from the council before the 21-day time limit for lodging an ordinary objector's appeal runs out.

2014 election transport forums !

Meet Greens, Liberal & ALP candidates

The forums will be a chance to discuss transport issues, ask questions and get answers from your local state candidates. Still to come:

Whittlesea - Sun 28 Sept, 2.00 pm - 3.30 pm
Mernda Village Community Activity Centre,
70 Mernda Village Dr, Mernda

Moreland - Mon 29 Sept, 7.00 pm - 8.15 pm
Brunswick Town Hall, 233 Sydney Rd Brunswick

Western Suburbs - Wed 1 Oct, 7.00 pm - 8.15 pm
Altona RSL, 31 Sargood St Altona

Melbourne - Thur 2 Oct, 6.30 pm - 7.45 pm
Blue Room, Multicultural Hub, 506 Elizabeth St

Monash - Wed 8 Oct, 7.00 pm - 8.15 pm
Oakleigh Hall, 142-144 Drummond St Oakleigh

ALERT: DUAL OCCUPANCY BY *STEALTH……*

There have been various cases over the last few decades when unscrupulous developers have built a large "single dwelling" with dual facilities on a large block without needing a planning permit and then sealing off connecting doors to create two separate dwellings which wouldn't meet some Rescode standards (eg re parking, etc).

Easy enough to rent out separately but impossible to sell, right? NO - WRONG!

It's possible to sell a Dual Occupancy dwelling without subdivision

Several residential buildings on a lot that is not being subdivided could still be legally sold in whole or in part as a multi-tenant dual occupancy that could be occupied by two or more separate sets of owners or tenants without subdivision.

Shared property agreement for virtual flats

Under Australian property law, tenancy allows two or more people to own property together in equal or unequal shares. It is a flexible form of property ownership because the co-owners' rights and obligations can be set out in a co-ownership agreement. Unlike joint tenancy ownership, each party can also bequeath their interest to their chosen beneficiaries instead of to the other co-owner(s).

Preventing Dual Occupancy by Stealth

The construction of dual occupancies masquerading as a single dwelling can be prevented if the authority granting the planning permit (a council or VCAT) includes a permit condition requiring a s173 agreement that specifically prevents the use of the property for more than one "self-contained" dwelling. The council and the property owner(s) are both parties to s173 agreements, which are attached to the title and run with the land.

For more information on shared ownership, see: http://www.netlawman.com.au/bizdoc/horse-share-agreement-australia.php?docid=AU-PR541

For more information on s173 agreements between a council and a developer/land owner, see City of Port Phillip minutes 27.10.08, item 4: http://www.portphillip.vic.gov.au/default/o31068.pdf