

## West of Elgar Residents' Association Inc. A.N.:A0031410U

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### **Annual General Meeting and WERA 20<sup>th</sup> birthday celebration**

The WERA AGM will be held at 7.30pm on Wednesday 27<sup>th</sup> May 2015 in the Surrey Hills Uniting Church Hall; Valonia Avenue (cnr Canterbury Road) as per a separate notification. In conjunction with the meeting WERA will celebrate 20 years since formation.

We have invited the Elgar and Riversdale Ward Councillors to this meeting for a 30 minute roundtable exchange of views on some of the key issues that are shaping the future of Whitehorse.

We also need to have some new nominations to committee – please consider as the current committee members are all long serving and are deserving of your support.

**Neighbourhood Residential Zone Schedules: Planning Panel Hearing** On 6 October 2014 the former Minister for Planning requested that the Residential Zones Standing Advisory Committee review the Neighbourhood Residential Zone (NRZ) schedules that were proposed by Whitehorse Council. With a pause for the State elections and a change in government the hearing into the Whitehorse Council five proposed NRZ schedules based on the *Housing and Neighbourhood Character Review 2014* was held from 31 March to 2 April 2015.

Council and the Department of Environment, Land, Water and Planning made opening and closing submissions. WERA and two other resident groups made submissions and 6 individual residents spoke at the hearing. Representatives for the owners of 3 large sites that have been placed in NRZ areas (*none located west of Elgar*) also made submissions concerning the proposed zone schedule restrictions on sites more suited to medium density re-development.

The NRZ areas cover 52% of the municipality. West of Elgar Road has the following residential zoned areas:

- NRZ2 Precinct BS1 Formal Bush Suburban: Mont Albert North; north of Belmore Road.
- GRZ4 Precinct GS8 Garden Suburban: Mont Albert North
- NRZ5 Precinct GS2 Traditional Garden Suburban: Mont Albert & Surrey Hills
- GRZ1 Precinct GS1 Established Garden Suburban: Burwood south of Wattle Park

The General Residential Zone (GRZ) precinct schedules were gazetted into the planning scheme on 14 October 2014. The schedules do not limit the number of dwellings on a lot; have a 9 metre discretionary height limit; 50% site building coverage and 30% site permeability.

In NRZ areas the planning scheme clauses now limit the #dwellings to 2 per lot and an 8 metre height limit unless otherwise specified in a schedule. The proposed NRZ2 precinct has these requirement and 40% coverage; 40% permeability.

The NRZ5 precinct whilst limited by the provisions of the planning scheme to no more than 2 dwellings per lot the proposed schedule specifies a 9m mandatory height limit; 50% coverage; 30% permeability.

Planning Officers have maintained that the NRZ5 area has houses at 9m height which is true of many of the steeply gabled older houses. However this does not apply to all of the NRZ 5 area. WERA recommended that the NRZ5 maximum building height be specified as the average of adjoining (residences) not to exceed 9 metres (and retain 8m maximum where neighbouring residences are not higher than 8m).

In June 2014 the Planning Ministers Residential Zones Standing Advisory Committee released an Overarching Issues Report which acknowledged there is no one-size-fits-all number of schedules that each planning authority should apply. If design issues are already adequately dealt with through an existing overlay the Committee considers that the overlay provisions should continue to apply. However, they also thought it appropriate to include a schedule to the zone if it can be demonstrated it is strategically justified and the provisions of Clause 54 and 55 (ResCode) do not adequately address the issue.

They emphasise that a planning scheme should not be unnecessarily complicated by the introduction of an excessive number of schedules and question:

- Whether the proposed schedule to the zone is strategically justified. *In this respect Whitehorse Council did the extensive Housing and Neighbourhood Character Review 2014*
- Whether the matters can be adequately dealt with under the provisions of Clauses 54 and 55 (ResCode). *Whitehorse and residents contended that they do not adequately protect neighbourhood character.*
- Where there are two or more schedules which are either close or identical in intent, whether they should be combined into one schedule. *WERA accepts this is possible and will not be surprised if the panel recommends that the 5 proposed schedules are reduced to 2 or 3.*
- Whether the issues are adequately addressed by an overlay. *Whilst heritage overlays protect some areas of Mont Albert there are no environmental overlays that protect larger areas such as around Blackburn Lake.*

WERA had frequently sought from Council during 2013/14 a response to what new dwelling capacity would be potentially established by the new residential zonings. Finally at the panel hearing the Department submitted that based on building permit data over a decade and recent trends it is predicted that the proposed residential zones (RGZ; GRZ and NRZ) across Whitehorse have a capacity for 8 times the housing strategy predicted need of 13000 dwellings from 2016 – 2036! This did not include the neighbourhood activity centres for

which Whitehorse has proposed design guidelines of 3 to 5 storeys still pending Ministerial decision.

