

SOS

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## Limiting planning notifications *is* an assault on residents' right to object

by Ian Wood

President of the Planning Institute of Australia, Marcus Spiller, writing in *The Age* 15 August, maintains that limiting planning notifications isn't an assault on residents' right to object ("*Want a better Melbourne? Concentrate and create*"). He implies that Melbourne will '*forsake reasonable opportunities to use existing land better and to support public transport*' if residents retain the right to object to activity centre developments.

Quite the contrary. In a democracy, individual and community involvement helps define 'reasonable' and guarantees at least some degree of transparency. To suggest that residential objections somehow threaten public transport is ludicrous.

During the Melbourne 2030 public consultation process, community participants repeatedly argued for a better public transport network. Instead, the government ignored the people and just implemented the urban consolidation principles of Melbourne

2030 *without the public transport upgrades it was theoretically based on*, and without any interim controls to protect our suburbs until councils finish their local structure plans.

The irony is that there is no urgency for all this! The government's population projections are grossly inflated and haven't been independently and transparently analysed. The government should be scaling down the current development boom to a sustainable, balanced economic level and guaranteeing quality outcomes and certainty in planning by setting mandatory standards — not by removing more controls so that unfettered speculative development can continue its cancerous onslaught.

Melbourne 2030 is indeed a vision, but that's all it should be until local councils have democratically developed plans for its controlled implementation and until the public transport upgrades it's based on have been planned and fully funded.



### Tell S.O.S. about what is going on!

Whenever we talk about what we think is the worst horror story, about how a neighbourhood is being destroyed by unbelievably bad development or inappropriate buildings, our stories inevitably get capped. We wish they were all written down. Such relevant stories are often wasted when they are only talked about, and worse, when they are not given appropriate publicity, developers are emboldened to perpetuate such abuses on other unfortunate people — like you. And our politicians think that all is well because they hear no protest!

Shout your story from the treetops by using SOS to publicise your predicament and hopefully obtain good results. Take photos and send them and your story to us (and the newspapers), preferably in e-mail form, but if not, type written or even in hand writing to: Ray Smith, SOS Newsletter Coordinator, E-mail: <rb.smith@lbigpond.net.au>, or by letter to: 13 Toronto Avenue, Doncaster 3108. *Note that SOS reserves the right to check for veracity*

## President's Address

*Time to get tough on planning*

As you well know, SOS has been critical of the State Government's failure to deliver on its



promises in relation to its planning blueprint M2030. SOS has always called for a planned approach to the future of growth in Melbourne and was encouraged by the Government's election commitment to 'protect and enhance Melbourne's residential amenity'.

Long and exhaustive pleas to the Government involving numerous promises from the Minister have failed to actually deliver outcomes. We believe the Minister's inexperience and lack of authority, coupled with strong resistance from the DSE and powerbrokers within the Government have caused this abysmal outcome.

The void created by the lack of structure plans and other measures to control planning decisions has resulted in decisions ultimately being made by VCAT as in the recent Mitcham and Brunswick cases.

These outrageous decisions have infuriated councils and communities whilst surprising even the development industry by their scale. This was always on the cards without any strategic framework, but ignored by the Government. The Minister failed to intervene when she could despite her documented disapproval of such a high building in Mitcham. Enough was enough. SOS decided it had no option but to cut ties until the Government delivered on its promises.

This year's AGM in November will see the retirement of a number of long serving members of our committee. I encourage anyone with an interest in helping to guide SOS's future direction to nominate for the committee. SOS Needs You!

Nigel Kirby

# For SOS, enough is enough!

## What the Minister declared — and our response

*Below is the press release issued by the Minister on 8 September, and at right is SOS's response to this, what we see as the final straw in our frustrating participation with the Government in its implementation of our Building Regulations. We will gladly work with the Government to make Victoria a better place to live in, but it seems that the Government has a different agenda. Despite the Government's frequent commitments to implement protection of our suburbs, they have failed to deliver.*

Media release

## The Place To Be From the Minister for Planning

Wednesday September 8, 2004

### INTERIM PLANNING CONTROLS OFFERED TO COUNCILS

The State Government will give Councils the power to introduce interim structure planning controls to give residents and business more certainty about how their town centres will develop over the next 30 years.

Planning Minister Mary Delahunty said the Government would provide for the speedy implementation of interim controls at activity centres where structure plans had been substantially progressed by councils.

"This will give residents confidence about what can and cannot be built in an activity centre, and industry certainty around where they can invest in Melbourne" Ms Delahunty said.

