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New Residential Zones - consultation 2009

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1. INTRODUCTION

In these days of peak oil, climate change, drought, demographic and economic pressures we need both more efficient and more carefully regulated planning.

Save Our Suburbs agrees that local policy is not being used effectively enough and that greater certainty needs to be provided in the planning system. However, SOS also believes that the proposed new zones are not the best way to improve the efficiency and efficacy of Victoria's planning system - see comment on the new zones below (Part 2). A more effective approach is outlined at Part 5 - A Better Solution.

The new zones have apparently been designed to complement, not replace, other planning provisions such as overlays. But it is intended that existing overlays may be removed if they include requirements that can be included in one of the new zones, considered on a case-by-case basis. In these cases, wider and more qualitative policies would be excluded where compliance with a few narrow parameters in a zone schedule allows a proposal to be fast-tracked for a permit.

This is counterproductive because it is more effective in terms of sustainable outcomes to implement detailed local policy on residential urban consolidation via structure plans, developed with community consultation.

This was the aim of the activity centre policy of the flawed Melbourne 2030 strategy - to improve housing yields while still considering other important issues like neighborhood character, affordable housing, environmentally-sustainable design principles and local geographical and infrastructure constraints and opportunities.

Making compliance with zone schedules the key to quick application approval is too simplistic and will result in local policies being given even less weight. However, trying to give more effect to local policy by allowing more variations in some zones and considering each zone and overlay situation on a case-by-case basis, will just make controls even more complicated and confusing for council planners.

The real power of the new zones lies in the schedules - which have all yet to be completed, and many may allow exemption from third party rights. Coupled with the planned introduction of the new unelected, unaccountable Development Assessment Committees, this is a recipe for rubber stamping indiscriminant urban consolidation instead of carefully specifying what appropriately increased densities should be allowed and where.

As usual, the solution is being left to market forces which historically have consistently failed to deliver optimum results in the community interest. Developers aim to maximize returns, not meet government or community needs and targets.

2. THE NEW DRAFT RESIDENTIAL ZONES

According to the discussion paper, the proposed new zones have been designed to:

- Keep single dwelling approvals in the building permit system as much as possible.
- Reduce the need for separate overlay controls.
- Enable councils to vary the standard zone requirements to suit local circumstances.
- Streamline the approval of developments that clearly meet the purposes of the zone and meet set criteria.

Firstly, there are two problems with keeping single dwelling approvals in the building permit system as it currently operates:

(a) While the building regulations are almost identical to Rescode in most respects, they do not include neighbourhood character controls, one of the most important planning parameters that concern local residents. Neighbourhood character is the starting point for the design response to the site analysis for a development proposal and thus directly influences the siting, layout and size of the building footprint as well as the building design.

(b) Similarly, the building regulations do not cover basic principles of environmentally sustainable (passive solar) design, such as orientation of buildings and windows, the need for eaves (especially on northern and western facades), etc - factors that are far more effective for energy conservation than "add-on" provisions like insulation or double glazing. Water and energy conservation can only be effectively assessed at the planning stage of a development.

To address the above issues would require all development proposals to undergo a planning assessment, which we acknowledge would increase the workload of some already-overburdened council staff even further, if permits applications continue to be processed as they are now. Our solution is discussed in Part 5 below.

Secondly, streamlining approval for proposals that meet set criteria and the purposes of the zone sounds effective, but its very simplicity is one of its major drawbacks:

(a) Neither these "set" criteria nor who will define them have yet been clarified

(b) The intention is to fast-track proposals that comply with the narrow criteria set down in a zone schedule, like heights and setbacks. However, zones cannot accommodate more complex local policies like overlays and structure plans and take account of important but qualitative parameters like neighbourhood character and environmentally sustainable design. Compliance with local policy could be reduced to meeting a set of less than half a dozen parameters like setbacks and heights.

The new zones would promote higher density housing in proximity to services and public transport - this needs to be more tightly defined. A hierarchy of zones is proposed - the same reasoning dictates that there should be a hierarchy of public transport accessibility, with buses rated the least effective and thus the least proportionately linked to any increases in residential density.

Buses are a low-volume form of transport that compete with private vehicles and contribute to traffic congestion (as do trams where they share the roadway, although they carry proportionately more passengers).

These parameters need to be tightened up in conjunction with re-definition of Major and Principal Activity Centres so that only those with rail (mass transit) access are allowed to expand further. For example, in the Substantial Change Zone where significantly higher residential density would be possible, "proximity to public transport" should be re-defined as "access to mass transit" (ie, trains, and to a lesser extent light rail and trams).

The new zones would mean higher densities everywhere, not just in the Substantial and Incremental Change zones. Even the Limited Change Zone proposes a minimum density of 2 dwellings per lot (a potential doubling of housing density) but there will always be some sites where only one dwelling is appropriate.

Finally, there is little detail of procedural issues relating to the actual implementation of the new zone structure. This is to be partly up to each Council in conjunction with its community, but this itself raises further questions:

- How much time will Councils be granted during which to consult their communities to develop local variations for the schedules for the new zones prior to their introduction?

