

West of Elgar Residents' Association Inc.

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When is a Hearing NOT a Hearing?

The Minister for Planning “called in” the VCAT “Application for Review” of the Whitehorse Council decision to refuse a planning permit for the **38-storey tower in Station Street Box Hill** after a meeting with the developers, Barton Australia Group. The Minister appointed two senior planning officers from his department who conducted a hearing on 15 & 16 February, 2010.

WERA, a Baptist Church representative and another resident presented submissions on the afternoon of 15 Feb. **However we were not permitted to hear the Council's submission in the morning, nor were we permitted to hear that of VICROADS after us or the developer's submission the next morning. It was therefore not possible to question other submissions or expert witnesses as would occur at VCAT.**

WERA supported the Council decision to refuse a permit for this building. Council has applied building height control within the Box Hill Activity Centre over several years, with new buildings ranging from 3 to 6 storeys. We think a building of 9 or 10 storeys is appropriate, however some years ago Council approved 23 storeys for the site.

A building of 38 storeys will impact negatively on the amenity of the neighbouring area because of:

- i. Increased wind speed and gusts on the adjacent pedestrian footpaths leading to the transport hub and shopping precinct;
- ii. Increased wind speed and gusts within the bus hub, causing further discomfort to passengers waiting and disembarking;
- iii. Overshadowing of the street restaurants in both Carrington Road and Station Street;
- iv. Overshadowing of the pavement eating areas in Carrington Road;
- v. Overshadowing every morning of the large skylights on the roof of the Centro shopping area.

The proposed building has no connecting bridges into the bus terminal area, decreasing the accessibility for occupants and other users of the building facilities to public transport. WERA contends that this deficiency encourages residents to have a continued preference for car transport contrary to the hope of the developer.

The new proposal (38 storeys) projects a parking demand for 617 spaces - the shortfall of 286 spaces being left to the Council to provide in an area where parking constraints already apply across a 1 kilometer radius from the site. With a lower building all parking requirements could be provided for on-site.

Existing congestion in both Station Street and Carrington Road will be increased by the traffic demands of this proposal. The congestion within Carrington Road, being **one-way and single lane** west to east exiting into Station street, is random during the day and tends to peak around midday and late afternoon. A more modest building on the site will not compound these existing congestion issues to any where near the same degree.

WERA contended that this proposal therefore fails on the following grounds:

1. Does not provide for an appropriate scale of development in order to accommodate the mix and intensity of uses envisaged for this precinct, which, in the Box Hill Transit City and Activity Centre Structure Plan, is zoned Business 1;
2. In regard to Box Hill Transit City and Activity Centre Structure Plan the proposed building of 38 storeys is a gross over-development. In the longer term, approval of this height limit creates the likelihood that adjacent developments could be of the same scale, rather than what is intended by the Whitehorse Planning Scheme for the current centre;
3. The proposal will exacerbate existing deficiencies in respect to congestion, parking, amenity and pedestrian flow in the immediate vicinity of the public transport hub and shopping centre service access.

You can read our full submission on www.wera.org.au/current issues

Please email your comments on the submission to info@wera.org.au

A Good News Story

Council's reasons to refuse a planning permit for a proposed development at **28-34 Boisdale Street, Surrey Hills** have been supported by VCAT. This development consisted of 28 dwellings, including a 3-storey, residential development of 21 apartments across 4 residential blocks with little set back from the public parkland. Council opposed the application for a planning permit for the development on grounds that included ... being contrary to neighbourhood character, constituting overdevelopment of the site from the perspective of building bulk, scale and massing, and being detrimental to the amenity of adjoining parkland.

At a VCAT hearing on 14 - 15 December, 2009 the Friends of Boisdale Street and WERA made submissions in support of these grounds. In their decision on the matter of "J and C Australia Unit Trust v Whitehorse CC [2009]", (VCAT 2759, 30 December 2009) the Tribunal also found that the ... *"proposal cannot be supported principally on the failings of neighbourhood character"*.

While the Tribunal did not agree with objectors that the number of units is necessarily the issue, but *"simply the building bulk"*, it concluded that, among other things, *"a design response that better addresses the preferred neighbourhood character of the area is required"*. Furthermore the Tribunal held the view that ... *"Larger, landscaped set backs may also assist in providing an*

appropriate interface to the park at the west and south boundaries, rather than the proposed smaller setbacks which seem to borrow on the amenity of, and dominate over, the park”.