Ms Delahunty said the interim controls would be offered to councils for activity centres and strategic redevelopment sites when councils meet the following conditions:

- Have made a formal written request
- Can demonstrate that the interim structure planning controls are:
  - Based on substantive progress of a structure plan that has involved community consultation and is consistent with the Melbourne 2030 Structure Planning for Activity Centres General Practice Note;
  - Would allow sufficient scope to provide for economic and population growth consistent with Melbourne 2030
  - Commit to completion of structure planning for activity centres within a specified time (interim controls will have a maximum two year sunset clause)
  - Commit to constructively participate in the Regional Housing Working Groups.

Ms Delahunty said if these conditions were met, she would agree to an immediate Ministerial Amendment to give effect to interim structure plans.

Completion of structure plans for centres is a critical part of the implementation of Melbourne 2030 and gives the community, the development industry and other stakeholder groups an opportunity to participate in determining the future local vision and direction of a centre.

The chairman of the Melbourne 2030 Implementation Reference Group, Bill Russell, said: "The Reference Group has identified getting on with structure planning as a key priority for both state and local government — anything that provides an incentive for councils to complete this work whilst at the same time providing more certainty for the development industry and communities is a step forward."

Ms Delahunty said the Government has funded councils to develop these strategic plans at centres across Melbourne through a \$5.6 million grants program.

These structure plans can identify where different activities or mixes of activities should occur, the height of buildings in different parts of a centre, and access to public transport.

"The Government recognises that completing this process takes time as it involves consultation with resident groups and the development industry to agree on a vision for individual centres," she said.

Ms Delahunty said a number of councils were leading the way with innovative local structure planning.

In the City of Glen Eira sound structure planning has resulted in two thirds of housing -, development being directed into designated activity centres. In the City of Port Phillip, structure planning has identified areas for medium density housing development at the eastern edge of the city, while offering protection for other areas of the municipality.

"Melbourne 2030 confirms that existing town centres will be the focus of appropriate growth and development to protect Melbourne's liveability now and for the future.

"Urban renewal in town centres will create safer, more vibrant and more liveable communities. Giving people the opportunity to work, shop and play in urban centres closer to home means a better lifestyle," Ms Delahunty said.

# SOS to suspend all cooperation with State Government in response to deepening planning crisis

SOS announced today, (16 September) that it has no option but to suspend its membership of the Melbourne 2030 planning forums, and contact with the State Government and its departmental staff until the Government honours its pledge to “to protect and enhance the existing residential amenity” of Melbourne.

The recent Mitcham and Lygon Street Brunswick VCAT debacles and the Governments totally inadequate response call for drastic action.

“This unprecedented step is taken with reluctance but we believe we have exhausted all avenues in attempting to work with the Government” said SOS President Nigel Kirby. “Our members and residents across Melbourne are outraged by the continual assault on suburban amenity. We have grave concerns about the ability of the Bracks Government to manage planning in this State”.

“The State Government continually quotes the support of our organisation for Melbourne 2030 in justifying its actions. However, despite frequent commitments to implement protection of our suburbs, they have failed to deliver. Leaving out interim height controls for residential areas in last weeks announcement of the highly conditional interim controls for activity centres was the last straw. We can no longer tolerate this deception” said Mr.

Kirby.

“The Government’s decision to give Melbourne 2030 legal status before allowing Councils the necessary time to prepare structure plans for activity centres was a disaster waiting to happen. With the Mitcham and Brunswick decisions, Melburnians are now seeing the horrendous results of this mistake. Furthermore the Government undertook to protect areas outside activity centres but have since actively resisted doing so”.

Last week, as a knee jerk reaction, the Minister announced a process by which Councils could apply to the Government for interim controls provided a series of conditions were met. Feedback to SOS suggests that realistically the strategic work required will take far too long. “Clearly we do not have time to wait for this process to take place when VCAT is already making horrific decisions in the name of Melbourne 2030 but in the absence of any strategic framework” said Mr Kirby.

“Either Melbourne 2030 must be put on hold until the necessary work has been done and local policies incorporated, or the Minister must introduce appropriate interim height controls for the various categories of activity centres across Melbourne to apply immediately”.

Put simply SOS will be in a position to reinstate its support for Melbourne 2030 and resume normal contact only when the Government acts to introduce:

- Interim height controls for all categories of activity centres at appropriate default levels (unless or until Councils through their structure plans determine otherwise). These decisions to be made with Councils’ input.
- Interim maximum 3 storey height limits in all residential areas to prevent out of centre inappropriate developments.
- Amendments to the VPP’s to apply greater certainty to metropolitan planning schemes.

