

# SOS

S A V E  
• O U R •  
S U B U R B S

INC.

RESIDENTS

# Voice

## COUNCIL MOVES TO PLUG

### PLANNING LOOPHOLE

A Melbourne council says it is 'happy to make an example' of three developments in its municipality to deter other developers from using a planning loophole to build defacto multi unit developments without planning permits nor compliance with the *Good Design Guide*.

The City of Glen Eira has initiated action to 'discourage further development and/or subdivision' at three locations where, it believes, developers have attempted to use that loophole to build dual occupancies.

The council says its preferred maximum development for each location is a single dwelling.

The council is concerned by the manner in which development has already occurred at 4 Elimatta Rd, Carnegie, 10 Kent Grove, Caulfield North and 11 Ludbrook Ave, Caulfield South.



10 Kent Rd, North Caulfield:  
An application has been made for a second house

Glen Eira Mayor, Cr Veronika Martens said: 'Council is happy to make an example of these particular developments in the hope that it will deter other developers from using similar tactics'.

Cr Martens explained that at each location a developer had built a single dwelling which did not require a planning permit because each site is over 300 sq m. She said after building the 'inappropriately designed, large two storey dwellings ... at one end of [each] property', all the developers had since applied for planning permission to build a second dwelling at the same location.

In each case, according to Glen Eira's manager of strategic planning, Mr Jason Close, the developers have used 'a

loophole in planning and building regulations' to circumvent the usual planning process for a dual occupancy.

In a letter dated 27 July 2000 sent to residents in the vicinity of the three developments, Mr Close described the houses as 'large "box-like" dwellings' which are 'inappropriately designed and located'.

At 4 Elimatta Rd and 10 Kent Grove large two-storey houses have been built to the very front of the site. In both cases, applications have been made to council for a planning permit to build a second dwelling at the rear. At 11 Ludbrook Ave a large two storey dwelling has been built to the rear of the site and an application made for a second dwelling to be located at the front of the site.

Two of the applications for second dwellings have been refused and are subject to appeals at the Victorian Civil & Administrative Tribunal. The third application which concerns 11 Ludbrook Ave is still to be considered by council.

In his letter to residents, Mr Close said the developments had 'significantly detracted from the character of the neighbourhood and have resulted in neighbouring properties suffering adverse amenity impacts'

He said the City of Glen Eira proposed to amend its planning scheme to include a local policy which would seek to 'place a restriction ... continued on page 13



11 Ludbrook Ave, North Caulfield:  
Wall has been built in front of house built at rear of block.

## Planning Reforms ...what they mean

### SEE INSIDE FOR DETAILS

#### \* RESCODE

A copy of SOS' policy on the proposed code has been provided with this issue of the Residents Voice. SOS has submitted a detailed response to the draft code.

#### \* IMPORTANT DIARY DATE

Our next Annual General Meeting will be held on 5 December 2000. This is necessary because of statutory changes relating to associations like our's. More details later

#### \* MEMBERSHIP RENEWALS DUE

Despite recent positive changes to the planning system, we cannot afford to become complacent until all those hard-fought-for reforms are in place. *YOUR support is still needed.*

It is time to renew your membership. Please use the form provided with this newsletter.

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# Planning Reform Report Card

The State Government has made a number of important changes to the planning system.

Recently, it has:

- released its long-awaited draft design guidelines for residential development - ResCode (see p 3)
- tightened legislation governing demolitions and enforcement of planning law
- introduced legislation Parliament aimed at reforming present law concerning restrictive covenants (see p 9)
- amended the statewide planning provisions to make neighbourhood character a key consideration in the assessment of medium density developments until ResCode comes into effect.
- invited councils to apply for interim controls which would provide them with greater control over development within their municipality (see page 6).

All these matters have been of great concern to residents and consistently highlighted by SOS.

## Eleventh hour closure of loophole

The government's **Planning and Environment (Amendment) Act 2000** went through the Autumn session of Parliament unopposed. Some of its provisions are not yet in operation.

The Act has made a number of amendments to provisions in the **Planning and Environment Act 1987**, the **Building Act 1993** and sundry other Acts.

However, during the passage of the Act through Parliament, SOS pointed out the existence of a possible loophole in the new planning legislation which would have allowed the demolition of a facade of a building, which may be of heritage importance, without needing council permission.

Opposition Shadow Planning Minister, Mr Robert Clark made the existence of the possible loophole public on 30 April 2000 and called on Mr Thwaites to address the issue.

The government acted quickly to close that loophole.

Now building surveyors will be required to notify councils of any proposed demolitions of the facade of a building.

## What the changes mean

The **Building Act 1993** has been amended to provide requirements for:

- building surveyors to refer applications for demolition permits to councils for 'their consent and report';
- any required planning permit to be obtained before a building or demolition permit is granted;
- building surveyors to check relevant planning permits (and other planning approvals) before issuing building or demolition permits;

- a building permit to be consistent with any relevant planning permit for other prescribed planning approvals for a site.

## Consistency between building and planning permits

Building permits will be required to be consistent with the relevant planning permits and other planning approvals.

The **Building Act 1993** has been amended to require a 'building surveyor to check that the relevant planning permit or prescribed planning approval is consistent with the proposed building permit'. Building surveyors should ensure consistency between any building permit issued and the relevant planning permit including:

- conditions
- endorsed plans for that permit
- any documents referred to in the planning permit which have a direct bearing on the proposed building permit.

When assessing consistency between a building permit and the relevant planning permit, building surveyors should include:

- the height, area, form and configuration of the proposed building work or any part of the building work;
- the location of the proposed building on the land, including setbacks from boundaries;
- the location of windows, doors and privacy screens; and,
- any conditions of the planning permit that have specific construction requirements or which require specification construction details'.

## Tougher penalties for breaches of planning law

Those who contravene a planning scheme, planning permit or agreement will face a maximum penalty of \$120,000 up from \$4000 for a first offence and \$6000 for a second or subsequent offence.

## Demolitions

According to the government, the onus will be on 'councils and their communities to ensure that buildings they regard as having historic or cultural value are appropriately protected through heritage studies and the planning scheme'.

Furthermore, amendments to the **Building Act 1993** 'will strongly support and encourage councils to use heritage overlays as the appropriate mechanism to protect historic and significant buildings within their municipality from demolition without consideration by council'.

Building surveyors will be required to refer applications for a demolition permit to councils for their consent and report if 'the proposed demolition, together with all other demolitions completed or permitted in the previous three years in respect of that building would cumulatively be equivalent to demolition of more

than half the volume of the building'.

In addition, the **Building Act** has been amended to prevent a building surveyor from issuing a demolition permit for any part of the facade of a building without the 'report and consent' of the local council.

## Safety net

A council will have fifteen working days to consider the matter during which time it will be able to apply to the Minister for Planning for an expedited amendment to its planning scheme to suspend the relevant application for a demolition permit.

Amendments provide that 'window of opportunity for councils to prevent the demolition of 'important' buildings which do not have heritage protection but are, nonetheless, considered by council to be historically or culturally significant.

Any suspension of a demolition permit application would enable the Minister to consider whether a particular building is of such significance that the relevant municipal planning scheme should be amended to require a planning permit for the building's demolition or whether the building should be protected through state heritage controls.

## 'Special interest'

Previously, it was left to a building surveyor to make a judgement whether a building was of 'special interest' or heritage significance before issuing a demolition permit. **Building Regulation 2.2(5)** required building surveyors to seek the consent and report of the Executive Director of Heritage Victoria where a building surveyor was of the opinion that a particular building was of 'special interest'.

Developers consistently appealed to the Building Appeals Board against refusals by building surveyors to issue a demolition permit after the Executive Director of Heritage Victoria refused to consent to the demolition of a particular building because it was considered to be of 'special interest'.

The Building Appeals Board regularly overturned decisions by the Executive Director of Heritage Victoria to refuse his consent

The **Residents Voice** (March 2000 issue) brought to public attention the 'turf war' fought by the Building Appeals Board and Heritage Victoria over who decided whether houses of 'special interest' or heritage significance should be demolished.

## Interim protection for neighbourhood character

On 25 May 2000, Planning Minister, Mr John Thwaites announced that Victoria's statewide planning provisions have been amended to provide interim protection for neighbourhood character in relation to medium density developments, until the new housing guidelines - now called ResCode - are in place later this

# WARY WELCOME FOR

# RESCODE

The State Government's long-awaited draft design guidelines for residential development - ResCode - has been released to a predictably mixed response by residents, planners and developers.

But the release of the draft code on 7 June 2000 was not without its surprises!

Within hours criticism was being levelled at an unexpected proposal to reintroduce an automatic right to build two dwellings on a single lot if certain standards were met. At present, a planning permit is required to build such a development.