While this was a win for residents, there is little doubt that a future application will be made. However, for WERA and Friends of Boisdale Park, there is the reassurance that the Tribunal has laid down much stronger guidelines for any future application and, for the residents of the area in general, that neighbourhood character is to be considered in future applications.

You can read our full submission on [www.wera.org.au/current issues](http://www.wera.org.au/current_issues)

New Planning Laws Reduce Your Say on Local Planning

The State Government is planning to change the Planning and Environment Act 1987 (“the Act”) which will radically change the way planning is managed in Victoria. WERA made a submission in February (full submission on www.wera.org.au) to the draft changes. The Act is the document which defines the roles and responsibilities of both local Council and the State Government for local and state planning in Victoria.

The State Government justifies the proposed changes by arguing that the current Act is outdated and involves too much red tape to get major projects moving to meet the housing and development needs of a rapidly growing Melbourne. They argue we need new objectives for planning in Victoria which will include considering environmental sustainability, transport and climate change in all future planning decisions. WERA supports these new objectives, but there is little evidence they will be implemented in the new planning act.

Amending state and local planning schemes: The state and local planning schemes are the regulations by which planning decisions are made. The State Government believes it takes too long to change planning schemes and this is blocking major new projects. To fix this problem the Government proposes to allow developers to change the **State Planning Provisions** by starting the planning amendment process themselves if the Minister approves of the proposed change. This “fast track” process will only require the Minister’s approval. The local council may be consulted but will no longer control the process. The danger with this system is that a big developer can propose a major project in your area and then get the state planning regulations changed to support it without any controls from the local council.

At VCAT, state planning policy over-rides local planning policy, so this change can potentially affect every Victorian. Councils, including Whitehorse, are very concerned that this approach undermines their role as the authorised planning authority in a municipality.

The proposed change to **local planning schemes** is even more troubling. There appears to be no limits to the powers of a person approved by the Minister to propose changes to a local planning scheme such as the Whitehorse Planning Scheme now managed by Council. This person, once authorised by the Minister, can manage the process, including convening a panel of experts to consider a planning amendment. *Would you approve of a local developer being authorised by Justin Madden to change the Whitehorse Planning Scheme to guarantee that a planning permit is given for his pet project?*

Councils can be cut out of the process altogether, have their planning schemes amended with no public consultation and then be forced to grant a planning permit to the person who arranged the

planning scheme amendment! The final sting in the tail is that the councils will be forced to bear the costs of these amendments without having any input to them.

WERA considers this proposal is the most radical and dangerously anti-democratic proposal contained in the Bill and one which most Councils in Victoria have vigorously opposed.

Changes to the planning permit process: Certain types of building projects and land uses require a planning permit to be granted by the local Council. The Government proposes a *fast track* and standard process for all future permit applications. Decisions must be made by the Chief Executive Officer of Council, or their delegate. A ***14- day statutory timeframe is proposed for decisions.*** Your elected council will not be involved. ***WERA opposes this “code assess” process because only the unelected CEO of the Council makes the decision and there is only 14 days within which a decision must be made.*** Also the Bill does not explain what the standards are which will be used to determine these “straightforward” planning applications and what the criteria are for identifying a planning application as a code assess or merit assess application.

An alternative process called “merit assess” is similar to the current process where planning permits are first decided by the Council or the Council planning officers. Merit assess however will speed up the processing times for planning applications. This may be achieved at the cost of resident and community consultation on proposed development projects.

There is one positive change proposed. The new Act will clarify whether permit conditions apply only to the construction phase of a building or for the life of the building. This should assist Councils to better enforce the conditions of permits, such as requiring that student apartments are only used for students, rather than being available to any residents.

State significant development: At the moment the Minister can “call in” a planning application if he or she considers it is of state policy significance. The latest example is the application to build a 91m building behind the Windsor Hotel. In practice the Minister is free to call in any application. There are no public guidelines. The Government plans to tighten up this process but does not clearly define when the Minister should “call in” and decide the application within his department.

WERA believes that the criteria for a state significant project which can be approved only by the Minister should be much more clearly specified and involve the Victorian community.

Victorians want to see environmental and heritage issues addressed in planning strategies for the future development of Victoria. The changes proposed to the Act will not give Parliament or the community the chance to see these issues debated and included in planning for our future. Even the process for consultation on these changes has been unsatisfactory and there is little evidence to date that the Minister is listening to residents or councils in drafting the new Act.

Should these changes proceed, residents in Whitehorse and across Victoria should expect to be locked out of any role in future planning matters in the name of efficiency and fast tracking new developments to meet our population growth and economic development.