The Department of Transport; Planning and Local Infrastructure Practice Note 78 July 2013 (updated December 2013) provided principles and criteria for applying the zones including:

- opportunity for **multiple schedules to be applied;**
- **allow a range of ResCode standard provisions to be varied.**

However the *cart* PN78 was put before the horse because Standing Committee review June 2014 commented on poor and contradictory wording in PN78 with various provisions of the planning scheme and other advisory notes. They also commented for example: ... *that there are some mixed messages derived from reading PN78 against Plan Melbourne and the zone purpose. The purpose of the zone refers to ... 'respecting' neighbourhood character, yet PN78 refers to 'respecting and preserving'. As discussed in the review of the NRZ principles ... there is a significant difference in the two terms, and has a bearing on how the GRZ and NRZ might be applied. The use of the word 'preserve' in PN78 appears to contradict the principle that the zone should be applied 'where more varied character' exists.*

Finally, the Committee observed that PN78 states that GRZ is expected to be used '*in most residential areas*' whereas the *Plan Melbourne* initiative was to '*Deliver the Neighbourhood Residential Zone across at least 50 per cent of Melbourne's residential-zoned land*'.

The Labor Party State election policy is to review the Victorian Planning Provisions to promote certainty in council land use over planning. ALP spokesman on planning during the election committed a Labor Government to a review of the planning zones reforms because of the differing outcomes for Councils across Melbourne.

We await the panel report which is firstly to be submitted to the Minister for consideration.

**It is important to keep in mind** that the ResCode standards in the planning scheme Clause 54 (single dwelling) and Clause 55 (two or more dwellings) **are discretionary** because they contain the provisions that:

- *Objectives: describes the desired outcome to be achieved in the completed development.*
- *Standards. A standard contains the requirements to meet the objective. A standard should normally be met. However, if responsible authority is satisfied that an application for an alternative design solution meets the objective, the alternative design solution may be considered.*
- *Decision guidelines: set out the matters that the responsible authority must consider before deciding if an application meets the objectives.*

In respect to the **Requirements** (that are listed under **Standards**) a development:

- **Must meet all of the objectives of the clause (i.e. 54 or 55 whichever is applicable).**

for example CI 54.03-3 Site coverage **objective** is:

- To **ensure that** the site coverage respects the existing or preferred neighbourhood character and responds to the features of the site.

and the ResCode **Standard A5** states that:

The site area covered by buildings **should not** exceed:

- The maximum site coverage specified in a schedule to the zone, or
- If no maximum site coverage is specified in a schedule to the zone, 60 per cent.

and furthermore ... **Should meet all of the standards** of this clause (i.e. 54 & 55).

If a zone or a schedule to a zone specifies a requirement of a standard different from a requirement set out in this clause, the requirement in the zone or a schedule to the zone applies. (N.B. Alternatively if a requirement is not specified in a schedule to this zone, the requirement set out in the relevant standard of Clause 54 or Clause 55 applies).

So although the Dictionary states Requirement as a noun means *something demanded or imposed as an obligation; a thing desired or needed* ... in Planning Schemes a Requirement; and even a Standard is **just a should that can be varied!**

VCAT has previously noted “... *that satisfying the Standard is not the only way of achieving the Objective, but it does contain the requirements to meet the Objective ... the Standards set the upper limit of the Objective and discretion can be applied if the decision maker is of the opinion an alternative solution will satisfy the Objective. The Decision Guidelines must be considered when exercising this discretion ... allows each application to be considered on its merits taking into consideration its unique site and development characteristics, as one particular design may work well on one site but not another.*”

**20 Louise Avenue; Mont Albert:** this 2-storey 10 apartment proposal in neighbourhood residential zone was refused prior to advertising by Whitehorse planning delegation. The applicant appealed and the VCAT hearing was held 20 & 21 October 2014. Council; WERA and two residents made submissions at the hearing. VCAT overturned Council refusal and directed issue of a permit.