SOS believes there should be no 'as of right' track for dual occupancy developments.

It may constitute an unwelcome return to the days of the Cain Government which attempted to facilitate urban consolidation by allowing 'as of right' dual occupancies. What resulted was a proliferation of often poor quality units popping up like mushrooms in back gardens.

some suburbs, the existing infrastructure, such as drainage and parking, is being strained by higher density development.

However we welcome:

- more extensive requirements in the draft code for a site analysis and design response;
- its generally more prescriptive benchmarks so that greater certainty can be achieved and understood by developers, the community, councils and VCAT; and,
- its removal of reference to the 7 km ring earmarked by the GDG for higher densities, provides greater protection on matters such as setbacks, overlooking and shadowing.

The keystone position occupied by neighbourhood character in the draft code represents a marked



However, the former Liberal government eventually heeded and responded to the widespread clamour for planning reform. The planning policy it took to the last election supported improved standards for both multi-unit developments and single dwellings which related to setbacks and overlooking and overshadowing.

It was residents' frustration with the Good Design Guide and VicCode 1 which ignited the suburban backlash against inappropriate development and created the need for SOS.

At the last election, the present Government promised to replace the GDG and VicCode 1 with a single, new and comprehensive housing code that would 'make neighbourhood character the mandatory starting point for designing and assessing any proposed new housing'.

Planning Minister John Thwaites reaffirmed that election pledge while announcing the release of Rescode by stating: 'The draft code proposes that developers will have to meet mandatory standards, the first four of which relate specifically to neighbourhood character'.

## CODE COUNTDOWN

July to August 2000

Public information sessions on draft code.

August 2000

Submissions on draft code will be considered by an advisory committee chaired by planning barrister Chris Wren. The committee comprises Helen Gibson, Cathie McRobert, John Glossop, Ann Keddie, Ray Peck, Lester Townsend, David Whitney.

September to November 2000

The committee will conduct hearings and prepare a report to the Minister for Planning. Consultation will be conducted with key stakeholders to fine tune the code.

December 2000 onwards ...

The final ResCode will be released with implementation in early 2001.

Two SOS committee members are on the consultative working party established by Planning Minister Thwaites to assist him in the preparation ... continued on page 14



Differing viewpoints on Rescode  
Courtesy The Sunday Age 11/6/00

As a consequence, the Kennett Government introduced a requirement for a planning permit for dual occupancies.

A number of other areas of the draft code also concern SOS.

While we applaud its emphasis on neighbourhood character, we believe that tighter rules governing that important matter are required.

We are also concerned by the draft code's apparent belief that there is a large under-utilised infrastructure capacity in certain areas. In fact, contrary evidence is mounting to show that in

and welcome change of direction from the planning agenda of Kennett Government, which had as its principle guide an emphasis on urban consolidation.

According to an August 1999 report prepared for the previous government by the Standing Advisory Committee which reviewed the GDG and VicCode 1 the 'imperative to facilitate urban consolidation was seen to outweigh neighbourhood character.' And furthermore, 'political pressure was exerted to approve medium density housing proposals in order to facilitate economic development and employment'.

# Good Riddance!

## SOS Answers Back

Save Our Suburbs has informed the Department of Infrastructure of our concern that 'there is a strong reactionary element in official circles (DOI, Planning Panels and VCAT), which will not move forward in an appropriate spirit'.

We have suggested that 'major restructuring may be required in these bodies'.

That concern was raised in our response to the Standing Advisory Committee's final report of a review of the *Good Design Guide* and *VicCode 1*.

We commended the panel report for including 'many worthwhile recommendations', but concluded that its findings were 'based on many unacceptable assumptions' and that the report reached 'some indefensible conclusions'.

According to SOS' response:

'One could not expect an objective review of the Guide to be headed by the principal author of the document, and it is no surprise that the tone is defensive'.

That committee's report, which was released for public comment in April, found that the 'main disbenefits' of medium density development were:

- detrimental impact on residential amenity in some locations; and,
- unwelcome change to neighbourhood character.

Overall, however, it was supportive of the *Good Design Guide*.

SOS' response to the report described its tone as 'tendentious and partisan' and questioned the alleged benefits and disbenefits of medium density housing it provided.

For example it criticised the committee for placing the recycling of old buildings among the benefits of MDH while not listing the 'destruction of an infinitely greater number of old buildings' as a disbenefit.

SOS' response countered that 'widespread destruction of older houses is directly attributable' to the *GDG*.

It also questioned the report's suggestion that MDH 'increased appreciation of heritage buildings and precincts'.

SOS' report suggested that 'this is true to the extent that people are all the more desperate to defend those buildings which have not yet fallen to MDH. But it is very like Radavan Karadic saying

that the more of his compatriots he killed, the more the survivors appreciated life'.

Also questioned was the report's claim that MDH had improved housing choice and diversity.

On the contrary, SOS' response suggested, MDH is providing 'inflexible' housing which is 'unable to meet changing requirements' and that it is 'placing individuals and families into straitjackets, rather than offering them diversity'.

SOS recommendations for *ResCode* provided in its response to the panel report:

- It should apply to all types of development in residential areas (single dwelling, multi-unit, high rise and non-residential)
- Controls on heights, setbacks etc, should apply wherever the new development abuts one or more existing or approved dwellings.

They should not apply in relation to abutting vacant land.

- Such controls as between units within a new development should be much more limited, basically on the assumption that residents buy into known existing conditions, and may value cost savings over higher standards.

• Neighbourhood character controls should be developed by councils in consultation with the residents of the area in question.

- There should be a standard table format for neighbourhood character controls.

• Neighbourhood character controls should embrace (optionally in each case) height, setbacks from all boundaries, design by architect, displayed signature of designer, location of garages and carports, television and other aerials, wiring and cabling (exposed vs underground), fence height, street crossings, planting type (exotic vs indigenous), tree cover, special environmental controls.

- All controls should be specific and defined by facts, dimensions, angles, number etc.
- Divergence from the controls should be exceptional, where a developer can argue that the unusual nature of the site or special conditions of public interest warrant a variation. All such proposals should go to the full council of the municipality.
- A site analysis should be required in (and only in) any case where a divergence from the controls is proposed
- A planning permit should be required for any development in a residential area, be it single house, multi-unit or other
- The planning permit may be taken to include a permit to demolish what exists, but where demolition is proposed in the absence of an approved redevelopment, a planning permit should be required for the demolition.



## GDG review timeline

**1998** - the then Minister for Planning and Local Government, Mr Robert Maclellan appointed the Standing Advisory Committee the *Good Design Guide* and *VicCode 1* primarily related to overlooking and overshadowing provisions.

**August 1999** - an *Issues and Options Paper* was ready for release but delayed by the September state election.

**October 1999** - the new Minister for Planning, Mr John Thwaites released the *Issues and Options Paper* for public comment.

**13 December 1999** - When releasing the Labor Government's State Planning Agenda, Mr Thwaites announced a further review of the *Good Design Guide* and *VicCode 1* to take in density and carparking issues.

**October 1999** - SOS and affiliated residents' groups were asked by the Standing Advisory Committee to respond to the issues and options raised in the August 1999 panel report.

**January 2000** - SOS submission was presented to the Panel and Advisory Committee.

**March 2000** - The committee's final report was released

## ESTATE AGENTS BACK SOS POLICY

Surprising comment on residential planning standards by the Real Estate and Stock Institute supports 90% of Save Our Suburbs' policy.

That body has stated:

'Development of multi-unit residential accommodation occurring [under council regulations for such developments on single dwelling sites] tends to find its greatest concentration in areas of least restriction, rather than being located according to the accommodation needs and availability of the community services required.

This unbalanced development reflects poor planning and indicates a need for zoning so that more intense developments will take place close to centres of public transport, shopping, etc, and where public utility services are adequate or under utilized. Other areas should be preserved almost exclusively for detached housing.

Estate Agents have observed that the lack of any detailed zoning has produced, in the owners of many detached houses, a fear of all new development or redevelopment. This is accentuated when such development is seen to be of unsatisfactory standard. His home is the most valuable of the average person's

... continued on page 16

# Submissions by Residents Disregarded

A committee, appointed by the previous government, which produced the final review of the **Good Design Guide** and **VicCode 1** in March 2000 effectively ignored a large number of photographs of inappropriate development supplied for its consideration



*Towering infernals*

by SOS members.

In a letter dated 20 April 2000, the chair of the Standing Advisory Committee, Ms Helen Gibson stated that the photographs

'served to reinforce the findings and conclusions of the Standing Advisory Committee, which were set out in the **Issues and Options Paper**. (August 1999)'.  
In our response to the March 2000 review, we referred to Ms Gibson's comment as being 'deliberately provocative'.