*Following is one of the many letters written by SOS to the Minister, alerting her of the concerns of home-owners and offering to help to arrive at practical solutions. Our advice has been consistently undervalued and ignored. The Minister is instead unleashing bad development to destroy our living environment.*

Dear Minister,

Thank you once again for attending the SOS Melbourne 2030 Forum on Saturday 15th November which was a huge success. We received close to 300 registrations which surpassed our expectations and was despite the extreme weather on the day.

We have since received very positive feedback with many people wanting to follow up on issues raised on the day. On that note, could you please send us a copy of your address as many attendees (and also people unable to attend) have asked for a complete record of what was said throughout the day.

With regard to what now happens, in light of the forum, we believe there is growing concern in the community about exactly how Melbourne 2030 will be implemented and how it will impact on them. These sentiments were reflected in the conference statement adopted at the close of the forum, a copy of which is enclosed for your information.

SOS is anxious to work with you to resolve these concerns, particularly the following:

1) *Activity centre planning.* Clear structure planning is required for centres, based on the

Melbourne 2030 activity centre objectives of building community, promoting sustainable transport etc. This structure planning needs to identify clear boundaries for centres. Zones and statutory implementation tools for activity centres need to be re-examined. There also needs to be a review of activity centre designations, as the commercial floorspace criterion used to designate centres bears little relation to the suitability of centres as sites for residential intensification. This has resulted in some unsuitable centres being nominated, while other superior sites have been omitted.

2) *The problems resulting from car-based shopping malls being identified as activity centres.* This is currently being seen in the proposed Chadstone expansion, which will have a disastrous impact on local residents, traffic and the viability of competing centres based on public transport and walking. The review of centres requested above also needs to deal with this issue, and the Chadstone expansion should be put on hold while the review takes place.

3) *Protection for out of centre residential areas.* ResCode needs to be revised to restrict intensification – and prohibit development of above three stories – outside centres, except on sites identified as specific in-fill sites by councils and the government as part of the nominated sites register. Out of centre retail and commercial development beyond specified maximum sizes should be prohibited.

4) *The planning process and VCAT.* These need to be overhauled to provide fairness and certainty. The SPPF needs to be rewritten to reflect Melbourne 2030 objectives, and the

VPP/zoning system requires reform to increase certainty. The role of VCAT needs to be restricted to remove its current status as a de facto “de novo” planning authority which overrides elected bodies on what are essentially subjective questions.

5) *Transport policy and the ‘20/2020’ target.* Current policies of above-inflation fare rises and service reductions for public transport, coupled with massive freeway-building, are inconsistent with Melbourne 2030. Public transport needs to be enhanced and all current and future major road projects must be independently reviewed in light of the 20/2020 target. This will require subsuming VicRoads within DSE as a subordinate part of the department’s planning responsibilities, similar to the transport reforms undertaken by the present progressive WA Govt.

We believe the best way to review existing procedures and propose new guidelines is through the transparent use of genuinely independent experts as opposed to relying on those who are part of the current system or architects of it.

We would like to meet with you as soon as possible to discuss ways of progressing the matters identified above. I can be contacted on 9818 4576 or by email [nkirby@bigpond.com](mailto:nkirby@bigpond.com)

Thanks again and we look forward to continuing our dialogue.

Yours faithfully

Nigel Kirby

President, Save Our Suburbs Inc.

19 December 2003

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# A rift with Save Our Suburbs has intensified pressure on the Bracks Government over planning

Article by Royce Millar in The Age 25/10/04

Andrew Dodd rejects any notion that he is driven by "not in my back yard" syndrome. But the Northcote resident and president of the Darebin Appropriate Development Association is fed up.

This week Dodd and fellow group members decided it was time to join residents' lobby Save Our Suburbs (SOS). "We accept the need for higher-density housing in Melbourne, but what's happening here is not reasonable," he says. "The only way to have more clout... is to join forces with other groups."

The decision comes only days after SOS cut all ties with the Bracks Government over its handling of planning.

In the honeymoon period following Labor's surprise election win in 1999, the membership and profile of SOS began to fall away. Commentators speculated that with Jeff Kennett and planning minister Rob Maclellan gone, the group would wither.

