



Response to Melbourne 2030

14 February 2003

Giving effect to "*Protecting and enhancing our residential amenity*"

2002 State Government election campaign commitment.

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Summary

Despite the misconceptions of many, our organisation has consistently maintained a positive approach to planning issues in seeking to protect the legitimate rights of residents.

Our support for Melbourne 2030, as evidenced in our press release of October 2002, was established on the basis that the broad objectives were consistent with long standing SOS policies dating from 1998.

[Appendix 1 SOS policy 1998](#)

With our bone fides established and our foresight evidenced by our policies we call on the government to ensure that the initiatives are not risked at the altar of the free market.

SOS restates our support of Melbourne 2030. However, our support is conditional on the adoption of all relevant SOS policies and in particular:

- A detailed analysis of the prioritisation for targeting population across the five zones taking account of the benefit of first directing population growth into Victorian regional centres. [Section 1](#)
- A more prescriptive approach to the implementation of RESCODE to provide greater certainty for all stakeholders and protect against intrusion of inappropriate development into non targeted residential zones. To ensure that there is no creep of activity centre development. [Section 2](#)
- Reform of VCAT to remove the right of applicants and objectors to seek to overturn or re-write properly constituted local policy. [Section 3](#)
- Cancellation of the status of seriously entertained legislation until such time as local communities and their councils have decided on the location and form of high density development. [Section 4](#)
- A review of selection techniques for determining which are the best areas to direct higher density development to. [Section 5](#)

1. Concerns in relation to the population projections [TOP↑](#)

SOS believes that medium and high density development should take place in properly chosen locations and in a coordinated fashion, rather than upon an unplanned and sporadic basis.

[SOS General Policy No 4 - 1998](#)

We have a specific concern with the underlying presumption that Melbourne will grow by 600,000 households over the next 30 years. There are inconsistencies with this growth (and its perceived benefits) and some of the consequential outcomes e.g. the acknowledged imminent exhaustion of water reserves with the continued provision of additional housing.

The Melbourne 2030 strategy is based on one future scenario only, i.e. the need to absorb 600,000 new dwellings within 30 years. A comprehensive strategy should however, address a range of possible scenarios and propose a corresponding range of guidelines. A timely monitoring program should also be included.

Unfortunately, planning for such levels of growth has a consequential **facilitation** of growth. Activity centres are identified according to their gross lettable areas and trip generations. The basic assumption is that they are capable of attracting even greater development when **there is no evidence** advanced for each identified primary or major activity centre to absorb more development.

SOS believes that a far more detailed analysis of the prioritisation of population growth needs to be undertaken.

It may be that the languishing rural and regional centres should have first allocation of household growth kick-started by co-location of government departments, incentives for small business & sunrise industries, and employment programs. Until this analysis is completed the market should not be allowed to follow its own direction based as it is purely on short-term financial gain, which is potentially diametrically opposite to the needs of orderly forward planning.

The lack of controlled planning – read market driven development – has got Melbourne into the position it is in today. The slide can be arrested but only with direct government (local and state) intervention backed by controls, including those of the appeals process in particular.

This could be achieved by releasing permits for new housing in the five designated zones in the same way that new land releases are managed.

The benefit of this approach ensures that all new development doesn't flood into one zone leaving the potentially lower return areas till last. Not good planning!

SOS believes that:

More analysis needs to be done on the capacity of each of the five zones to absorb greater housing density.

We believe for example that **greenfield sites are the priority locations for high density housing** simply because

- The prospective residents know what they are getting
- It makes no sense to visualise how centres, such as those shown on page 32 – “making car-based centres work” - can be transformed if new developments are not prescribed in this form.
- Integrated high density housing with high quality public transport and local work opportunities ought to be the blueprint for new suburbs.

2. Strengthening Rescode

[TOP↑](#)

The market cannot be allowed to decide how state and local policy will be given effect. Whilst acknowledging the state's role in establishing broad policy objectives,

SOS believes that the detailed planning of local areas should be the responsibility of democratically responsible local governments

[SOS General policy No 10 - 1998](#)

There is an imperative to empower Councils through local variations and neighbourhood zones to give proper effect to the government's election commitment of **protecting and enhancing our residential amenity**.