- Will DPCD and the Minister refuse many requests for local variations, as occurs now with other local policy variations? How long will formal approval take for those that are deemed acceptable? Over a year, as sometimes happens now?

- Who will decide whether existing overlays should be replaced by a new zone, and on what criteria? Overlays will often contain requirements that could be included in one of the new zones but overlays also contain other more detailed planning controls as well - this could be throwing the baby out with the bathwater.

3. THIRD PARTY NOTIFICATION AND APPEAL RIGHTS

SOS believes strongly that as long as the planning system retains performance-based "requirements" and discretionary decision-making, notice and appeal rights MUST be preserved and extended to ALL areas, including business zones.

The former head of VCAT, Justice Stuart Morris, has argued for appeal rights even in business zones. His support for notice and appeal rights in general is predicated on three key principles:
- better local democracy and governance
- improved planning outcomes through better scrutiny of applications
- greater scrutiny and transparency, which discourages corruption

[Third Party Participation in the Planning Permit Process, VUT, 4 March 2005]

No matter how the planning system operates, the basic fact remains that scrutiny and transparency discourages corruption, so in a democracy and in the absence of any other independent third party oversight, notice and appeal rights should remain (exercised on valid planning grounds) and they should be extended to all planning applications (see Part 5 - A Better Solution).

It is no coincidence that the existing R2 zones which facilitate urban consolidation have not been adopted more widely by councils because they are anti-democratic in that they remove residents' notice and appeal rights.

What VCAT and state bureaucrats often overlook is that the objection process produces superior scrutiny of applications because residents have a vested interest in critical appraisal. Objectors provide a vital quality control function, given that council planners often don't have the time or motivation to do more than a cursory compliance check. They often don't carry out proper site inspections and sometimes don't detect basic flaws, inconsistencies or errors in application plans.

This situation was corroborated by the recent Auditor-General's report on Land Use Planning in Victoria (May 2008), which concluded inter alia:

In 78% of cases examined, officer reports did not give adequate consideration to matters specified in the Act, planning scheme, or both, when assessing planning permit applications…deficiencies in most other stages of the permit process were also evident…".

4. ROLE OF MELBOURNE 2030

The new zones have partly been designed to help implement M2030. SOS strongly opposes this approach because the underlying basis for the M2030 strategy is flawed. Consequently it has failed to achieve any of its fundamental aims, as identified by the first five-year M2030 Audit:
- *failure to direct residential growth from the fringe to established urban areas*
- *lack of significant residential or mixed-use development in large activity centres.*
- *insufficient resources and capacity to implement activity centre structure planning.*
- *insufficient provision or even commitment to crucial public transport investments.*
- *inherent tensions within M2030 itself, with lack of guidance for policy prioritisation.*

The reasons for this failure are obvious. The strategy was not linked to the state budget process and there have been no significant improvements to the lack of implementation mechanisms needed to underpin the strategy.

The "integrated transport strategy" to guide activity centre development originally just comprised suggestions to "prepare plans". The practice guidance note for activity centre structure plans wasn't published until December 2003, guidelines for development over three storeys weren't released until November 2004, and departmental structure planning advice to councils and the incorporation of M2030 legislation in the VPPs weren't finalised until late 2005.

M2030 provided no activity centre implementation strategies to counteract the trend to car-based shopping centres nor to regulate retail markets to protect traditional centres from new retail development. By contrast, strategic metropolitan planning in the 1980's and 1990's contained activity centre and retail and office development policies based on managing centres for net community benefit.

Although all aspects of M2030 were supposed to carry the same weight, no guidance was provided to balance conflicting policies. There has still been no attempt to adopt a serious "whole of government" planning approach and set up structures to achieve it, as recommended by the Minister's own M2030 Implementation Reference Group in 2005 and by the M2030 Audit in March 2008.

The only practical steps that actually facilitated the strategy were piecemeal funding for structure planning work and demonstration projects in transit cities. However, government-facilitated site consolidation and development under VicUrban has concentrated on large outer suburban greenfield sites without rail transport - specifically against the "compact city" aims of M2030.

In short - the key parameters on which M2030 was supposed to be based are lacking and the result is a vague, laissez-faire, urban consolidation "strategy" which simply facilitates market demand. History shows this is not the best way to address social and community needs. It lessens the role of local Government and perpetuates the problems the city is already experiencing with the inappropriate size and location of higher density development projects and inadequate infrastructure provision.

The new zone proposals will facilitate yet more re-development driven by profit, not affordability or careful land use planning in both the short-term and long-term community interest. Instead, local fine-tuning of development parameters needs to be done via structure plans and design overlays - not the simplistic blunt instrument of zone schedules (and not via DPOs or IPOs either, which remove 3rd party rights).

Consequently, there should be a moratorium on M2030 until the issues outlined above are rectified - including re-definition of major Activity Centres to be located at mass transit nodes and a fully integrated metro-wide rail system upgrade planned, budgeted for and commenced as the top state infrastructure priority. Many studies show that providing rail infrastructure not only drives productivity but also provides more jobs. (*see SOS Eddington Submission - www.sos.asn.au/eddington_sub*)

5. A BETTER SOLUTION

Accommodating errant developers puts a large amount of extra resource stress on every section of the planning system. Instead, many more proposals could be approved if applications were simply required to be more complete and more compliant (as for applications submitted to any other government department). SOS believes that the following steps together would improve certainty and planning outcomes as well as greatly reducing delays and litigation, and thus obviate the need to fast-track developments by introducing new zones.