But in 2004, SOS membership is climbing, with residents in neighbourhoods as disparate as Mitcham, Camberwell and Brunswick taking to the streets. Commenting on a June rally of 48 residents' groups at Parliament House, Melbourne University architectural historian Miles Lewis wrote: "This conjunction of local interests is strikingly similar to the first days of the Save Our Suburbs movement, which rapidly spread to cover . . . much of Victoria."

Since then, SOS has developed a sophisticated policy that supports higher density in appropriate places. Despite this, Labor has managed to put the group offside. What has happened to reignite public anger about planning? And is it possible that the dispute could become even more bitter than under Kennett?

In 1998, when inner and middle Melbourne were under siege from Maclellan's Good Design Guide, tilt-slab apartments and mock-Georgian mansions, Labor seized the opportunities offered by middle-class amenity angst.

After winning office, the party developed ResCode, which put restrictions on multi-unit development up to three levels. While not completely satisfied, SOS backed the new code and, at the time of the last state poll, planning barely registered on the electoral radar.

But the seeds of this month's schism between SOS and the Government were also sown in the lead-up to the 2002 election. For it was then that the

Government revealed its metropolitan blueprint, Melbourne 2030.

Under the plan, the Government wants to contain urban sprawl while absorbing more than a million new Melburnians over the next 25 years. It would achieve this by squeezing new households into 1100 housing, shopping and transport hubs known as activity centres.

SOS was nervous about all this, but was prepared to support the blueprint in return for a Government commitment to protect existing neighbourhoods.

Now SOS says that, after two years of talks, the Government has failed to deliver. "Since the 2002 election, not one Government decision has been made to honour that commitment," SOS president Nigel Kirby says.

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*... the Government wants to contain urban sprawl while absorbing more than a million new Melburnians over the next 25 years. It would achieve this by squeezing new households into 1100 (new houses and) activity centres*

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The group says it will boycott the Government until Labor meets a series of demands, including a three-storey limit across residential Melbourne. Under 2030, the Government has asked councils to draw up "structure plans" for new housing. But this is a complicated process which cash-strapped councils say could take years. Planning Minister Mary Delahunty told The Age yesterday that people wrongly see 2030 as a detailed planning "solution". She says it is a broad framework. "The solution lies in local

municipalities deciding the shape of the extra population and where to put them."

However, some councils say they have not had a chance to do that. Last year, before most had even started their planning, the Government made 2030 legal by directing the Victorian Civil and Administrative Tribunal to take it into account.

That led to a string of contentious approvals, from the infamous "cheesegrater" in Fitzroy last year to the "Mitcham monster" this month. The SOS-Government rift came to a head two weeks ago. Delahunty announced she would allow councils emergency powers, or "interim controls", over activity centres while they completed their structure plans. On the same day, VCAT dropped a bombshell with its approval of a dual-tower project in Mitcham. Three days later, the tribunal also gave the green light to a 10-level tower in Lygon Street.

For SOS and others, Delahunty's interim controls fall short of what is needed to protect neighbourhoods. Kirby says they are counterproductive because, without clear height limits in residential areas, developers will turn their attention from the activity centres to residential streets. Delahunty does not rule out interim height limits in residential areas, but rejects a blanket limit across the city because "Melbourne is not one-dimensional".

Mitcham was the last straw for SOS. "It was the lightning rod of discontent," Kirby says. Delahunty chose not to intervene despite the State Government's belief that the project was too big. For SOS and other groups, such as the Planning Institute of Australia, that highlighted the real shortcomings of 2030: lack of clarity, certainty and leadership.

Clearly there was a really strong



*Yet another huge out-of-activity-centre "development". Four-storey units proposed for beside the Yarra at Bulleen. We are sure that the residents of Eaglemont on the other side of the Yarra will appreciate looking at it. But why the giant "P" sign?*

opportunity the minister had to articulate and interpret what 2030 is about," says the Planning Institute's Victorian president, Trevor Budge. "Unfortunately, that was left to the tribunal."

Budge says Mitcham was a "try-on" by developer Fraser Brown that came off. Ms Delahunty stresses that it was "an exception rather than the rule", and the Government is working to ensure "this exceptional circumstance never happens again".

It is clearly a concern for the 17 groups, including local government, developers and planners, that make up the Government's 2030 Implementation Reference Group.

Asked by The Age whether it was a mistake to give 2030 legal status while the plan was incomplete, reference group chairman Bill Russell hesitates for a long while and then says he would prefer not to comment. Delahunty also refuses to answer the question directly. Russell is clearly worried about the friction over 2030, but says some residents' groups are "over-dramatising".