Deakin University's Proposed Bridge over Gardiner's Creek Reserve

There is a long history of WERA working with Gardiner's Creek Community Group (GCCG) to ensure the preservation and maintenance of the Gardiner's Creek Reserve. In the years since 2000, Deakin University has attempted to erect a large, 5-storey, glass-covered student building on the northern oval within the reserve; more recently several attempts have been made to get permission to erect yet another bridge across the creek valley to link the 2 campus sites the University has acquired in Burwood.

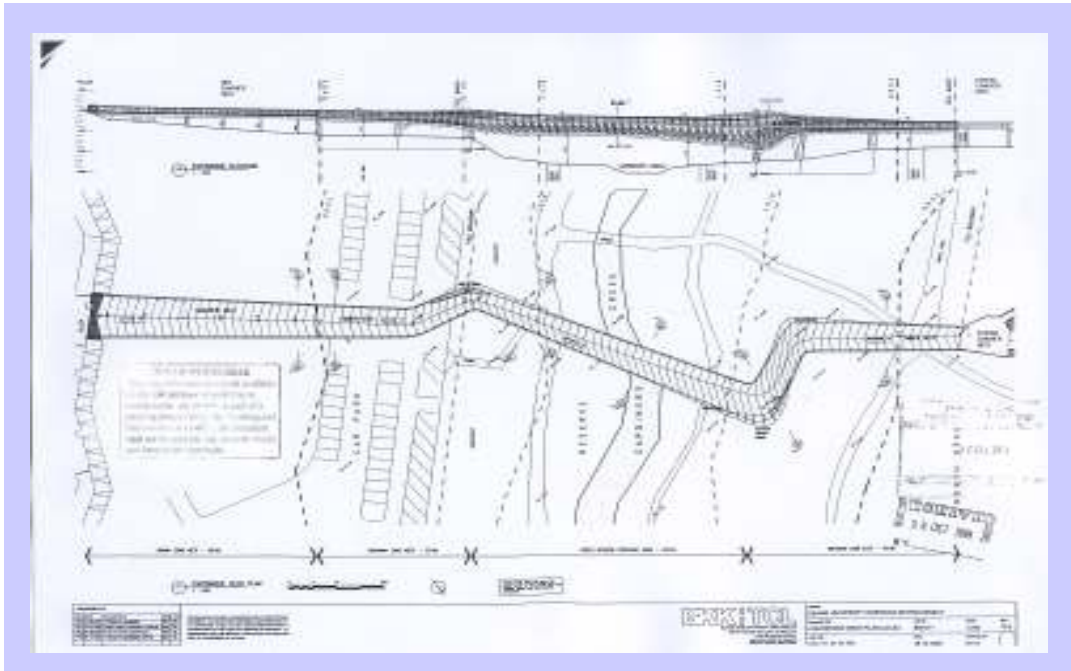
As a response to this latest application by the University, a Public Meeting was arranged by GCCG together with WERA on 28 February. The meeting was to inform the local community about the details, e.g. scale, of the proposal and to formulate a community response to the University's application for a permit to erect a bridge across the Gardiner's Creek Linear Reserve.

Over 110 people attended on a Sunday afternoon, with apologies from another 60. Among those present who spoke, were **David Davis** (Shadow Minister for Health -formerly Environment Shadow Minister), **Bob Stensholt** (local MP and Parliamentary Secretary), **Graham Watt** (Liberal candidate for Burwood), **Mary Drost** (Convener of Planning Backlash & Marvellous Melbourne Website) and **Dr. Brownbill** (Yarra Riverkeepers). **Cr. Ellis** (Riversdale Ward) was also present.

Those in attendance were unanimous in their opposition to the bridge proposal. A signed motion to that effect was passed without dissent and sent to the Minister for Planning
WERA is objecting to the construction of the bridge which, by its size and design, will project some 120 metres of steel, wood and concrete into the reserve, adversely impacting on the amenity of the reserve. The plan (centre of drawing below) shows the somewhat elongated and tortuous path taken by the bridge as it crosses the reserve, the total length of the bridge being around 200 metres. The bridge elevation (top of drawing) illustrates the substantial amount of under-hanging steel supporting structure.

The width of the bridge varies from around 5 metres (similar to a local, suburban street) to 9 metres depending on the position along it, while the height above ground level varies from 5 to around 10metres. There are a total of 5, large, concrete support pylons within or bordering the reserve. The estimated cost is \$16-\$18 million.