The current local variation provisions do not adequately address the protection of neighbourhood character. Neighbourhood character needs to be strengthened to remove the elements of subjective judgement that by their very definition are open to inconsistent interpretation.

Neighbourhood zones should ensure the diversity and attractiveness of our suburbs. The zones should incorporate prescribed controls covering building setbacks, scale, footprint, articulation of height lines and other mechanisms to give proper effect to neighbourhood character.

For example, some zones may prescribe single storey development. Others may highlight the importance of trees. Too often developments are facilitated by the removal of important trees.

There are many issues that will flow from the adoption of Melbourne 2030. These include:

- What happens at the interface of the activity centres and the established residential areas?
- What is the consequence of increasing residential density in activity centres for access to those centres by the surrounding residents? It is naive to assume that maximised use of public transport will occur. Increasing housing with the increase in vehicle density has the potential to exacerbate the already stretched parking capacity of the centres.
- What protection will be given to existing residential areas to prevent overflow development and spot nodes being established by default?

These are issues that can best be resolved by strengthening Rescode to ensure that the government's commitment of **protecting and enhancing the existing residential amenity** is delivered. Despite its promise, the strategy currently offers no concrete measures to enable protection outside activity centres. Prescriptive measures are essential.

Of continuing concern is the lack of guidelines for high rise (over 3 storey) developments. The advisory panel, appointed in April 2002; which was notable for its exclusion of resident representation, has failed to make recommendations to guide consideration of high density developments.

3. Reform of VCAT

[TOP↑](#)

The objectives of our policy are:

1. That VCAT should not be a generator of planning policy.
2. That VCAT should not be able to interfere with properly approved *local* planning provisions by invoking state or metropolitan objectives.
3. That VCAT should not overturn or interfere with decisions which have been properly made by a responsible authority.
4. That VCAT should not impose the subjective opinions of its members in relation to planning, architectural or other questions.
5. That any decision by VCAT should be consistent with all previous and properly made policies and decisions of the responsible authority.
6. That an appeal to VCAT should not be seen as a chance for a second bite at the cherry.
7. That applicants for permits should not be in a position to benefit from making ambit claims to VCAT.
8. That permits should not be amended without going through the usual notification and advertising process, unless by the common consent of all concerned parties.
9. That responsible authorities be the sole sources for the issuance of permits.
10. That VCAT should truly be a body of review and not itself a decision maker that is not subject to review.

[VCAT Policy 2002](#)

The logic of our policy as it relates to Melbourne 2030 is self evident.

What value is there is a properly researched and effected strategic plan if it can then be undermined with potentially debilitating consequences by way of an appeal against a specific application?

Bear in mind that any properly evolved local policy will have received ministerial assent prior to incorporation into the planning scheme.

The consequential effect of our VCAT policy is that the only grounds for appeal are based on the failure of the Council to apply local or state policy in reaching its decision.

Further, SOS believes that the responsible authority needs to be permitted to refuse to consider an application if it is of the opinion that it is not in accord with its policies and objectives.

The decision not to accept the application ought to be appellable but in this instance the only decision for VCAT should be to uphold the Council decision or to direct the Council to accept the application.

This reform will remove the ambit or speculative development from the system, freeing up Council time to consider and report on application s of merit.

The economic benefit to the state will be measured in reduced cost and time as well as reduced inflation of property values

4. Cancellation of status of seriously entertained legislation

Many of the supporting documents to Melbourne 2030 are in draft form and detail is lacking. Further, we contend that residents and Councils have had insufficient time to develop reasoned responses and identify errors of omission or inclusion.

A seriously entertained planning proposal is a legal concept which can only be legitimately earned if it satisfies a number of criteria. It has not been tested by an independent panel. Submissions in relation to it have not even closed, let alone been considered.

We believe a number of the proposals and techniques within the draft will require review and possibly be significantly changed. After that the strategy should be presented to an independent panel for assessment. Because of these factors it is obviously premature to consider the strategy to be 'seriously entertained legislation', and the motives for doing so must be seriously questioned.