But Kirby says there is much to be anxious about. If not handled properly, he says, 2030 has the potential to be even more explosive than Maclellan's Good Design Guide. "That's because it is such a big plan, which has the potential to change whole suburbs in a much more comprehensive way."

In Northcote, Andrew Dodd says recent tribunal decisions are encouraging developers to be anything but reasonable and that the Government's lack of control over 2030 is endangering the good will of groups like his own. "The politics of this isn't working. You've got half of Melbourne pissed off. They (the Government) are just failing to bring the community with them by failing to set reasonable height limits in both activity centres and residential areas."

The current focus of his group is a twin 10 and eight-storey apartment complex proposed for a site next to parkland and the Northcote Plaza shopping centre.

For the local MP - Mary Delahunty - these towers loom large indeed. The Government has "called in" the project from the Darebin Council, and she must now decide its future.

If Delahunty approves the project, she will upset her increasingly organised constituents. But having allowed VCAT to approve the 17-storey Mitcham project, it will be hard for her to justify blocking a smaller one in her own electorate. "Not in my back yard" may soon take on a whole new meaning in Northcote.

## Rogue 16 storey development decision in Mitcham demands immediate action on interim controls — SOS Press Release, 8 September 2004



*The 16 storey towers as drawn by the developer from a long way away. Unfortunately, you will be able to easily see them from the many homes in the next street to homes 20 kilometres away. Pity about the views to the Dandenongs.*

**S**ave Our Suburbs has called for interim controls to protect Melbourne's suburbs from inappropriate multi storey development after the Victorian and Administrative Appeals Tribunals approval of an unprecedented 16-storey development in Mitcham.

SOS believes VCAT has effectively acted as a de facto planning authority and says the approval of the 16 storey development will send alarm bells ringing across Melbourne.

The Mitcham decision has been made without the opportunity for proper community consultation which is supposed to be a key element under Melbourne 2030, said SOS president, Mr Nigel Kirby. VCAT has no authority to re-write the metropolitan planning schemes in this arrogant fashion. The effect of this decision is, at the stroke of a pen, to turn the Mitcham neighbourhood centre into a high intensity major activity centre.

SOS has consistently criticised the state government for failing to introduce interim controls both within and without activity centres in the absence of any structure plans to support Melbourne 2030.

For months we have been calling for interim controls to offer some protection across municipalities until

structure plans are introduced, said Mr Kirby. Yesterday, as a knee jerk reaction to the Mitcham decision, the government has now proposed an opportunity for councils to apply for such controls. However to be considered for interim controls, councils must meet a range of conditions with an assessment process to follow and that takes time.

Although SOS welcomes well overdue action in relation to the introduction of interim controls, it does not support a process which will not deliver its stated objectives in a timely fashion. decision will send a clear message to the development industry. We do not want blame to be shifted to councils for not acting quickly enough to have controls in place, said Mr Kirby.

SOS believes interim controls should be able to be achieved in a short timeframe and nominates three months and also calls for the protection of areas outside activity centres.

situation where outrageous development proposals are simply directed away to unprotected residential streets, said Mr Kirby.

In the meantime SOS has called for the Planning Minister, Ms Mary Delahunty to provide immediate blanket height limits for all the various categories of activity centres as well as an absolute 3 storey height limit for residential areas.



*I TOLD YER SO 'AROLD!  
I KNEW THAT SOMEONE  
WOULD FIND A USE FOR  
THOSE BEAUTIFUL OLD  
GASOMETERS*

*YEAH DAD!  
IT LOOKS JUST LIKE  
THE GOOD OLD DAYS.*

Good news Bill. I told you we'd be able to claim this block under adverse possession if we stuck on it for the sixteen years!



## Suburban squatters

By David Gabriel-Jones,  
Principal, The Public Land Consultancy

The age of the pastoral squattocracy may be long gone, but the philosophy of acquisition by enclosure is alive and well in suburban Melbourne.

We are all familiar with those urban squatters who extend their property by fencing in an abutting rear laneway, or those who undertake the incremental 'beautification' of some adjoining reserve or roadway.

Until now, this predatory behaviour has been condoned by the common law doctrine of 'adverse possession' which holds that if the squatter has possessed the land for 15 years, then it's theirs – and the Titles Office will amend their title accordingly.

This doctrine, which goes back at least as far as William the Conqueror, is long overdue for review. There may be a case for amending titles to reflect long-standing encroachments of buildings over title boundaries, but in an age of satellite photography and computerised property systems there's no reason to accept predations on public land as being inevitable.

