RESIDENTS Voice

ISSUE 18 – JULY 2004

ISSN 1440-6977

PUBLICATION OF

SOS SAVE • OUR • SUBURBS INC

What's wrong with the planning system in Victoria — and how to fix it *by Nigel Kirby*

For decades now, the planning system in Victoria has mandated flexibility and subjective interpretation which we were told would encourage high quality, innovative and site responsive built outcomes.

Unfortunately the reverse is true. What has resulted is widespread generic design with costs and quality minimized and bulk maximized.

The effect has been to maximise the potential returns for developers but has led to uncertainty, inconsistency and delays in the planning permit process. By definition this is not planning but is instead a reactionary mechanism that delivers compromised results and fosters community anger and dissent. This is no way to treat the people of Melbourne.

We all prefer to live where our roots are strong and where our sense of community is nurtured. A planning system that gives effect to dislocation and leads to disputes and anxiety, tears at the very fabric of our communities and flies in the face of the government's own objectives to foster and strengthen community living within this vast metropolis. It is time for positive change.

There is a simple solution. Replace the subjectivity of the current planning system with more prescriptive controls that ensure certainty for all. Certainty for developers that a compliant application will result in a permit, certainty for residents that their cherished neighbourhood will not be changed beyond recognition in the name of urban consolidation. This has

Continued on page 2.

The future according to Melbourne 2030 — huge multi-storey boundary-to-boundary developments with little or no ground level open space, lots of balconies and plenty of overlooking!

Reminder notice for Municipal Representatives
and Group Members of SOS

Meeting to discuss latest on Melbourne 2030, to be held on 27 July 2004 at St. Joseph's hall, 7 Stanhope st., Malvern, at 7:30 p.m.

R.S.V.P. Nigel Kirby, phone: 9818 4576, e-mail at <nkirby@bigpond.com> or Cheryl May, phone: 9596 1823, e-mail: <martinkmay@ozemail.com.au>

Other interested members welcome

President's Report

It has been two years since our first forum on Melbourne 2030. During this time we have been working on ways of protecting our existing residential amenity from the potential impacts of higher density developments within our shopping centres.

The government's reference group on Melbourne 2030 includes representatives from developers, planners, local government, social service organizations and unions as well as Save Our Suburbs. This representation has provided us with an opportunity to have a say on matters that are important to us. These meetings, as well as our own mid year forum last year and the November conference that we hosted at RMIT, have all been important in defining the pathway forward.

These forums have been an attempt to bridge the divides between various, up until now competing, sections of the industry. If we can agree on the important issues we will have gone a long way toward removing the confrontational aspects of the planning system. I believe we are close to reaching a consensus on what needs to be done. And that consensus relies upon introducing certainty in the planning system.

Certainty in the planning system will benefit everyone. Why is it taking the government so long to act? I believe the main reason lies in the fact that those officers responsible for the current unworkable system are still in the department. They are fighting change that would acknowledge their own failure.

Continued on back page.

"What's wrong with the planning system in Victoria" (continued from p.1)

been Save Our Suburbs policy since 1998.

In 2001, as a result of community agitation, Rescode was introduced to synchronise controls over multi unit and single unit developments and to acknowledge the primacy of neighbourhood character.

Unfortunately the government failed at the time to also take heed of our call for prescriptive planning controls; to establish inalienable limits on aspects such as height, bulk, and building setbacks that could not be subject to re-interpretation. This omission continues to haunt us all.

Government departmental officers have consistently undermined the true intent of metropolitan planning schemes. Whenever a Council submits a planning scheme to the State Government for approval, words like MUST are deleted and more subjective words like SHOULD are inserted. This single act has proven tantamount to government complicity in the vandalism of our neighbourhoods, as developers have taken advantage of this ambiguity and continually tested the limit.

Market driven development utilising amenities to the detriment of existing residents is not planning.

The following example shows what subjective interpretation leads to.

Opposite the Botanic gardens, in Domain Road, the City of Melbourne sought a planning overlay to limit the height of buildings to 12 metres along Domain road, overlooking the gardens.