We made that judgement because the findings of the August 1999 review stated that 'medium density developments built using the objectives and techniques of the **Good Design Guide** is (sic) generally of a high quality'. Furthermore, the committee concluded that 'there is nothing inherently

unreasonable in the techniques and performance measures in the Guide'.  
The photographic examples of inappropriate development supplied

by SOS members were additional to those which SOS provided to the Standing Advisory Committee for the August 1999 review but which were claimed to have been received too late 'in time for inspection' for that first report.

We would like to thank all



*Neo-warehouses*



*Suburban drive-in*

## President's

### Address



All residents who have taken part in the long struggle for planning reform should be immensely proud of what has been achieved.

We are now reaping the rewards of all our hard work.

A full account of the changes which have been made or that are in the pipeline, is provided in this issue of *Residents Voice*.

We congratulate the government for making those changes, and in particular, for fulfilling its election pledge to make neighbourhood character the mandatory starting point when all new housing is designed and assessed.

However at this early stage, the welcome we extend to the draft *ResCode* is necessarily a cautious one.

We have submitted our response to the draft *ResCode*, as have many residents' groups.

In each *Residents Voice* we provide contacts for our municipal representatives (see page 15). On 18 June 2000, many of those municipal representatives as well as delegates from affiliated residents' groups met to discuss the new *ResCode* and other planning matters.

That meeting was attended by Mr Peter McEwan, director of planning policy development at the Department of Infrastructure and Ms Kate Alder, a senior policy officer with the DOI. Both gave up much of their Sunday afternoon, at short notice, to deliver a presentation on *ResCode* and answer many questions about it.

Mr Robert Clark, the Shadow Minister for Planning also attended and highlighted the bi-partisan approach to planning issues which the Opposition has adopted.

It was heartening that so many of our 45 municipal representatives were able to attend

the meeting at the Balwyn Community Centre, in particular Judy and Bob Hutchinson who came from Geelong and Greg Henderson who made the even longer trip from Ballarat. Vivienne Nicholson from the Save Mornington Alliance group also attended.

Despite a two and a half year association with SOS and probably a much longer involvement with local residents' groups, it is clear that our municipal representatives remain vigilant and committed to planning reform.

That said, it is important, too that SOS members maintain their commitment by renewing their annual membership subscription which is now due. Please use the renewal form which accompanies this issue of the *Residents Voice*.

Although we have much to celebrate, the planning battle is not over yet. Almost every day, we receive complaints from residents about the present planning controls. However, the groundwork has been laid for change, and hopefully by the end of this year the residents' voice will have been substantially answered.

*Jack Hammond*

# COUNCILS SLOW TO TAKE UP GOVT. OFFER

An SOS survey has revealed that very few metropolitan councils have taken up a State Government invitation to apply for interim planning controls which would allow their municipality to:

- require a planning permit for a single dwelling on a lot between 300-500 sq. m. where it can be strategically justified; and,
- if applicable, replace the arbitrary provisions of the **Good Design Guide** relating to density, building heights and setbacks, which apply within a 7 km radius of the GPO with new, locally responsive provisions.

## Planning permits for single dwellings

Stonnington, Port Phillip, Bayside, Mornington Peninsula and Boroondara can now require a planning permit for a single dwelling on a lot between 300 sq m and 500 sq m. Their requests for such a measure were approved by the Planning Minister, Mr John Thwaites after they responded to the Minister's December 1999 invitation. Previously a planning permit for a single dwelling was only required on a lot of less than 300 sq m. The new provisions apply throughout Stonnington and Bayside and in specified areas in Port Phillip and Mornington Peninsula.

Other applicants for that measure are Banyule, Yarra and Hobsons Bay.

## 7 km radius rule

Mr Thwaites has also accepted requests by Port Phillip, Hobsons Bay and Boroondara to introduce a local variation to the **GDG** removing the arbitrary provisions relating to medium density development within a 7km radius of the GPO. Yarra has also applied for

that interim measure. Yarra's request is currently under discussion.

## Subdivision loophole

SOS president, Jack Hammond QC said the action taken by Mr Thwaites goes a long way to closing a planning loophole which allowed developers to subdivide small lots and build de facto multi unit developments without a planning permit and without complying with the **Good Design Guide**. Mr Hammond said that in some suburbs there will now be less incentive for developers to build a de facto multi unit development after subdividing a lot.

SOS is regularly contacted by residents who are distressed because they have minimal opportunity to object to or appeal against such developments because a planning permit was not involved. Many of those residents faced being overlooked and overshadowed by units built on, or very close, to their boundary.

In April 1998, SOS alerted the previous **Planning Minister, Mr Robert Maclellan** to the concerns of residents and councils that developers were using the loophole.

"However no legislative or planning scheme changes were made by the previous government to close that loophole despite the fact that Mr Maclellan had also expressed concern about its existence", said SOS president Jack Hammond.

However, in the planning policy it took to the last state election, the Kennett Government promised to make provision for councils to increase minimum lot sizes for single dwellings from 300 to 500 sq m.

Last year Mr Macellan responded sympathetically to **Moonee Valley Council** after it had written to the former Minister complaining that a developer had built a two-storey house at the rear of a property in Essendon and then applied for a permit to subdivide to build a second house in front of it.

The council told the Minister that the developer was acting 'with contempt for planning legislation and issues of neighbourhood character and residential amenity' by seeking a

permit for a two-lot subdivision which would effectively allow a dual occupancy to be built without a planning permit nor having to comply with the **Good Design Guide**.

Mr Maclellan told Moonee Valley that the 'practice of circumventing the process for medium density housing is of considerable concern' and, that 'it undermines the application of the **Good Design Guide for Medium Density Housing** and reduces the community's confidence in the planning system'.

## SOS survey

On 21 March 2000, SOS sent a fax to the mayor of every metropolitan council asking if their municipality had applied for the interim control relating to planning permits for single dwellings on lots between 300-500 sq m, and, if applicable, the option to remove arbitrary

## HOW YOUR COUNCIL RESPONDED

### Councils which HAVE interim controls:

Port Phillip, Stonnington, Mornington Peninsula, Bayside, Boroondara

### Councils which HAVE applied for interim controls:

Banyule (not for 7 km radius provisions which do not apply), Hobsons Bay.

### Councils which HAVE NOT applied but may do so:

Brimbank, Darebin, Frankston, Glen Eira, Hume, Manningham, Moonee Valley, Moreland

### Councils which WILL NOT apply:

Casey, Knox Melton, Monash, Nillumbik, Whittlesea, Wyndham, Yarra Ranges

### Councils which are YET TO RESPOND to our survey:

Greater Dandenong, Kingston, Maribrynong, Maroondah, Melbourne, Whitehorse, Yarra\*

\*SOS committee member Michelle Quigley who is also a member of Richmond Residents Against Inappropriate Development (RAID) reported that Yarra

## NEW SOS COMMITTEE

Our second annual general meeting was held at 7.30 p.m. on Thursday, 6 April 2000 at St Joseph's hall, 47 Stanhope St., Malvern.

The committee elected at the AGM was:

**President** - Jack Hammond QC, a member of the Summerhill Estate Residents Association East Malvern)

**Senior vice-president** - Alastair Mitchell, insurance broker and resident of Beaumaris

**Junior vice-president** - Dr Miles Lewis, Reader in Architecture, Melbourne University and author of **Suburban Backlash** (see back page)

**Secretary** - Cheryl May, statistician and member of Brighton Residents for Urban Protection

**Treasurer** - Philip Warren-Smith, automotive

technician and SOS municipal representative for Whitehorse

### Committee members

**Michelle Quigley** - planning barrister, founder of Richmond Residents Against Inappropriate Development (RAID)

**Dianne Duck** - journalist, SOS municipal representative for Stonnington

**Michael Bromby** - solicitor and Canterbury resident

**Ian Macrae** - film director and SOS municipal representative for Port Phillip

**David Wilms** - member of Save Surrey Hills with a background in architectural project management

**Geoff Ronald** - general manager and Malvern resident

**David Moore** - architect and member of Williamstown, Spotswood and Newport Residents Association

Peter Matthews, a committee member of the Kooyong Valley Civic Group recently joined the SOS committee.

Peter has replaced Ian Macrae who has taken a year off to live in Italy.

As well as serving on the committee, Ian helped many residents as an SOS Municipal Representative for Port Phillip.

Ian also provided his creative talents to layout



# media release

FROM THE OFFICE OF THE MINISTER FOR PLANNING

Thursday, 25 May 2000

## INTERIM MEASURES FOR PROTECTION OF NEIGHBOURHOOD CHARACTER

Victoria's streets, suburbs and towns will be better protected against inappropriate development under an Amendment introduced today to Victoria's statewide planning provisions by the Minister for Planning, Mr John Thwaites.