If a laneway is no longer required, then the relevant council should close it and dispose of the land by an orderly and transparent process. Instead of the predator picking up windfall gains, the proceeds of any sale should benefit the ratepayers as a whole.

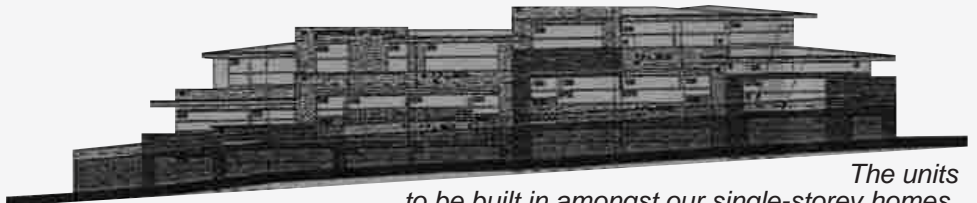
The Minister for Local Government, Candy Broad, has flagged new legislation which will go part way to remedying this situation. Under the Government's proposal, the Limitations of Actions Act 1958 (which already protects Crown land from adverse possession) will be amended so as also to protect council land – but only if title to it is formally registered in Council's name. Unfortunately, due to the peculiarities of our titles system, many roads and reserves which are actually council-owned freehold are not recorded as such at the Titles Office. Under the Government's proposal these will still be vulnerable to adverse possession.

For the Government's 'Explanatory Memorandum' go to

## Would anybody like to have a block of units bigger than a Bunnings store beside them — we think not! by Elizabeth Meridith

ResCode clearly states that neighbourhood character is the mandatory starting point for building, yet VCAT is dismissive of neighbourhood character when applications from wealthy developers come before it.

It begs the question as to why VCAT favours developers rather than the people who live in a neighbourhood; and is ResCode worth the paper that it is written on when it can be dismissed so easily?



The units to be built in amongst our single-storey homes. So much for respecting neighbourhood character!

**WERA** (West of Elgar Residents' Association) was sickened by what has been allowed to happen in a short suburban street in Mont Albert. This street and the nearby streets, with their single storey homes occasionally interspersed with low level unit developments, were about one kilometre from an 'activity centre'. A developer applied to erect 43 units, three storeys high with car parking below on the site of a church and its hall. In the formulation of applications, use was made of "proximity to an activity centre" one of the 'grey areas' between the aims of Melbourne 2030 and the shortcomings of the local planning scheme.

WERA, together with a well organised group of neighbours, supported Whitehorse Council in the rejection of the proposal. However, despite the fact that the application failed Neighbourhood Character aspects of ResCode, such as height, frontal setback and visual bulk, the application was approved by VCAT. In its decision, the Tribunal acknowledged that the built form in the surrounding area comprised "single and double storeys on generous frontages, featuring development of this scale, we admit to having had some reservations about the intrusion of this proposal into the suburban hinterland, but, on balance (due to) the

proximity to public transport and other infrastructure the development is not unreasonable the site offers to make a contribution towards the objectives of Melbourne 2030". The Tribunal did not acknowledge the Housing Study (designates areas of potential higher density) or the Neighbourhood Character Study carried out by the Whitehorse Council, as these are yet to be incorporated into the Planning Scheme. At almost every VCAT hearing attended by WERA, the applicant has been able to persuade the Tribunal to ignore the description of neighbourhood character, despite its position as the mandatory starting point for ResCode.

Why?

Below is a Bunnings store. Pretty big, isn't it? Superimposed onto it is a dotted line showing the size of the units to be built in amongst our single-storey homes. So much for respecting neighbourhood character!



www.dvc.vic.gov.au then to 'local government' then to 'what's new in local government.'

Put our web site:  
[www.saveoursuburbs.org.au](http://www.saveoursuburbs.org.au)  
with your favourites

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## VCAT explains

VCAT president, Justice Stuart Morris is advocating more efficient access to, and openness and accountability of VCAT, and has generously offered to answer reader's questions about VCAT. So, e-mail your questions about VCAT and your response to Justice Morris' explanations to <rb.smith@bigpond.net.au>.



Justice Stuart Morris

**Q.** Justice Morris, can evidence produced by "informed lay-people" be given more weight in deliberations? A key argument of resident respondents in planning disputes is often clause 55.1, which refers to the "preferred and existing neighbourhood character". Often, local council descriptions of neighbourhoods are very general and never reflect the local residents' "preferred" neighbourhood character.