The issues associated with the pronouncement of the Green Wedges and Urban Growth boundary have been dealt with through specific legislation.

With respect to activity centres; developers, Councils and VCAT are already having to relying upon Melbourne 2030 to reach decisions that may subsequently be inconsistent with the final version of the strategy. Why the rush?

A more prudent approach is to establish a timeline at which point Melbourne 2030 becomes the default policy.

5. Activity centres

[TOP↑](#)

The techniques used to select areas which are best suited to higher development are seriously questioned. So too is the one size fits all approach. We believe an individual and very detailed assessment of any area contemplated for significantly higher development is essential.

Our initial observation is that areas selected are in many cases areas which have already received a high proportion of higher density growth in recent times. This is not the 'fairer' scenario described as a key objective. Also, due to the extensive nature of the areas to be targeted, and the potential for extremely dramatic change within those areas, as well as the 30 year timeframe; wouldn't it make sense and be prudent to test the strategy in a limited number of pilot areas first?

The lack of detail provided as to what might actually occur in nominated activity centres, e.g. within what radius, and to what height, has created deep concerns and anxiety amongst many of our members. These may well prove to be valid.

Furthermore, we can confidently predict from our past experience and local knowledge that once the potential implications of this strategy become clearer to the community at large, widespread dissatisfaction is likely to result.

Appendix 1: SOS General Policies (1998)

[TOP](#)↑

Preamble:

Save Our Suburbs is an organisation devoted to protecting citizens from the destruction of their houses, their streets, and their environment.

Melbourne's suburbs provide some of the most desirable living conditions in the world and a lifestyle which is quintessentially Australian. Changes will inevitably occur in these suburbs, but these changes must be managed for the benefit of the community. They must cater for the future, rather than for short term demographic pressures, political fads or speculative profits. And they must be brought about with full regard for the established rights and expectations of existing residents and property owners.

We have a positive vision. Melbourne should retain its incomparable suburban environments, but should incorporate within this fabric concentrations of higher density development, clustered around nodes of public transport and provided with retail outlets, job opportunities, and educational and cultural facilities.

The need for travel should be minimised. New residential development should be well designed in terms of its impact within the neighbourhood, the lifestyle it offers to its occupants, its energy performance, and its aesthetics. All suburban areas should be properly served by public transport and provided with parks and community and other facilities upon an equitable basis.

Decision-making should be in the hands of elected representatives responsive to the wishes of citizens, whether at a local, a state or a federal level.

General Policies:

1. SOS seeks to preserve the amenity and rights of existing residents.
2. SOS seeks to preserve and enhance the character of Melbourne's suburbs.
3. SOS believes that there is a case for an increase in residential density in some areas.
4. SOS believes that medium and high density development should take place in properly chosen locations and in a coordinated fashion, rather than upon an unplanned and sporadic basis.
5. SOS believes that greater densities can and should be achieved without adversely affecting existing residents, and with better quality results than at present.
6. SOS believes that the urban expansion of Melbourne should be contained by means of direct government intervention to prevent the development of peripheral agricultural and other land.
7. SOS believes that all forms of development should bear the direct and indirect costs involved, so far as these can be calculated, unless a subsidy is required in the public interest and for explicit reasons.
8. SOS believes that the whole of the planning system requires modification to meet the reasonable expectations of residents.
9. SOS believes that the State Government and the Minister for Planning should accept responsibility for the state of the planning system, and should rectify it as necessary.
10. SOS believes that the detailed planning of local areas should be the responsibility of democratically responsible local governments.

Appendix 2: VCAT Policy (2002)

[TOP](#)↑

Summary

In its planning review function, VCAT has evolved as an organisation which can override local Council policy with arbitrary decision making processes.

We believe that:

VCAT should, in its planning jurisdiction, be concerned only with appeals over legal and technical errors and inconsistencies in any decision or decisions by a responsible authority.

As a prerequisite to having an appeal listed at VCAT, the appellant should be required to first demonstrate that the Council has failed to comply with its own policies and legal obligations in issuing either a notice of decision or a refusal for a permit. Matters of subjective judgement should not be appealable.