In making that seeming innocuous change that the height should not exceed 12 metres instead of must not exceed 12 metres, the government has facilitated a developer appeal against a council refusal to grant a permit for an excessive development.

VCAT subsequently downplayed local Council policy (and the objection of the director of the Botanical Gardens) in granting a permit for a 20 metre building, arrogantly stating that the "high standard of design …would justify any additional height above that recommended in the planning scheme." With the stroke of a pen, the new default height limit in Domain Road is 20 metres, over 60% higher than the Councils properly researched and constituted planning scheme.

And this is called planning? More like making up the rules as we go along.

Now the government has introduced Melbourne 2030 as the umbrella planning guide for Melbourne over the next 30 years. Save Our Suburbs supports the basic principles of Melbourne 2030. The plan purports to give effect to our long standing policies of curtailing the urban sprawl, ensuring that higher density developments are located in transport nodes and to foster public transport usage rather than private transportation. Most importantly, Melbourne 2030 states that it seeks to ensure that the amenity of our existing residential areas — our suburbs — will be protected by restricting 'out of activity centre' developments.

It is interesting to look at the recently highly publicised development proposal for Camberwell Station in light of Melbourne 2030 aims.

A government body called VicTrack is seeking to develop a three storey office and retail building with 430 car spaces at Camberwell Station, without any consultation with the Council, residents or other interested parties. It must be said however, that once Boroondara Council got wind of the proposal, the government at least acceded to a consultative process.

But, surely a government body should follow government policy?

The absence of any residential component in the development and the lack of community consultation immediately fails the objectives of Melbourne 2030. Most absurd of all is the provision of 430 car spaces at a train station. Simple question. How do 430 car spaces encourage the use of public transport to either get to or leave the development? They don't. If we are to support the idea of locating housing because there is public transport available, let's not then facilitate the use of private transportation. Melbourne 2030 seeks to promote, not minimize, the use of public transport.

Meanwhile the protection promised for areas outside nominated activity centres has not been provided.

What needs to be done?

Firstly, the Councils have to produce strategic plans to give effect to orderly long term planning for Melbourne. These plans have to show how the residential amenity will be protected and at the same time ensuring that the absurd proposals such as the Camberwell Station development don't get off the drawing board. This can be done by Ministerial Directive. Councils strategic plans must reflect community aspirations determined through consultation.

Secondly municipal planning systems need to be amended to allow for prescriptive controls to establish set backs, height limits, building footprints, open space and landscaping to be consistent with existing neighbourhood character. City wide, street by street if appropriate.

Thirdly, once all these measures are iin place, ensure that applications that don't meet the planning schemes are consigned to the recycling bin and not allowed to be appealed to VCAT. The incentive for developers must be that those who respond positively to the unambiguous criteria will be more assured of receiving a permit.

And the winners under these reforms are?

All of us!

Residents have an opportunity to contribute to the shape and form of their neighbourhood, reflecting on the values that our communities consider important and ensuring that our individual environments are respected.

Developers win because they know that they are bidding at auction on a level playing field and not against a speculator who is betting on getting one through the system. And secondly, the inordinate delays in getting a permit for an appropriate development are removed because the planning system is not clogged by inappropriate development approvals that fail the local policy test.

Councils win because they are allowed to PLAN. They can think more about capacity of each area and try to look at the optimal population which can be achieved, whilst maintaining the overall character; if that's what the residents want.

The Government wins because for the first time in a decade, future planning for Melbourne will actually work. Melbourne 2030 seeks to plan for the growth of Melbourne in an orderly way. It should be a plan that can result in population growth being directed to areas which want it, or, are crying out for it. Market driven development utilising amenities to the detriment of existing residents is not planning.

The frustration for Save Our Suburbs is that most people we talk to, including planning professionals, developers, builders, architects or residents, agree that something needs to be done.

It is now for the Government to show the necessary leadership. Establish the mechanism for change, make the changes and let us all enjoy our communities in harmony.