*I have presented a 60-household petition stating that a proposed development was against the "preferred and existing neighbourhood character", only to be told that (a) it counts as one objection; and (b) that local council descriptions take precedence, but since these were still in draft, neither the petition nor the council description carried any legal significance.*

*I have also presented carefully drawn, scale representations of what a proposed development would look like from various perspectives, created using professional CAD software, only to be told (in effect) that, since it was not drawn by a highly-paid, professional planner/architect, it could not be given any significant weight in deliberations. In this instance, the commercial respondent did not present any "professional" visual representations.*

*This favouring of "professional" (read, 'costly') testimonies and drawings, unfairly stacks the odds against the means-challenged, non-commercial respondent. Could not some less costly yardstick be applied to ensure that submissions are given the recognition they deserve, especially if backed by significant numbers of the immediate, local community or by "amateur-professional capabilities" (I refer to petitions and carefully drawn visual simulations)?*

*Ivan Reid, Doncaster*

**A.** Petitions have rarely been effective in persuading tribunals to a particular viewpoint. This is understandable. The function of the tribunal is not to count heads. It has a legal duty to determine cases on the basis of the controls and policies contained in the planning scheme or referred to in the Planning and Environment Act.

Evidence prepared by a layperson, even of a technical kind, can be considered by the tribunal. Expert evidence can be sloppy and ill-informed. Lay evidence can be precise and accurate. But the evidence of a professional person, such as a surveyor, will obviously be accepted

more readily than the equivalent evidence of a layperson where the knowledge and skill of the person is likely to be relevant to the credibility of the evidence. But technical information introduced by a layperson is entitled to respect where it is credible, properly explained, objective and relevant; and if the layperson is willing to be questioned on the evidence, this may enhance credibility of the evidence.

VCAT uses various means to give non-professionals a fair go. These include the use of a conference table for hearings, the admission of evidence by assertion, the high

proportion of non-lawyers presiding and the infrequency of costs orders.

Apart from the non-legalistic environment used to hear appeals, the objective of a level playing field is greatly assisted by ensuring that the tribunal member hearing the case has appropriate expertise. An expert planner should be able to see through a specious argument being advanced by a highly paid professional planner. Most VCAT planning cases are heard by expert town planners, many of whom have previously served in senior positions in local government.

*Stuart Morris*

## Melbourne doesn't have sufficient renewable resources to sustain an extra million people at the present level of environmental comfort

How are we planning for the likely scenarios as they appear to be, are we wisely investigating the worse case scenario of high cost oil on transportation and trade?

How are we to deal with the present trend of declining agricultural resources and the threat of an increase in population on the remaining agricultural lands and water resources?

Melbourne 2030 is based on the premise that the middle classes must squeeze together to cater for an extra million people. The year 2030,

coincidentally, is the year that the world's oil resources are predicted to run out. How are the people of Cranbourne going to get to Melbourne because bitumen will be a thing of the past. Even the hoped-for hydrogen-powered cars will come to a stop without lubricants.

Trains? We have lost all the manufacturing industries, so how would we get the trains from France without shipping?

We don't even have enough water for our present population! And how will we transport sufficient food to a population of four million. And how will you be able to grow food on the deep lodes of soil at Cranbourne when it is covered with houses?

Shall I go on?

*Gerald Dale, Donvale*

## Welcome Hobart

SOS welcomes aboard Hobart's New Town Community Association Inc. It is the first time we have welcomed an

association from another state, and, from their description of their organisation, we can learn from them much about cooperative neighbourhood support.

## A bouquet for VCAT

With all the complaints we hear about VCAT, it is gratifying to receive a letter from a Balwyn resident who writes that 'After fighting so hard for so long against inappropriate development in our lovely Balwyn area, VCAT, for the first time has directed that no permit (be issued) for the building of 5 two-storey dwellings next door to me. The chair of the tribunal was Sylvia Mainwaring whom I feel was a very good listener, came to look at the site from my property, and leaves me now with the hope that we are getting our views across and perhaps our diligence will "Save Our Suburbs". Thank you all (SOS) for your sustained, hard-working efforts.'

*Letter to SOS from M. Gilbert, Balwyn*

# What a difference a pro-active Council can make

by Ray Smith



One of the wetland areas, part of Skeleton Creek, a land that had been degraded but is being restored and is now a very attractive and desirable place in which to live, with lakes, streams, parks and extensive plantings of native trees, shrubs and grasses, paths with seats, recreation areas and playgrounds. Native animals and birds are returning. Even migratory birds welcome the improved environment and provide a popular sightseeing attraction.