The decision states “... *Whether the proposal achieves an acceptable outcome having regard to all the relevant considerations, is dependent on the proposal’s built form response to the preferred character of the neighbourhood, and its amenity impacts. Whether an apartment building is acceptable on this site is primarily a built form consideration, because a **dwelling is an “as of right” use in the NRZ7, and any attempt to differentiate between different types of dwellings is misguided.** I cannot conclude that this proposal is unacceptable simply because it adopts an apartment building typology. The acceptability of the proposal requires a consideration of the proposal’s response to the character of the area.*”

The NRZ7 referred to is the ResCode transition provisions applying until such time as the proposed schedules are finalised by the Minister. VCAT has challenged differentiation between different types of dwellings as misguided, because mostly they consider the types of dwellings in an area, amongst other things, which contribute to that areas neighbourhood character. The VCAT decision notes that “...*proposal’s built form response to the preferred character of the neighbourhood is one of its considerations, therefore the type of dwelling being considered should be considered ... if the preferred character of an area is single dwellings, then an apartment building is unlikely to achieve an acceptable outcome as the built form of an apartment is quite different to that of single dwellings. In contrast to being misguided, it provides certainty about what types of built form are acceptable in particular areas*”.

It is noted that VCAT make reference to other multi dwelling development in the area, as well as a large detached dwelling constructed or under construction along Louise Avenue. Council’s clear indication is that apartment style developments are to be constructed within the Residential Growth Zones, while medium density unit development are considered to be more suitable in the other residential zones.

The property with permit for the apartment building is now up for sale to “...*a savvy investor...*” states the sale board!

**8 Park Rd; Surrey Hills:** Council at the July meeting went against the planning officer’s recommendation to approve this 3-storey 16 apartment proposal and approved issue of a permit for a 2-storey building. At a mediation hearing earlier this year the developers representative was keen for the objectors present to cease if the applicant amended the development to 2-storey. This site is also in an area Council adopted as neighbourhood residential zone so the applicants appeal to VCAT is another test for the new zones. The VCAT hearing is part heard as not all shadow drawings had been prepared by the applicant and council had not previously requested the required drawings! The adjoining apartment residents appearing are not WERA members. WERA was unavailable to appear at the hearing.

**57 Florence Rd; Surrey Hills:** Proposal for 4 dwellings on sub-divided allotment with 2 dwellings exiting to Florence Rd and 2 exiting to Royal Lane. Extensive vegetation removal is proposed and 4 lot sub-division is contrary to NRZ two dwellings per lot. The planning officer report recommended issue of a permit but Council refused a permit (meeting 16 February 2015) as being an over-development; contrary to neighbourhood character and tree conservation

**16 - 18 Florence Rd; Surrey Hills:** Neighbouring residents have been notified of a proposal to demolish the long closed 2 storey nursing home and replaced with a 51 bed 2-storey building and basement car parking.

This is the site of the former Surrey Hills Nursing Home. In May 2011, there was a proposal to develop the land for a three storey building plus basement car park, comprising 45

dwellings. The City of Whitehorse refused to grant a planning permit on August 2011. This decision was affirmed by VCAT in 2012.

In December 2014, the new owner proposed to develop a residential aged care facility within a two storey building with a basement for car parking. An Application of Review was lodged by the applicant with VCAT against Council's failure to make a decision within the prescribed time on 16 January 2015.

A mediation meeting was held with VCAT on 1 April 2015. The Tribunal directed the City of Whitehorse to issue a permit upon resolution of issues raised mainly by the residents in the units abutting the south boundary and the City of Whitehorse.

For these residents, the positive outcomes include increased setback on the ground and first floor on the southern side; installation of root barriers along the south boundary and provision of porous paving in the perimeter paths in the northern, southern and western setbacks. It was also agreed that the applicant would arrange a meeting between its landscape architect and these residents to discuss the type and extent of landscaping to be established along the southern boundary of the subject land.

**692 Whitehorse Rd; Mont Albert:** neighbours and WERA objected to a proposed new 2 – 3 storey 55 apartment development to replace the existing single storey boarding premises and demolish an Edwardian villa. Several 3-storey apartment pods and retaining the villa were proposed in 2003. Council at that time issued a permit for 2-storey apartment pods which VCAT also supported. The applicant did not proceed with the proposal. WERA appeared at that hearing.

The site is now zoned as NRZ and is still within the Mont Albert heritage precinct overlay.