Put our web site: **www.saveoursuburbs.org.au** with your favourites

VCAT explains

VCAT president, Justice Stuart Morris is advocating more efficient access to, and openness and accountability of VCAT. So when SOS asked him if he would take the time to answer questions about VCAT he readily accepted. E-mail your questions about VCAT and your response to Justice Morris' explanations to <rbsmith@labyrinth.net.au>.

To start, I have a question.

Justice Stuart Morris

Q. *Justice Morris, how can an ordinary person have fair access to VCAT when developers get "free" expert and legal help because they have legal insurance which is tax deductible. On the other hand, if an ordinary person loses the appeal, the developer could claim massive costs which could easily cost an appellant their home and more?*

A. VCAT strives to provide a quick, easy and low cost method of resolving disputes. It seeks to do this by avoiding undue formality and legalism, promoting timely solutions and facilitating direct access by the parties to proceedings.

VCAT uses various methods to achieve these objectives in the Planning and Environment List. For example, a majority of members are non-lawyers (usually planners), directions hearings are avoided in most cases and a conference table is used for hearings, rather than a formal court environment. Importantly, costs are rarely awarded in typical planning appeals. This means that an objector, acting reasonably, can be confident that he or she will not be faced with an order to pay the permit applicant's costs.

I have no doubt that Victoria's planning appeals system is the most accessible and least costly system of any in Australasia.

Because the amount at stake (both financial and non-financial) in a typical planning appeal is considerable, I do not believe it is appropriate to deny a party legal representation if they choose this course. However it is important that, where one side is legally represented and other sides are not, procedures are adopted to ensure a fair hearing. Members of VCAT are aware of this and do their best to prevent overbearing or unfair conduct on the part of professional advocates. However all parties must accept that robust exchanges can sometimes occur in any legal proceeding where parties seek to advance or protect their interests.

Turning to the specific question, in the 30 years that I have been associated with planning appeals in Victoria I am unaware of any case where a developer has been able to claim the cost of expert or legal services from an insurance company. Indeed I am unaware that this type of insurance is available.

I am not in a position to comment on whether legal and expert costs incurred by a developer, in contesting a planning appeal, are tax deductible. I suspect that the general approach would be that costs are deductible, whether on the recurrent account or the capital account, if tax is payable on any profits derived from the venture, whether on recurrent or capital account. In other words, I suspect that costs would only be deductible if any profits from the venture were also taxable.

However the tax status of costs incurred in appeals is nothing that VCAT has any control over. The important thing, from VCAT's perspective, is to ensure that its hearings are conducted fairly, particularly when only one side of a dispute is professionally represented.

The loophole in Victoria's Planning Provisions that allow developers to build units without a Planning Permit *by Ray Smith.*

In the last edition of our newsletter, I showed how some developers have managed to bypass Planning Provisions and "thumb their nose at VCAT" by the simplest tactic of calling units a "single dwelling". Manningham Council is furious at this, and has written to all Councils to support Manningham's actions requesting the Minister for Planning to close this loophole.

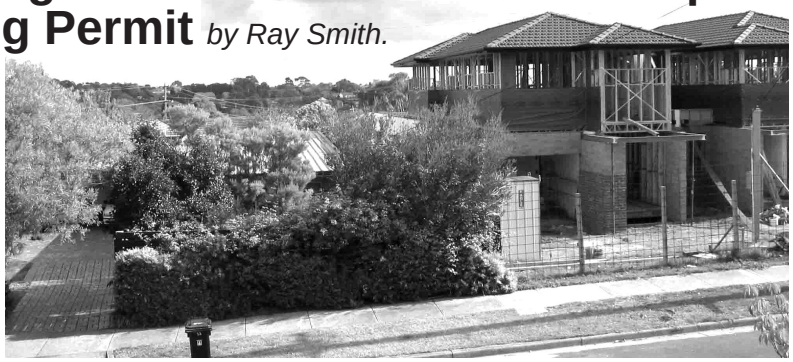
In its letter, Manningham Council warns that it is likely to lead to 'unit development by stealth'. There is a current planning permit for two dwellings on the land. This was issued after lengthy, detailed consideration, as was an earlier planning permit application that was unsuccessful. Both applications were subject to VCAT reviews.