Mr Thwaites said Amendment VC9 to the State Planning Policy Framework will help provide interim protection of neighbourhood character until a new code for residential development is implemented later this year.

"The Amendment will require neighbourhood character to be taken into account when considering planning applications for new development.

"In the past, some inappropriate proposals for new development have been approved based on the argument that urban consolidation was enshrined in the statewide planning scheme, whereas principles of neighbourhood character were not.

"With this Amendment, developers, residents and other users of the planning system should understand the importance of neighbourhood character from the outset.

"This Amendment is providing greater certainty for users of the planning system and should result in greater consistency in decision-making across councils," Mr Thwaites said.

Mr Thwaites emphasised that the Amendment was an interim measure until a new, comprehensive housing code was developed and implemented.

"A new residential code will address in detail the Government's commitment to neighbourhood character as a mandatory starting point in deciding new development applications. Today's Amendment will provide a necessary safety net for neighbourhood character until the code is implemented," Mr Thwaites said.

A working draft code will be released shortly for wide and rigorous public consultation.

Effective today, Amendment VC9 will remain in place until the new housing code comes into effect.



Courtesy Sunday Herald-Sun 11/6/00

# 'GLOVES ARE OFF'

## Say 'LET DOWN' Essendon Residents

Members of ERRODE have elected to adopt a gloves off approach to our council, the City of Moonee Valley.

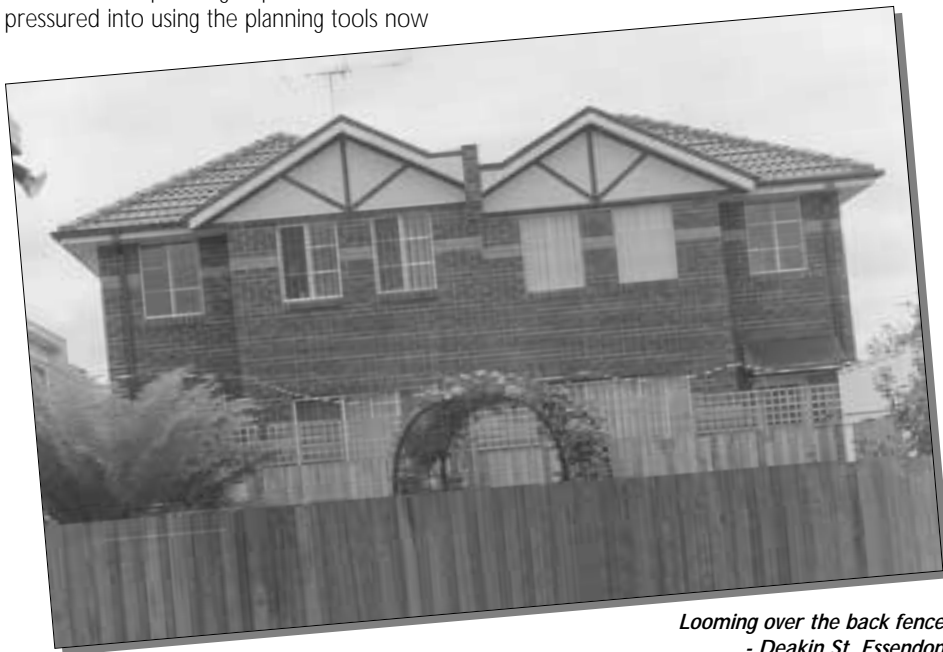
Why? We feel let down by decisions made by our planners who continue to approve developments which we believe pay scant regard to neighbourhood character and residential amenity.

ERRODE will be embarking on a campaign to seek rate reductions in the hope that our council's town planning department is pressured into using the planning tools now

Encouraged, we communicated to our hundreds of members of ERRODE Inc. that we were entering a new phase of cooperation with our council. But as it has turned out, it appears that my initial scepticism was not without foundation.

### The Turning Point

A recent decision by our newly elected council to approve yet another multi-unit development - this time two doors away from my own



*Looming over the back fence  
- Deakin St, Essendon*

available to them to make the most appropriate decisions.

We will be following the example set by Hughesdale residents Leo and Irene Keane who received a rate reduction after they appealed to the City of Monash to have the value of their property adjusted downwards because they believed the units next door had devalued their property (see March 2000 issue of Residents Voice).

It is fair to say that our open but legitimate criticisms of our local planning bureaucrats and politicians has drawn some ire from those at the upper echelons of power at council.

However, we have been undeterred in our desire to achieve a more balanced approach to planning through consultation.

And for a while I was pleasantly surprised, although remaining sceptical, at the cooperation we had started to experience. That appeared to be partly due to the fact that the Liberal Government had just received their marching orders!

home  
- has galvanised our organisation.

This particular proposal is for three attached dwellings: two single storey houses and one double storey house.

The frustrating aspect of this decision is that council had recently endorsed a set of policies entitled the Residential Design Principles (RDPs) after wide public consultation.

I had come away from that consultation process confident that ERRODE's input would prevent the previously approved, random development of monoliths in our predominantly single storey, single dwelling residential streets.

For example, one particular RDP states that the bulk and scale of developments must be in keeping with that which predominate in the area or neighbourhood.

Therefore it came as quite a shock that our council had supported the town planners' recommendations that the abovementioned proposal should be supported.

This is despite the fact that the scale of the double storey unit and the significantly

*By Rick Clements, president, Essendon Residents Rejecting Overdevelopment Everywhere (ERRODE)*

diminished setbacks are in direct conflict with the RDPs recently approved by the State Government.

That decision, along with a number of other issues, has completely frustrated the members of ERRODE.

Matters of major concern include horrendous examples of developments which do not conform with the planning permit

When our town planners are challenged, the common line is that the modification is minor and therefore does not justify further action.

We are concerned, too, that Moonee Valley has experienced one of the highest numbers of permit applications in Victoria yet has only a part-time building enforcement officer.

Also of great concern to us is the difficulty residents face in obtaining copies of plans. ERRODE has continuously requested council to make documents in planning files available to objectors.

The town planning department is finally making these documents available - but at a price.

*... continued on page 10*

## HERITAGE RICHES

**Real estate agent, Ken Griffith of Burne MacMillan, has nominated Buckingham St Richmond as one of the suburb's most popular streets.**

**Why?**

**According to the Age's Melbourne Property Guide (24 May 2000):**

**'A heritage overlay has restricted multi-unit development in the street**

**This, in turn, has largely protected the streetscape and helped boost values'.**

**Mr Griffith told property reporter Joanne Painter that keen buyers will pay \$200,000-plus for an unrenovated cottage and up to \$350,000 for a renovated single-fronted terrace.**

**He said renovated double-fronted houses sell for around \$500,000, are keenly sought but seldom come on the market.**



The State Government has introduced a Bill to Parliament which seeks to reform present legislation that illogically allows a planning permit to be granted for units even though an existing restrictive covenant prohibits them.

The *Planning and Environment (Restrictive Covenants) Bill 2000* was introduced to Parliament during the last autumn session on 1 June 2000 but will lie over until the House sits again this month.

In the meantime, the government has invited public comment on the Bill.

Despite welcoming the proposed reforms, SOS has suggested to the government that a number of amendments should be made to the Bill. Those amendments relate to six principal issues involving:

- the documents that should accompany an application;
- the contents of the notice of an application;
- the method of giving notice to persons who benefit from a covenant;
- costs;
- compensation; and,
- the qualifications of persons appointed to hear opposed applications to remove or vary a restriction.

SOS believes an application to vary or remove a covenant should be accompanied by a certified copy of the title of the subject land and all land which benefits from the covenant in question.

Our submission states that this requirement would be consistent with the practice of the Supreme Court.

In addition, SOS believes an application should be accompanied by a written notice to be served on all beneficiaries of a covenant which would explain:

- the effect of the covenant;
- the manner in which the proposed use or development would breach it;
- the extent to which the applicant seeks to remove or vary it; and,
- the right of the beneficiary to oppose the application.

SOS believes there should be a requirement that personal notice is given to the owners and occupiers of land benefitting from a restrictive covenant that an application has been made for a use or development that

will breach that covenant. Notice should also be published in a newspaper generally circulating in the area in which the land is situated.

We believe the Bill should incorporate costs and compensation provisions to ensure that those who seek to use or develop land that would breach an existing covenant bear the true costs, and not shift them onto those who seek to uphold the covenant.

'These matters should be addressed by the legislation in the interests of fairness and natural justice in accordance with the general practice of the Supreme Court', said Mr Jack Hammond QC, president of Save Our Suburbs.

SOS' submission states that applications for removal or variation of a restrictive covenant 'should be determined by persons with similar legal qualifications, experience and independence to that of a judge'.