As the bridge starts and finishes on University land Council officers have previously indicated it is not desirable for Council to take responsibility (or ownership) of the bridge; as a consequence there is the potential for the University to be given planning control over that section of the reserve which encompasses the bridge, which, given the elongated path illustrated above, could be quite substantial. The reserve as it exists today was created at a cost of around \$8 million of public money in the late 1980's and has been maintained by Local Government ever since from our rates. The University is a non-rate paying entity, and contributes nothing to the parkland



Please inform your Whitehorse Councillors and local politicians that preservation of parkland and its amenity is immensely important, especially in this time of accompanying “densification” of living, particularly within the immediate neighbourhood.

At the time of going to press we believed that in excess of 500 objections have been lodged with the Whitehorse Council. A public forum on the issue, organized by Council on 28 March in the Box Hill Town Hall, was attended by over 100 residents.

VCAT – President’s Review

The VCAT President’s review of access, operational and jurisdictional issues at the Victorian Civil and Administrative Tribunal has been released and can be viewed on www.justice.vic.gov.au and the link to the report pdf. The review makes 78 recommendations which include amendments to the VCAT Act and other legislation, and changes to internal administration. The State Government will now seek community and stakeholder feedback on the recommendations.

In 2008/09 VCAT heard over 3600 matters under the Planning & Environment Act, although this is considerably less than other matters heard by VCAT in respect to guardianship, civil claims and residential tenancies.

The criticisms of VCAT listed in the report include: too little assistance for self-represented persons and non-lawyer advocates; the dominant role of lawyers; excessive delay in being listed and getting a decision; a clubby atmosphere in some hearings; inconsistency in procedure and result and lack of internal appeal. Despite these criticisms, there was virtual unanimity about the tribunal being a necessary feature of Victoria’s justice system.

Some of the main areas of suggested amendment include: an objects and functions provision; enhancing the powers of the president; competency-based support and performance management

of members; expanding internal reconsideration of decisions; establishing an internal appeals tribunal; introducing guideline judgments; a code of conduct for members; a customer service charter and complaints system.

Aspects of VCAT planning hearings that WERA raised, in both written and verbal submission, have not been directly responded to in any of the recommendations. These included: the need for access to a pool of experts; plan amendments being available at least 30 days before hearings; dismissal of appeals if not consistent with neighbourhood character; that the Tribunal should not act as a Planning Authority; the applicant being required to appear rather than relying entirely on experts; the applicant should not be regarded as an objector when they initiate the appeal, i.e. applicants should appear first followed by Council and objectors, not the other way around as at present.

Whitehorse Residents' and Ratepayers' Association

[W R A R A]

At the February meeting of WRARA, Noelene Duff, Chief Executive Officer of Whitehorse, spoke to an open gathering about the many aspects of her role. At the end of the meeting a WERA member was invited to speak about Deakin University making a repeated attempt to erect a bridge, for its own use, across Gardiner's Creek Reserve. WERA urged the members present to ensure the preservation of this and all parkland in Whitehorse. The Mayor of Whitehorse, Councillor Bill Pemberton, will address the next open meeting at 8pm, 13th April.

Whitehorse residents who are concerned about their rates at work are encouraged to join WARA and can do so by contacting Bill BENNETT, email: benfam@bigpond.net.au

WERA Website

Visit our website www.wera.org.au . Please let us know any suggestions, comments or information that you have or would like to see on the site. Also you can elect to receive your newsletter by email and save paper! Please email us at info@wera.org.au to arrange this. In addition we would welcome your suggestions for stories or ideas for forthcoming editions of the newsletter and your help in editing and printing the newsletter.

Membership Renewal

Please note that ***your annual membership renewal*** notice is attached to this newsletter. Your continued membership and support is most appreciated and critical to our on-going operation.
Enquiries: June Kavanagh 9898.7594

**WEST OF ELGAR RESIDENTS ASSOCIATION, INC.
A0031410U**

RENEWAL OF SUBSCRIPTION TO 31st March, 2011
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Notice of Annual General Meeting

All members are invited to attend the AGM

Date: Wednesday 19 May 2010

Time: 7.30pm

Place: 15 Harding Street, Surrey Hills

WERA Committee 2009/2010: Geoff White 9898 8205; Judy Sharples 9890 8038; Deb Elliot 9898 4196; Elizabeth Meredith 9898 2607; Terry Randle 9808 8638; June Kavanagh 9898 7594.