The current planning permit issued by VCAT includes conditions to re-design aspects of the proposal to reduce impact upon adjoining properties. The dwelling now under construction does not reflect these revisions.

Council wrote to the landowners requesting them to enter into an agreement that prevents the use of the land for two dwellings or the subdividing the land at any time other than in accordance with the planning permit.

The landowner/developer has refused.

Council is concerned because the owner has already signalled that he will seek in the future, to divide this single dwelling into two dwellings.



Obvious units that the developer claims is a "single dwelling". They are far more overpowering than Council or VCAT will allow. It has a firewall down the middle that separates what everybody knows is two units with two of everything — two double garages, two master bedrooms, two staircases, six loos, two viewing platforms, two drives etc. Does it surprise anybody that the developer signalled that he will be wanting to have it converted into two units?

As a consequence, Council wrote the Minister for Planning to amend the Manningham Planning Scheme to ensure that the only subdivision of the land that is permitted is subdivision of a dual occupancy that is in accordance with the development approved by VCAT. This the Minister has done.

The issues raised by this situation are not only relevant to Manningham, they could occur anywhere in Victoria. Consequently, the DSE is examining the impact of amending Clause 62.02 of the Victorian Planning Provisions and all Planning Schemes to close this loophole.

"President's report" (continued from p.1)

The government has stated more than once that they are committed to protecting and enhancing our existing residential amenity. This does not mean "no development" but it does mean no inappropriate development. This is SOS policy.

There is only one way for this protection to occur and that is the introduction of prescriptive controls into the planning system. These controls would be mandatory to ensure that they are not subject to change at VCAT.

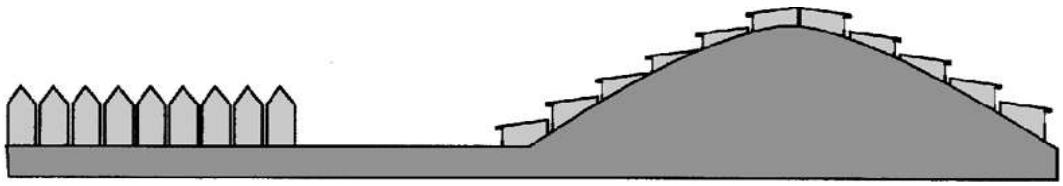
Prescriptive controls will vary from suburb to suburb and will necessitate identifying those elements of neighbourhood character, such as height, setbacks, vegetation and open space, that are important. Of course they will differ from suburb to suburb. The fact that there are differences is what endears our own particular community to us all and why we fight so hard to protect those things that we identify as important.

At the time of going to press I believe we are very close to reaching agreement with the government. I hope that in our forum on 27 July we will be able to discuss ways to monitor the scoping processes of the Victorian Planning Provisions and ensure that all that we hold dear is taken into account.

We may well be close to reaching a major reform that has been 6 years in the making and has been the cornerstone of SOS policy since 1998. Even when we finally achieve this long awaited outcome there will still be much work to do. At the local level we will have to work hard to ensure that those elements of neighbourhood character that we identify as important in our own suburbs are the ones that receive mandatory protection.

There will be extensive strategic planning by our local councils and we will have to make sure that we are engaged in this process. In the case of activity centres, it is likely that the planning zone used will not allow a second opportunity to object to development applications that meet the prescribed development limits. So it is important that we get it right first time.

Nigel Kirby



Who owns our views?

By Ray Smith, Assistant Convener, Keeping Manningham a quality place to live in (Inc).

Most houses in flat-territory Copenhagen are crammed together and have pitched roofs. This is a good solution for the Danes who rely on 'cuddly' architecture in their cool 55° latitude homes. And since views of the countryside are impossible from flat territory, the gable roof is good design. However, about twenty kilometres south of Copenhagen is a small hill. The houses on the hill are also crammed together but they have low-profile roofs. So everybody gets a view.