What the proposed changes mean If enacted, the new legislation will require that a permit to use or develop land must not be granted if that permit results in the breach of a restrictive covenant.

Furthermore, such a permit 'may only be granted if authority to remove or vary the covenant is given either before or at the same time as the grant of the permit'.

Currently, beneficiaries of restrictive covenants faced with a multi-unit development application are being frustrated by the lack of an opportunity during the planning permit process to oppose that development on the ground that it would be inconsistent with or contrary to a covenant restricting development to single dwellings.



Courtesy the Age, 21/2/00

Under present law, the existence of a restrictive covenant is not a relevant planning consideration when planning permit applications are being considered.

### Election promise

The Bill is consistent with the State Government's election promise to introduce legislative change to require that 'an application for removal or variation of a restrictive covenant is made separately and before the granting of a planning approval for development on the site'.

The government reaffirmed that pledge in the State Planning Agenda '*A Sensible Balance*' which was announced by the Minister for Planning, Mr John Thwaites on 13 December 1999.

The former Kennett government, too, had made an election policy promise to change legislation to ensure that an application for a variation or removal of a restrictive covenant was made separately and before a planning permit was approved for a new development on the same site.

Hundreds of thousands of residents owe their residential amenity to covenants which restrict development to single dwellings.

### Three choices

Those beneficiaries of restrictive covenants will welcome the proposed legislation which will provide three choices for those seeking a permit to use or develop a property governed by a restrictive covenant.

Applicants may choose whether to :

- obtain a court order under the *Property Law Act 1958* to remove or vary a covenant before applying for the permit, or;
- concurrently apply to the relevant council for a permit to remove or vary the covenant and a permit to use or develop the land, or;
- ask a planning authority to prepare an amendment to a planning scheme to authorise removal or variation of the covenant and concurrently consider an application to use or develop the land.

### Covenant battles

In the last issue of the *Residents Voice* (March 2000), East Ivanhoe resident, Brian Fitt told of his neighbourhood battle to stop a developer building three units on land which bears a covenant restricting development to a single dwelling.

... continued on page 11

# Fighting on the Beaches

"Gloves Are Off"... continued from page 8

By Kristin Stegley, founder of Brighton Residents for Urban Protection

The phenomenal success of BRUP in attracting over 2000 members says much about the depth of feeling that residents have for their suburb.

Like other residents across Melbourne, we have been appalled at the destruction of our neighbourhood character, the demolition of heritage buildings and quality housing stock, the ripping up of established gardens and the destruction of beautiful, mature trees - all to make way for inappropriate developments that line the pockets of a few and leave us all the poorer, especially in spirit.



Open space in Brighton

Constant lobbying is extremely important.

BRUP's voice has been heard at state and local government levels. We seem to have a mutually reciprocated love/hate relationship with the Bayside City Council.

Because of constant pressure, council is now refusing more and more applications for developments that are clearly inappropriate.

An increasing number of applications to build multi-storey developments in established centres such as Church and Bay Sts. are being fought at VCAT.

We believe the neighbourhood character argument that applied to residential streets should equally apply to established shopping centres. It is the low scale, village atmosphere of these centres that is so valued by the community.



Another palace goes up

I personally look forward to the day when I can take my sign off my fence and BRUP is no longer in existence because our neighbourhoods, streetscapes and amenity are protected by good planning laws and regulations.



Pictured: Kristin Stegley

Ratepayers are being charged \$1 an A4 page for photocopying and far more for A3 size copies of plans. ERRODE believes these charges are excessive.

The statutory manager of town planning, - Mr John Karageorge has said that photocopying fees are charged as a 'disincentive'. He made that comment at a meeting on 15/6/00 in the presence of myself, the vice president of ERRODE - Mr Michael Villani, the treasurer of ERRODE - Mr Peter Crettenden and the Moonee Valley Group Manager of Development and Operations, Mr Francis Khoo.

Subsequent correspondence from Moonee Valley's CEO in relation to the availability of planning documentation stated that fees are charged to recover costs.

ERRODE was formed about three years ago after the residents of Deakin St, Essendon became aware of the threat to our neighbourhood by inappropriate development.

Whilst multi-unit developments were not new to the neighbourhood many residents still trusted Moonee Valley council to reject any proposals that were inappropriate for the area.

Accordingly a proposal for 2 single and 2 double storey attached dwellings in Deakin St received very few objections.

However, to our dismay, a permit was granted. A warning bell went off.

We were in complete shock once the cathedral-like structure commenced to take shape and aimed to reach the heavens. Of course by this stage it was too late to complain.

As the monolith was being completed, the same developer decided to purchase the adjacent property and apply for a permit to build the same unit design next door to the 'twin peaks'.

This time, the residents sprang into action and condemned the development from its inception. But the council decided the architecture of the original development was worth duplicating and decided to grant a permit.

The events which took place in the ensuing months included a unanimous cry from our councillors that the development was fine and that we, as residents, had no chance of overturning their decision at the AAT (now VCAT).

But as it turned out, the AAT member was not backward in scathingly criticising the council's position on the development and refused a permit.

The rag tag army of objectors to that development formed our group - ERRODE - Essendon Residents Rejecting Over Development Everywhere. We started to make ourselves



Signs of the Times

But Brighton residents have not been prepared to accept this future for our suburb and we are, and have been, fighting back.

Inspired by the founding of Save Our Suburbs in February 1998, Brighton Residents for Urban Protection (BRUP) was launched a month later at a meeting attended by 600.

BRUP aims to protect the urban character of Brighton including its open spaces, streetscapes, precincts, gardens and rich heritage as well as the amenity and rights of existing residents.

We provide our members with advice and support. Our 'survival kit' provides information on the planning system, how to write objections and what is required for VCAT appeals.

BRUP was the first residents' group to promote signs proclaiming: WE WILL OPPOSE INAPPROPRIATE DEVELOPMENT. It has been fun to watch others across Melbourne do the same thing. Know this - they work!

I believe many residents have been able to keep inappropriate development out of their streets by a unified and strong message of intended opposition.

Developers hate the signs and families looking for houses love them!

If residents' groups want to maintain vigilance, constant monitoring is required.

We have divided Brighton into fifteen zones. Each zone leader reports on 'yellow peril' applications and breaches of planning permits.

# A Fitting Result

East Ivanhoe residents have won the first round of a Supreme Court battle to stop a three unit development being built in the McCubbins estate - an area which is protected by a single dwelling covenant.

The residents took Court action against Luxury Developments after that company began construction work in breach of the covenant which restricts development to one dwelling.

language restricted the owner of that land from building on it more than one residential premise and the benefit of the covenant was expressed to be for the owners of identified land.

Despite the existence of that 80-year-old restrictive covenant, a legislative loophole had enabled Luxury Developments to obtain a planning permit to build three units at 270 Lower Heidelberg Rd.

The developer had started to build more than one unit on that site in breach of the covenant.

The residents asked the Court to issue an injunction to restrain the developer from building more than one dwelling on the site.

In an April 2000 hearing heard over four days, the developer, Mr Bernard Seiffert argued before

Mr Justice Gillard that the covenant was unenforceable. Mr Seiffert told the Court that in his opinion the restrictive covenant did not apply because the development proposal had gone through a complete town planning process.

The planning permit for the three units had been granted by Banyule Council after the developer successfully appealed to VCAT.

Maclellan had removed a 79-year-old restrictive covenant limiting development to a single dwelling without any notification to the beneficiaries of that covenant.

Mr Maclellan removed the covenant by a Ministerial planning scheme amendment on 18 October 1999 whilst the Kennett Government was in caretaker mode, two days before the Bracks Government was sworn in. The residents found out two months later after a planning application was lodged with Glen Eira Council to redevelop the property - on which a single

## New law no balm for Ivanhoe estate

By IAN MUNRO  
LUXURY DEVELOPMENTS

Legislation to be introduced into the Victorian Parliament this year will aim to make restrictive covenants more effective against household developments.

The move will not help the 100 or so Ivanhoe residents of the McCubbin Estate land to limit 300,000 to try to enforce their single dwelling restrictive covenant in the Supreme Court.

The estate was set up in 1920 with a covenant restricting each lot to a single house but developers were allowed two town house units and one three-storey unit.

An estate resident, Mr Brian Fitt, said his neighbour had started construction to stop the developer from building more than one unit on the lot.

The position of some of the estate, Mr Jack Hammond, said residents were restrictive covenants in court. "It is a metropolitan-wide issue. There are many covenants in place, some of them going back decades - but they do not seem to be enforced."

Mr Fitt said the development had been approved by Banyule Council but was opposed by VCAT after a notice of objection was made.

A council spokesman said that the developer, Luxury Developments, was aware of the covenant, but a started work on the project, yet it had not broken any rules. Work has now been stalled by the court action.