This document discusses why we believe that VCAT needs to be reformed. The objectives of what our proposed reforms seek to achieve are clearly spelt out, followed by detailed policy to achieve those objectives.

1: Why should VCAT be reformed

The current system is wasteful and costly and perceived by the general public as having processes that are unfairly biased in favour of developers. Outcomes are unpredictable and inconsistent in that individual members are not bound by precedent and are able to apply their own subjective views to cases they hear without fear of challenge or review.

In considering appeals as though they are new applications, VCAT duplicates the work already done by Councils, resulting in unnecessary expense of time and money by Council and objectors. This encourages developers to submit ambit applications to Councils in the hope that VCAT might give them a permit for a slightly watered down version. The system discourages developers from getting it right in the first place.

Allowing VCAT to stand in the shoes of the responsible authority diminishes the right of the community to establish local interpretations of State policy guidelines through local planning schemes. These have received input from users and community prior to receiving Ministerial assent and their integrity should not be compromised by an appeal tribunal.

Developers, Councils and communities will all benefit from a more efficient planning process.

There is currently no avenue to correct erroneous VCAT decisions, except on a point of law. This is prohibitively costly for most people, even on the rare occasions when a point of law exists.

In summary:

- ❑ Transparency of decision making improves confidence in the planning system.
- ❑ The need to provide a separate system of checks and balances on VCAT decisions is obviated.
- ❑ Economic benefits will flow through cost savings from avoiding lengthy delays.
- ❑ If an appeal is upheld then areas of deficiency in Council's policy or systems will be more readily highlighted with, perhaps, recommended remedies.

2: Objectives of the policy

1. That VCAT should not be a generator of planning policy
2. That VCAT should not be able to interfere with properly approved planning provisions by invoking state or metropolitan objectives
3. That VCAT should not overturn or interfere with decisions which have been properly made by a responsible authority
4. That VCAT should not impose the subjective opinions of its members in relation to planning, architectural or other questions
5. That any decision by VCAT should be consistent with all previous and properly made policies and decisions of the responsible authority
6. That an appeal to VCAT should not be seen as a chance for a second bite at the cherry.
7. That applicants for permits should not be in a position to benefit from making ambit claims to VCAT
8. That permits should not be amended without going through the usual notification and advertising process, unless by the common consent of all concerned parties
9. That responsible authorities be the sole sources for the issuance of permits
10. That VCAT should truly be a body of review and not itself a decision maker that is not subject to review.

VCAT POLICY

[TOP↑](#)

1. VCAT should, in its planning jurisdiction, be concerned only with appeals over legal and technical errors and inconsistencies in any decision or decisions by a responsible authority, and not with substantive planning issues.
2. As a prerequisite to having an appeal listed at VCAT, the appellant should be required to first demonstrate that the Council has failed to comply with its own policies and legal obligations in issuing either a notice of decision or a refusal for a permit. Matters of subjective judgement should not be appellable.
3. In hearing the appeal, VCAT should be required to take account of all relevant elements of the Victorian Planning Provisions, of any previously published planning or other relevant policies of the responsible authority, and of any previous decisions, directions or undertakings by the responsible authority relating to the subject or neighbouring properties, as provided for under Section 60 of the Planning and Environment Act 1987.
4. If the responsible authority has deemed it appropriate to use the powers granted to it by s60(1)(b) of the Planning and Environment Act 1987, the Tribunal should be required to restrict its assessment of the responsible authority's use of these powers to the consideration of the legal correctness, or otherwise, of this use.
5. Except as may be provided for in points 3 and 4 above, VCAT should be required to operate on the presumption that existing planning schemes and provisions already take proper account of state and metropolitan planning objectives and should not seek to re-implement such objectives.
6. In relation to a decision by a responsible authority, VCAT should have the following courses available to it:
 - ❑ Sustain the decision of the responsible authority to grant or not to grant a permit
 - ❑ Amend a permit or permits, but only with the consent of all parties to the appeal, and only if it is satisfied that no other party will be materially affected
 - ❑ Direct the responsible authority to issue new or modified permits, either subject to advertising conditions, or within 14 days, and/or
 - ❑ Rescind a permit or permits

*30 May 2002
SOS Committee*