1) A planning permit should be required for all proposals, irrespective of the number of dwellings or size of the block. This is necessary to adequately assess each proposal from the point of view of two increasingly important parameters which should be the starting point of any proposal - environmentally sustainable design (ESD) and neighborhood character.

2) Errors, omissions and failure to address all relevant issues under the Planning Scheme in development applications should result in automatic Council refusal without appeal - ie, a new, accurate, compliant development application (DA) would be required. Why should council staff time and resources be wasted chasing up missing information or correcting erroneous details? Poor applications are often submitted not in ignorance but as deliberate ambit claims to capitalise on the inexperience of young and easily intimidated council planners, on the lack of prescriptive controls and on the complexity and confusion in the planning system.

3) Prior to further high-density development approval, triggers must be identified by councils and utilities (with community input) for the maintenance, upgrading or extension of infrastructure and services (power & gas reticulation, drainage, sewerage, etc). These systems must be adequate to cope with local increases in population density. Rescode standard B4 should be re-written to include definition by councils or utilities of the capacity limits of local utility services, and to require compliance or the provision of any necessary upgrading (assistance by the state is one way to attract appropriate development to desired locations).

4) Requirements of existing zones, overlays and Rescode must be mandatory (with no "trading" of Rescode standards).

5) With mandatory siting requirements, substitution of plans at VCAT should not be permitted (and would hardly be required). This would minimise the resources that objectors, councils and planning professionals waste on cases and, more importantly, remove 'ambit claim" applications from the system. Developers would simply need to prepare a reasonable and compliant application from the start. Many already do, and they would not be adversely affected by the new changes SOS is suggesting.

6) The VCAT Planning List should be required to oversee Council DA assessment processes as part of conducting merits hearings. This would encourage councils to improve their statutory performance (*see critical VAGO reports on land use planning and local government performance - May & June 2008*). VCAT would be empowered to impose remedial, punitive and preventative measures where council processes were sub-optimal (as it does now to some extent with enforcement hearings).

None of this would negatively impinge on scrupulous developers - in fact, without non-compliant DA's, council planners would have lighter workloads and be able to significantly reduce the average time taken for assessments.

6. CONCLUSION

The New Residential Zones are likely to increase urban consolidation without taking full account of more detailed local planning policies. They will only be effective if councils impose strong local variations to zone schedules, but these simplistic prescriptive standards will override other planning controls that recognise the detailed intent of local plans and strategies.

A further issue not addressed in the new zones proposal is how they will operate, not with existing procedures but with intended innovations like Development Assessment Committees, which would use the new zone schedules as a "menu" for permit decisions without considering other local polices - and without any notice or appeal rights. This would be a total abrogation of residents' democratic rights and a removal of the scrutiny that results in better planning outcomes, as explained above.

Nowhere in these new zone proposals or their rationale is there mention of how they will facilitate related government policies in areas like climate change, affordable housing, public transport, water and energy conservation, etc.

These issues are now acknowledged as increasingly crucial to current and future daily residential amenity and, along with more certainty and more emphasis on local policy, should be the main focus of any changes to zones or any other aspect of planning regulation and legislation.

Jobs and economic activity are also vital and our suggested re-design of the planning regime outlined above would facilitate economic efficiency as well as guarantee better planning outcomes in the community interest.

It is significant that across metro Melbourne and especially in the inner suburbs there are many large residential development projects that already have planning permits but cannot begin construction for financial reasons. There is no point facilitating more such projects without first addressing this financial bottleneck. The Government should be trying to fast-track approved projects (with their considerable holding costs) instead of giving un-assessed and non-compliant projects a green light.

The state needs to look at mechanisms like infrastructure subsidies or government loans, which would also provide a planning tool to facilitate approved residential projects at appropriate sites (ie, with excellent access to facilities and mass transit nodes), as originally intended under M2030.

After this regulatory preparation, the Government could provide amortised loans for energy conservation building retrofits (which should be mandatory for new homes, commercial buildings and upon the sale of existing buildings), and regulatory and financial incentives for installing green roofs, solar hot water and photovoltaic systems on domestic, commercial and industrial buildings (with rebates to include unlimited re-sale of power back to utilities). The benefits of such greenhouse initiatives would include stimulation of locally-based green employment and production, reduction of the heat island effect, mitigation of air pollution and permanently reduced energy demand with less need for new power stations.

Ultimately, a wider and more multi-faceted set of solutions must be provided to the conundrum of providing more housing for a continually expanding population. This is an unsustainable equation. The government must initiate a broad inquiry into the carrying capacity of Victoria from the point of view of agricultural production, renewable or non-carbon-based energy production, water conservation and provision of services and infrastructure. One of the aims of this review should be to distribute population on a sustainable basis between city, suburban, regional and rural centres.