Opposition planning spokesman Mr Robert Clark said the Government's proposed changes to restrictive covenants and VCAT consider covenants before issuing planning permits. "It's not going to be enough."

He said the key issue was whether they would be allowed, or forced, to make notice of covenants.

A spokeswoman for the Government said covenants needed to be considered earlier in the planning process. Legislation to amend the law would be introduced.

a planning permit that contravenes the covenant without having to exercise or vary the covenant," he said.

The Victorian Civil and Administrative Tribunal was not allowed to let covenants influence its decisions on planning issues, he said.

Mr Fitt said the development had been approved by Banyule Council but was opposed by VCAT after a notice of objection was made.

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He said the key issue was whether they would be allowed, or forced, to make notice of covenants.

A spokeswoman for the Government said covenants needed to be considered earlier in the planning process. Legislation to amend the law would be introduced.

Courtesy the Age, 10/4/00

Under present law, the existence of a restrictive covenant is not a planning consideration.

However, Justice Gillard upheld the plaintiff's right to enforce the single dwelling covenant.

McCubbins estate resident and SOS member, Mr Brian Fitt, who wrote about the residents' battle in the March 2000 issue of the newsletter said:

'Residents are pleased their proprietary property rights, represented by the single dwelling covenant on their properties, have been upheld by the Supreme Court of Victoria'.

In his judgement Justice Gillard stated: 'In my opinion, Mr Seiffert was prepared to chance his arm and take the risk that someone would institute proceedings to stop his company. His whole conduct was of the kind "try and stop me if you can".'

'However, we did stop him and we were able to do that because we all stood together', said Mr Fitt.

The residents are now preparing for the next rounds. The developer has filed an appeal

house still stands - as a kindergarten for 100 children.

And as a member of the Summerhill Estate Residents' Association in East Malvern, SOS president Jack Hammond has been fighting a developer who wanted to build 11 two-storey units on land protected by a single-dwelling covenant for over 85 years.

After two appeals to VCAT the developer won planning approval for 7 two-storey units but still has to obtain the removal or variation of that covenant to enable him to build those dwellings.



Estate defenders: Residents of Ivanhoe's McCubbin Estate protest against high density development  
Courtesy the Age 10/4/00

In a 59-page judgement handed down on 20 June 2000, Mr Justice Gillard stated:

'I have no doubt that in the present matter the plaintiffs and their supporters cannot understand how the hearing occupied over four days with extensive references to authorities and was contested, when it is clear that Mr [Bernard] Seiffert on behalf of Luxury Developments purchased the land with full knowledge of the existence of the covenant which in plain

"Covenants" ... continued from page 9

That developer had obtained planning and building permits. The residents took their fight to the Supreme Court and won the first round.

And earlier this year, wide publicity was given to another case involving the removal of a restrictive covenant without notice to residents who benefitted from it.

In December 1999, Caulfield North residents were appalled to discover that former Planning Minister Mr Robert

By Debbie Lonsdale

Residents of Northcliffe Rd, Edithvale are fed up. We have been to the Victorian Civil & Administrative Appeals Tribunal THREE times in TWO months and we have lost EVERY case.

It all began twelve months ago.

First there was a proposal to build two units at no 42 but no-one objected to that.

We did object, however, to a proposal to build five units for 'over 55s' at no 33. That proposal was unanimously rejected by Kingston Council on the grounds of it being an overdevelopment.

We residents had been astonished by the private open space provided. Walk out the back door straight into the fence!

On 31 March, 2000 we went to VCAT. The decision was handed down on 12 April, 2000. The development was approved.

The next development was for 82-84 Northcliffe Rd which involved the retention of an existing dwelling on No. 84 plus five units.

We went to VCAT again on 12 April 2000. The following month VCAT ordered that a planning permit be granted for four units.

Then on 1 May 2000 we were off to VCAT again for a hearing involving three units at No 68 Northcliffe Rd. We lost that one too.

Our street already has the Chelsea Private Nursing Home which accommodates 125 elderly residents and Northcliffe Lodge which is home to 68 elderly residents. These people love to be wheeled down the street to enjoy the fresh air and our gardens. But on-going multi-unit development is taking away our gardens, lawns and trees. The volume of traffic is increasing as is parking congestion.

We told VCAT about Edithvale's high water table. You only have to dig 3-4 metres and you hit water. We have no stormwater easements on our properties and only some Northcliffe Rd residents have a drainage pipe into street gutters.

*Walk out back door ... into fence*



When there is a heavy downpour we are very reliant on our gardens and lawns. Our porous sandy soils soak up stormwater run-off like a sponge. Already parts of Northcliffe Rd are subject to flooding during heavy rain.

A recent council report into the flooding of a drainage pit at 85 Northcliffe Rd revealed that the drainage system in this area will eventually need to be upgraded.

Kingston council engineers made the report after investigating claims by a resident that during heavy or constant rain, water flowed over the road and house drains in the street backed up.

We have come to the conclusion that our drainage system, which is over 40 years old, cannot cope with all the development occurring in Edithvale and next door Chelsea.

We residents don't want to have to pay increases in our rates to upgrade the system when developers only have to pay a drainage levy of \$1200 to council.

What is going to happen when the drought breaks and the normal rainfall returns!

Anyone got a boat for sale?

**Frogs and lizards**

Another issue we presented to VCAT concerned our unique environment. In our gardens we have burrowing frogs and tree frogs, lizards, bats, possums and many species of birds.

Our gardens are wildlife corridors for the renowned Edithvale-Seaford wetlands. We find it marvellous that this can happen in

the middle of the suburbs.

Once the authorities retained the wetlands for flood mitigation, now governments have realised that properly managed, wetlands play a major role in cleaning up waste waters and pollution so that clean water returns to the bay.

The well-being of wildlife has repercussions for the health of our environment. The buffer zone around the wetlands is



*Gun barrel driveway*

not large enough to accommodate their food and shelter so they have learned to live with us and we with them.

Overdevelopment takes away a natural environment. Frogs can't live with concrete and birds disappear when trees are pulled down.

**Families can't buy in**

The Kennett Government promoted medium density housing as positive change, the change have to have because we need diversity of housing stock, affordable living, our population is ageing, our families are no longer Mum, Dad and the kids. We must accommodate all. Sounds great but families are being forced out of the area because of high prices. Four years ago in Edithvale you could buy a house for \$120,000. Now developers buy a property for the size of the land. The asking price for properties starts at \$190,000 to \$300,000. But it is great to know that one of our successful developers is doing well. He is selling his units at \$260,000 each!



*Treasured back garden resident*

**Housing snobs**

I was astonished to read about John Gaffney's comments in the last *Residents' Voice*.

(Issue 8 reported comments made by Mr Gaffney, the Victoria Director of the Housing Industry Association, on 8 December 1999 when he called residents 'militant housing snobs' and 'irrational' for objecting to multi-unit development.)

I was born and raised in a Housing Commission house in Jordansville. The area was nicknamed, The Concrete Jungle. A fellow resident objector grew up in a housing commission home in Carrum. I looked up the dictionary for the word 'snob'. The definition was: One who judges by social rank or wealth rather than merit. Sure sounds like us!

"Loophole" ... continued from page 1

on each of these sites to limit further development'. He invited residents to make a submission on the proposed *Amendment C15*.



4 Elimatta Rd, Carnegie: Stands over its neighbours

The council's proposed policy lists the three locations and provides details of development which has taken place on each site, the planning applications which have been submitted for second dwellings in each case and council's concerns about the current dwelling on each site. Even though the *Maximum Development of Residential Sites policy* makes particular reference to the three addresses in question, the council proposes that it will apply to all residentially zoned land within Glen Eira.

In his letter, Jason Close informed residents that although the new housing guidelines - *ResCode* - would 'hopefully close the loophole that allows this form of development', council 'would be keeping its eye out for any further developments which attempt to utilise the loophole' until the guidelines came into effect.

The proposed policy states that a 'loophole in the system ... allows applicants to bypass the Planning Scheme for the first dwelling of a multi dwelling development by constructing a dwelling on site and then applying for planning permission for the second or subsequent dwelling'.

It goes on: 'In cases where it is evident that clear intent existed to construct a second or subsequent dwellings at the time of construction of the first dwelling it is considered appropriate that further development of such sites be limited if the development of the site as a "whole" is

considered inappropriate and unlikely to gain approval if a proper planning process were followed'.

The president of Save Our Suburbs, Mr Jack Hammond QC has commended the council for taking action to ensure that planning rules work the way in which they were intended. He described the wording of the proposed planning scheme amendment as 'unique' and 'revolutionary.'

Moreland Council has also raised concerns about the planning loophole which it believes is being used to develop a dual occupancy at 42 St Phillip St, East Brunswick even though council had earlier refused to issue the developer a planning permit to build two units on the site.