**F**our years ago, internationally renowned landscape architect Phil Vertue returned to Melbourne from Malaysia to retire — well, kinda retire. Being far too creative for the rocking chair and being a virtuous person by deed as well as by name, his reputation and design skills were soon discovered by organisations like the National Trust, a body of talented people who rely on philanthropic deeds by people like Phil, and they put him to work keeping Melbourne a quality place to live in.

A chance call from an old friend led to a couple of days a week contracting at the City of Wyndham formerly called Werribee, and which was the undeserved 'butt' of derogatory jokes. However, to Phil's eyes, Wyndham had great potential as a 'clean canvas' where imaginative, economical ideas could greatly transform bleak featureless paddocks.

Wyndham Council took the chance to employ Phil as a part time consultant with a let's-see-what-he-can-do mandate.

Phil looks over incoming proposals, then he sits down with the developers and suggests things like, 'How about leaving those old trees there but putting the pipeline on the other side of the road', 'Why don't you locate the houses nearer to the street and use your back yards as

a green wedge', 'You can do all that without ruining the views for everybody else'— ideas that most often would not add to the developers costs, but would make the ambience better for all.

However, smart developers soon realized the benefits — a 'free' service that would make not only the immediate houses more valuable, but would also make the reputation of the whole area to be very desirable and of high value. This pro-active reputation has resulted in wise developers' consultants coming to Phil before they submit plans where he takes them out to the site to brainstorm good ideas for the benefit of everybody — a Wyn-win-win situation.

Wyndham Council has seen quick and dramatic results and now employs three Landscape architects.

Wyndham is witnessing an historical and positive turnaround in the perception of their domain into a great place to live, perhaps the best planned city in Melbourne and a great model for Councils that want to promote solutions rather than reacting to what developers give them.

'There is still a lot to do' said Phil, and rattled off a few areas of concern. 'Got some great ideas for them too' he said with a twinkle in his eye.



At Sanctuary Lakes estate at Wyndham, S.O.S. Municipal Representative Marilyn Canet (left) shows Phil Vertue (centre) and visiting Town planner, Jeffrey Clyde from Malaysia plans for link houses approved by Brimbank Council. 'They are just like the (lower socio-economic class) link houses we have in Malaysia' comments a not-impressed Jeffrey.

# Municipal

## Representatives

<b>Ballarat</b>	
Greg Henderson	5331 3537
<b>Banyule</b>	
Jane Crone	9457 1675
Kirsten Burke	9435 2978
Noel Withers	9435 4513
<b>Bayside</b>	
Cheryl May	9596 1823
Cecelyn Lee	9596 6835
<b>Boroondara</b>	
Keryn Christos	9817 3755
Adele Barrett	9836 0640
<b>Brimbank</b>	
Marilyn Canet	9390 5788
<b>Geelong</b>	
Judy & Bob Hutchinson	5278 7203
<b>Glen Eira</b>	
Cheryl Forge	9509 6290
<b>Hobsons Bay</b>	
David Moore	9397 5773
Patsy Toop	9397 7666
Roy Armstrong	9398 1594
<b>Kingston</b>	
Janelle House	9772 4862
<b>Knox</b>	
Jill Wright	9762 7632
Greg & Gayle Mackenzie	9739 8585
<b>Manningham</b>	
Rosa Miot	9842 1292
Ray Smith	9848 1534
<b>Maribyrnong</b>	
Alan Ross	9317 7732
<b>Moonee Valley</b>	
Rick Clements	9337 5647
Diane Adey	9379 4513
Michael Gill	9379 9686
<b>Moreland</b>	
Ronnie Whitmore	9380 1481
<b>Mornington Peninsula</b>	
Arthur Moore	5975 6148
<b>Port Phillip</b>	
Sheryl O'Donnell	9527 1075
<b>Stonnington</b>	
Ann Reid	9572 3205
Dianne Duck	9576 1492
Tom Moloney	9510 3540
<b>Whitehorse</b>	
Philip Warren-Smith	9898 6107
Judy Sharples	9890 8038
<b>Yarra</b>	
Ian Wood	9429 3581

<b>SOS Liaison Officers</b>	
Ronnie Whitmore	9380 1481
Margot Carroll	9510 4845

Note: Municipal representatives needed in Darebin and Frankston. Please contact Ronnie Whitmore if you can help.

## CORRECTION

In our most recent correspondence to SOS members, the residents' group BRAG was incorrectly described as a member of SOS.

It was certainly not our intention to mislead. We regret this mistake and apologise for any confusion that may have resulted.