Thinky people these Danes

Compare that with our own 'Lakeview' estate, in an Eastern suburb. Many of the houses on the hill have gable roofs so few get a view of the lake. But because the people bought into a 'LakeVIEW' estate in the expectation of getting a lake view, they complain about the houses opposite them that block their view. But guess what kind of roof they have?

The 'Retirement' village in Tram Road too! The developers show you the views from the already-built houses. But, do I have to tell you what they are doing with the units across the road, and about views that the residents will (not) get? Did anybody in the City Planning Department ask them that question, and if not, why not? Aren't views a public resource of value?

Not-so-thinky people these Australians

Australians have a nostalgia for European, badly-designed, chocolate-box houses. Small children are imprinted with the image of a house being a box with a gable roof with a chimney with scribbles coming out of it. Ask them what the scribbles are and they won't be able to tell you it's that chokey stuff that isn't part of good housing. We even sanctify these quaint styles within our Manningham Character study and imply that low-profile roofs are out-of-character within our hilly city whilst putting Winter Park estate with its many low-profile roofs on our heritage list.

Australians generally don't appreciate great Australian housing like the Graham-Gunn developments. We can only buy what developers offer, and that is normally a heavily promoted, kitchy style, great kitchen, a palace facade, but pretty ordinary living space behind.

Developers are not obliged to respect anything that is not spelled out. Business is business! So who is going to tell them that they are depriving people of what some of us regard as a publicly-owned resource?

Who will promote sensibility and good design in housing? Not I, said the architect, for if they want bad design, let them pay me lots! Not I, said the Council because I only work to regulations. Not I, said the Developer, it's your problem, not mine! Well, said This Little Red Hen, since nobody will help me to do the work, just make me your first president and I will immediately pass a decree that it will be illegal to block out views when building on hilly territory. Second decree will be to order all planning people to be pro-active and promote sensible housing instead of sitting back and letting bad housing happen!

Municipal Representatives

Ballarat
Greg Henderson 5331 3537

Banyule
Jane Crone 9457 1675
Kirsten Burke 9435 2978
Noel Withers 9435 4513

Bass Coast Shire
Carola Adolf 5678 2286

Bayside
Cheryl May 9596 1823
Jocelyn Lee 9596 6835

Boroondara
Keryn Christos 9817 3755
David Tink 9830 5280
Adele Barrett 9836 0640
Gillian Simonson 9813 2186

Geelong
Judy & Bob Hutchinson 5278 7203

Glen Eira
Cheryl Forge 9509 6290
Orek Tenen 9572 1511

Hobsons Bay
David Moore 9397 5773
Patsy Toop 9397 7666
Roy Amstrong 9398 1594

Kingston
Janelle House 9772 4862

Knox
Jill Wright 9762 7632
Greg & Gayle Mackenzie 9739 8585

Manningham
Rosa Miot 9842 1292
Ray Smith 9848 1534

Maribyrnong
Alan Ross 9318 5833
Jack Harrison 9317 7843

Moonee Valley
Rick Clements 9337 5647
Diane Adey 9379 4513
Michael Gill 9379 9686

Moreland
Ronnie Whitmore 9380 1481

Mornington Peninsula
Arthur Moore 5975 6148
Ralph Percy 5974 1222

Port Phillip
Ian Macroe 9690 7604
Rohan Hamilton 9225 8755

Stonnington
Tom Moloney 9510 3540
Dianne Duck 9576 1492
Ann Reid 9572 3205

Sydney
Sally Pike (02) 9437 1427

Whitehorse
Philip Warren-Smith 9898 6107
Judy Sharples 9890 8038

Yarra
Ian Wood 9429 3581

SOS Liaison Officer
Ronnie Whitmore 9380 1481

CONTACT SOS

mail PO Box 5042 Y, Melbourne, 3001
phone 03 9849 0023
fax 03 9574 3482
email
sosmelbourne@saveoursuburbs.org.au

Sponsorship
Expo Hire (Aust.) Pty Ltd 03 9676 7777
Website design. Peter Billingham 0414 227 389