In a letter dated 20 July 2000 to Planning Minister John Thwaites, Moreland Mayor Ms Stella Karlofyllidis stated that 'council has ... been put in an untenable position in connection with a development proposal at [that] address as a result of loopholes in both the planning and building system'.



St Phillip Street, East Brunswick

against Moreland Council's refusal to grant a planning permit to build two units at the same location.

Following an unsuccessful VCAT appeal late last year, the owner-developer, Mr Vito Bartucca obtained:

- a demolition permit from a private building surveyor to knock down an existing single-storied house at 42 St Phillip St.
- a building permit from another municipality - Manningham Council - to construct a single house on the site under *VicCode 1*.

Plans obtained by the Whitmores show a single, two storey house positioned close to their western boundary with just under half the 564 sq m block left vacant. That house is now in the early stages of construction.

The positioning of the house so far to one side of the block led the Whitmores to conclude that at a later stage the developer will seek planning permission to build another house next to it on the same block.

"Why else would you position a single house so close to our boundary while leaving almost half the block as a supposed garden without providing any windows or doors opening on to that space?", asked Ms Whitmore.

The Whitmores' suspicions were not allayed by recent comments attributed to the developer's son, Mr Frank Bartucca, published in the local *Moreland Community News* on 27 June 2000.

According to that report, Mr Bartucca said 'the family had not yet decided whether to build one or two dwellings on the block'. It quoted Mr Bartucca as saying: 'At the moment, we've just demolished the old house and we haven't decided what we will do yet ... Only time will tell'. The report also stated that Mr Bartucca 'preferred not to comment further as it was a family matter'.

Vito Bartucca first applied to build two double-storied units at 42 St Phillip St on 15 January 1998. Fifteen objections to that development were received by Moreland Council.

After a series of amended plans were received and refused by council, Mr Bartucca withdrew that application on 30 April 1999.

A subsequent application for planning approval for two double storied units was made on 22 March 1999 and refused by Moreland on 18 August 1999 as being out of character with the neighbourhood and detrimental to existing residential amenity.

... continued on page 14

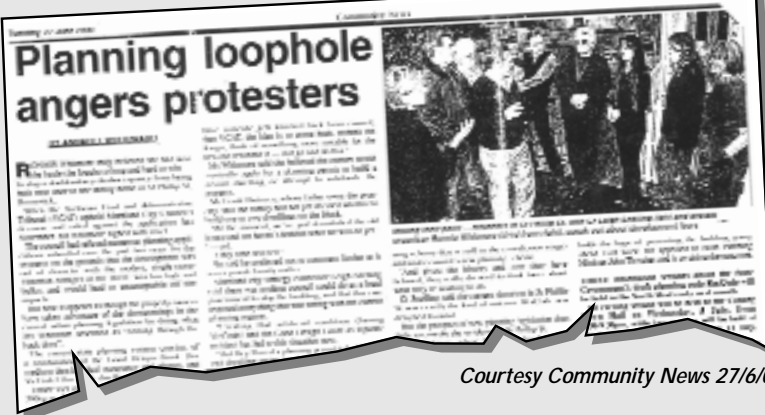
## Planning System HAS LET ME DOWN Says Ronnie



Ronnie & Steve Whitmore with view of site

East Brunswick residents Ronnie and Steve Whitmore are fighting to stop a developer exploiting the planning loophole to build two units next door to their property.

An exasperated Mrs Whitmore said she and her husband believe a developer is using, what she calls a 'back door method', to build the dual occupancy at 42 St Phillip St despite losing an appeal to VCAT



Courtesy Community News 27/6/00

# YOUNG PLANNERS TAKE THEIR FIRST STEPS

*First year planning students at RMIT University will soon know Abbotsford and Collingwood as well, if not better, than local residents.*

*Their lecturer, Kate Shaw, has sent them on a self-guided walking tour of the area as part of a research project.*

*According to Kate the purpose of the tour is to provide the students with a hands-on opportunity to 'gain an understanding of some of the social, economic, environmental and cultural changes taking place in the inner areas of Melbourne'.*

*She has told her students that the area between Smith St in Collingwood and the Yarra River in Abbotsford displays many of those changes and that a number of tensions exist.*

*She said those tensions involve:*

- *economic growth vs environmental quality*
- *manufacturing jobs vs residential construction/renovation*
- *urban 'revitalisation' vs affordable housing*
- *cultural homogeneity and sense of 'community' vs. social diversity*

*The students are also being required to look at two major issues in Abbotsford:*

- *multi-unit dwellings built under the Good Design Guide; and,*
- *the proposed redevelopment of the Abbotsford Convent, St Hellier's.*

*As well as research work, the students are conducting interviews with council planners, developers, residents and neighbours of medium density housing, planning academics and bureaucrats, resident action groups, including Save Our Suburbs, real estate agents and politicians.*

*'Sustainability' will be the principal guide of research work: environmental, social, economic and cultural.*

"Let Down" says Ronnie" ... continued from page 13

That refusal was upheld by VCAT.

In his 11 November 1999 decision, Mr H W Terrill of VCAT stated:

'The proposal is totally out of character with the street in terms of its scale and design. It is too high, too bulky and with the two front vehicle access points is such as to spoil the area' which he described as having a 'streetscape character ... of predominantly modest single storey Victorian worker's (sic) cottages set approximately 3m from the frontage and mostly having low picket or wire front fences'.

Mr Terrill stated that an existing dual occupancy opposite did 'nothing for the street and should not be permitted to be repeated in either single or double storey proportions as they too are out of keeping with the character of the street'.

The decision went on to state that the proposal had 'not considered abutting neighbours' and that there were 'unacceptable amenity losses for them in terms of bulk, potential overlooking and overshadowing because of that bulk'.

Mrs Whitmore said a three-dimensional architectural model of the plans for the single house shows that it is just as bulky as the two units criticised by Mr Terrill.

"The building under construction does not fit in at all in this one-way street with its small houses", she said. "But it appears that the developer does not care".



*Ronnie Whitmore with view of site*

The Whitmores' dilemma clearly illustrates the need for the speedy implementation of the new housing guidelines - *ResCode* - which will replace *VicCode 1* for single dwellings and the *Good Design Guide* for medium density developments.

Under *ResCode* developers will be required to meet strict neighbourhood character standards for single houses and medium density developments. The application of those standards should have a positive bearing on existing residential amenity.

Despite her frustration, Mrs Whitmore said she is not going to give up.

"I have lived in my home for 25 years and my grandmother has lived here for 60 years. The planning system may have let me down but I do not intend to give up", she said.

it pays

## NOT TO BE OVERLOOKED

The outcry against inappropriate development in established suburbs has even made buyers of properties in new housing estates wary about the quality and security of their residential amenity.

Mr Stephen Hains, chief executive officer of the Portland House Group which is behind the Braeside Waterways development in Melbourne's south-east told the *Sunday Age* on 21 May that 'some of the mistakes that occur in and around the suburbs are not going to occur here'.

He said 'overlooking was a concern to home owners' and that one prospective buyer had asked if the development's design guidelines were 'enforceable' before he bought a site.

"I think the market is calling out for these sorts of guidelines and these types of controls", said Mr Hains.

According to the *Sunday Age*, interest in the 157 hectare site had been 'strong'.

"Wary Welcome for Rescode" ... continued from page 3

*of the residential design code to replace the Good Design Guide and Vic Code 1.*

*They are Dr Miles Lewis, Reader in Architecture at Melbourne University and planning barrister Michelle Quigley.*

*The draft code package is now available from:*

- *the Department of Infrastructure's Planning Bookshop, 80 Collins St, Melbourne*
- *ph: 1800 012 346*
- *the Department's website at [www.doi.vic.gov.au/planning](http://www.doi.vic.gov.au/planning)*
- *all councils and Department of Infrastructure regional offices*

*The package includes a commentary document, the draft code, seven draft practice notes and a background document titled Housing Ourselves which provides information on Victoria's housing patterns and needs.*

Age, 19 June 2000

'Melbourne is set to become a giant forgery... Melbourne will become the mock-Victorian and mock-Federation ("Queen Anne") centre of the world with small, dark rooms, cast-iron terracing, ceramic roof tiles, bricks, high-pitched roofs and complicated timber window frames. Neither Rome, Paris, New York, Tokyo nor Hong Kong is willing to limit its future to that extent, yet this prescriptive code is one embraced in at least four towns I know of - the Disneylands and Disneyworlds in Tokyo, Paris, Anaheim and Florida'.

- Norman Day, architect and architecture critic providing his critical view of ResCode.

Metro News, 17 May 2000

'This is an integrated local area planning issue. Traffic is one issue, parking is another, but most people don't realise most of Clifton Hill has aged infrastructure (which the council needs to renew). Clifton Hill is an area in transition in every sense'.

- Yarra councillor Robyn Williams who tabled a petition calling for public consultation on the future development for South Clifton Hill. Residents have called upon Yarra Council to formalise a policy to control the rate of residential development in the area.

Australian Financial Review, 16 May 2000

'Councils have tried to protect the character of local neighbourhoods by opposing inappropriate development on the basis of urban character studies. However, many medium-density developments have later been approved by the planning appeals tribunal because of the priority given to urban consolidation in the State planning policy'.

- Planning Minister John Thwaites.

Sunday Age, 14 May 2000

'Neighbours are at once a blessing and a curse. Because I live in what has been deemed (by someone - and if you know their name, I would like to talk to them) a MAXIMUM DENSITY housing area, our neighbours are an integral part of our lives. On one side is a bandy sort of music house. We never really see them, because they're on the other side of our two storey brick wall, and like us, keep funny hours, but we hear their music, which, while no hardship, is best described as "electric" ... And on the other side, with windows looking into our kitchen, is our lovely European neighbour ... Two neighbours are manageable, but because all of us being squeezed in like a size nine foot in a size six sock, we also have to factor in the people behind us with the trampolining early-morning happy children, and two doors down even, because their neo-Georgian (yeah, right) townhouse has a balcony that looks into my bedroom'.

- Columnist Kate Langbroek writing about her close neighbours

Metro News, 3 May 2000

'I certainly got the impression that the minister [Mr Thwaites] was wanting to understand our concerns and address them. Although I'm not too sure how he's going to do that given the high

expectations of community groups and the perception that the industry and community groups are so far apart'.

- Mr David Hodge, the Housing Industry Association's planning and environment director commenting on public consultation for Residential Code 2000.

Age, 29 April 2000

'What they have done which is unlawful is they have created two self-contained dwellings from one, with no planning permit'

- Mr John Van As, Darebin's manager of urban planning commenting on council's discovery that a double-fronted Victorian weatherboard house in Herbert St., Northcote, had been subdivided after a permit had been granted for work at the rear of one of the houses.

Commenting on another case - in Clifton St. Northcote - Mr Van As said that three units had been built despite council only approving a planning permit for two units.

Herald Sun, 22 April 2000

'Obtaining a planning permit is a perfectly normal procedure and a necessary precaution against the monstrous houses which have been built on these small sites in recent years. It seems an odd claim to me that the [interim planning controls] will stifle development and cost them profits and jobs. What is implied is that we, the state of Victoria, owe the developers a living - we are obliged to keep them in business somehow. I don't see why we should support development for its own sake unless it's performing a social goal'.

- Dr Miles Lewis, SOS vice president commenting on criticism by the Victorian director of the Housing Industry Association, Mr John Gaffney, of the state government's new building provision which allows councils to require planning permits for single dwellings on lots between 300 - 500 sq m.

Heidelberg, 27 April 2000

'Now that Banyule Council has gone to the trouble and expense of establishing the Neighbourhood Character Strategy and vegetation overlays, it seems even more outrageous that ratepayer concerns and local council decisions can still be over-ruled. [We] get the feeling that residents and the council are being treated as irrelevant or worse - that they are seen as having no right to influence local planning issues. The community has realised that the only way to protect the area from the devastation of over-development is to band together and pool our resources to hire experts at the VCAT hearing'.

- Mr Patrick Patterson, one of 200 residents who have objected to a proposed five-unit development for 371-375 The Boulevard, Ivanhoe.

Moreland Sentinel, 4 April 2000

'I would hate to see us become a city where all the new development was mock-Victorian, mock-Edwardian, neo-post-war. What I think we need to make sure we talk about is scale, form, material and colours so that we don't lock ourselves into a situation where we don't experience exciting new architecture and new building possibility'

- Moreland Cr Leigh Snelling providing her view of neighbourhood character

## Municipal Representatives

<b>Ballarat</b>	
Greg Henderson	5331 3537
<b>Banyule</b>	
Jane Crone	9457 1675
Noel Withers	9435 4513
<b>Bass Coast Shire</b>	
Carola Adolf	5678 2286
<b>Bayside</b>	
Cheryl May	9596 1823
Derek Wilson	9583 2839
Jocelyn Lee	9596 6835
<b>Boroondara</b>	
Keryn Christos	9817 3755
David Tink	9830 5280
Adele Barrett	9836 0640
Gillian Simonson	9813 2186
Luba Copland	9885 1869
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Sharon Beel	9707 4721
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Liz Gaynor	9484 7361
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Mark Conroy	9785 9314
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Cheryl Forge	9576 0099
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David Moore	9397 5773
Patsy Toop	9397 7666
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Ralph Percy	5974 1222
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Peter Wilson	9690 8294
<b>Stonnington</b>	
Tom Moloney	9510 3540
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Ann Reid	9501 6318
<b>Sydney</b>	
Sally Pike	(02) 9437 1427
<b>Whitehorse</b>	
Phillip Warren-Smith	9898 6107
John Hodgetts	9809 6966
<b>Yarra</b>	
Jo Kinross	9419 8494
Ruth Clemens	9428 0282

possessions and he easily becomes alarmed when he feels that any adjoining development will adversely affect his enjoyment of his property or its value.

Future planning requirements are for better standards which will ensure that any development is correctly located and carried out in accordance with the creation or preservation of a satisfactory standard of amenity for the particular area concerned. This can best be achieved by the adoption of a firm policy at regional level. Local authorities will then have a clearly defined course to follow. They should be able to administer residential planning within their area under a scheme where the basics are unassailable other than by regional amendment, but where specialised local knowledge can be used to make decisions in accordance with criteria clearly defined in the overall scheme.

Any estate agent concerned with multi-unit residential development has become aware of the increased costs, attributable to a lack of 'certainty' in the statement and implementation of many local planning schemes and the resulting long delays before the approval or otherwise, together with money wasted on detailed preparation of unacceptable plans.

This extra cost is finally paid for by the occupier of the accommodation, be he tenant or home owner, and the possibility of its elimination provides strong reason for supporting a metropolitan level of residential planning.

The use of improved standards will result in general cost increases for which the whole community will eventually pay. The economic effect of the imposition of such

standards on allotments within the existing subdivided area has been a matter of concern to members of the Real Estate and Stock Institute of Victoria. Redevelopment of many single lots, particularly those of a size commonly occurring in the inner suburbs, will become economic at ruling land prices or anything approaching them ...

...To some extent, this effect will be counteracted by an increase in the potential of land in other parts of the existing subdivided area where redevelopment has been heavily restricted. Here the potential of an allotment will be increased by the imposition of satisfactory residential standards'.

Remarkable comments indeed. And even more so, when you discover that they were made THIRTY YEARS AGO!

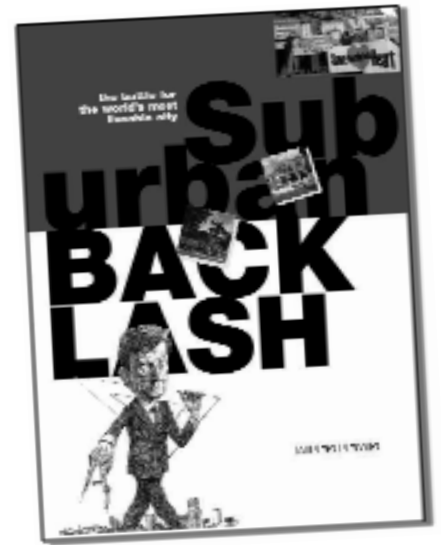
- see DW Simson et al, Residential Planning Standards [Technical Advisory Committee Report to the Melbourne and Metropolitan Board of Works] (Melbourne 1970), pp 31-2]

Dr Miles Lewis, vice-president of SOS was surprised to stumble upon this prophetic view of our platform.

Dr Lewis identified the common ground between our policy and comments made three decades ago as addressing the following matters:

- multi unit development occurs in the areas subject to least restriction rather than those where it should logically be located
- zoning is needed to ensure that multi unit development is located near shops, transport and services
- other areas should be preserved for detached housing
- owners fear loss of enjoyment and property value caused by multi unit developments
- standards are required to ensure appropriate location and quality of development
- local authorities should be able to apply local criteria within the overall framework

## Top Planners Recommend "Suburban Backlash"



*Peter Tesdorpf, Victorian president of the Royal Australian Planning Institute has recommended 'Suburban Backlash' as 'essential reading for anyone with a serious interest in planning and Melbourne'. (Planning News, March 2000)*

*In the same issue of Planning News, Mr John Bayly, a life member of RAPI described Miles's book as 'impressive' and said that while he agreed with 'many of its conclusions and proposals' he 'strongly' disagreed with others.*



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