The proponent lodged an appeal at VCAT for failure of Council to make a decision within time. VCAT Mediation with three adjoining neighbours resolved amenity issues relating to overshadowing and overlooking. However as Council were opposed to issuing a planning permit a hearing on the zoning aspects; neighbourhood character and heritage precinct contributory villa demolition was held from 23 to 26 March 2015.

Council and WERA made submissions supporting retention of the house and restricting the development to 2 –storeys. The VCAT decision is pending but WERA will not be surprised if the proposal is permitted; i.e. the demolition of the Edwardian villa will be allowed even though the applicant acknowledged that the building is in sound condition but argued main road; large allotment; close to activity centres; on public transport route etc.

WERA considers that the houses on Whitehorse Rd between High St and east to Hood St which are in the heritage precinct overlay may now be subject to similar applications. The backyards onto the houses on north side of Zetland Rd will be impacted. At least these are NRZ but boundary push back is in the sights of all developers.

This application also had the advantage of transition period general residential provisions which they mostly satisfy.

At applicant final submission they relied in part on the Boroondara “Arden” Burke Rd decision of the Appeals Court that upheld Supreme Court and VCAT decisions that demolition of a house in a heritage precinct can proceed because of overall *net community benefit* re urban consolidation.

WERA in right of reply remarked that *net benefit* did not extend to the present boarders at the property who will be displaced despite planning scheme provisions for housing diversity to support opportunities for a wide range of income groups to choose housing in well serviced locations and housing to encourage a significant proportion of new development, including development at activity centres and strategic redevelopment sites to be affordable for households on low to moderate incomes (*applicant claimed support for site on the edge of activity centre & public transport options*).

**Telstra Tower; Canterbury Rd; Surrey Hills** WERA does not support the proposal in the report to Council for a heritage overlay on the tower. WERA considers that the structure detracts from the housing character of the area and acknowledges that the surrounding neighbourhood opposed the tower prior to construction in the 60`s and again in the 90`s when more telecommunication equipment was attached.

**721 Canterbury Rd: Surrey Hills** The proprietors of the Canterbury Veterinary Clinic applied to Whitehorse Council to alter a townhouse at 721 Canterbury Road [cr. Rosemont Street] to be used as an animal clinic. It was to include operating and euthanasia rooms upstairs and dog and cat 'holding' rooms on the ground floor. WERA, local WERA members, and the surrounding community put in a large number of objections. We stated that the proposal failed the Whitehorse Planning Scheme's objectives for the Neighbourhood Residential Zone, and for the non-residential use in residential areas. We were also concerned about the signage.

The application has been refused outright by planning delegation using these same criteria. Vic Roads has also lodged an objection. The refusal to grant a permit together with VicRoads intervention will make it difficult for the applicant to take the matter to VCAT.

**Tree Protection** The 20 October 2014 Ordinary Council Meeting, Council passed a resolution requesting an appraisal of options available to further protect canopy trees in the Whitehorse municipality. At 8 December 2014 Council meeting considered a paper on the various controls and measures available to Council; what other Councils are doing and the resource implications of applying further controls. It also reviewed the approaches taken by the City to date to protect its trees and significant vegetation as urban density increases in Whitehorse. Strategies have included statutory planning controls through the local planning framework, including neighbourhood character statements and housing strategies and local policies such as Tree Conservation which have been enacted in the City to protect the treed canopy.

The paper concluded there were three strategies available to local councils to protect trees:

- Enact further statutory planning controls such as overlays and schedules
- Develop a local policy to protect and regenerate trees in the local planning scheme

- Develop a local law with penalties for the removal or lopping of trees.

The paper noted that Council has enacted options 1 and 2 and recommended a preferred option enacting further controls in the local planning law and referred this for consideration in the 2015/16 budget planning process.

WERA was invited to make a submission to the 2015/16 budget planning process in relation to Tree Protection Options and we supported the proposed approach of applying additional statutory controls for the protection of canopy trees and their restoration.

However, WERA noted that simply relying on the implementation of the new residential zones in Whitehorse would not be enough to address the tree removal and canopy loss issues as most of the western wards are described as Garden Suburban under the Neighbourhood Character framework. There are no vegetation protection areas in the western wards except for a small area north of Belmore Road characterised by stands of mature native trees hence the application of the new zones offers little for us even in the NRZ 5 area proposed for Mont Albert on the basis of its heritage significance. The Vegetation Protection Overlays in Blackburn Vermont and Mitcham have resulted in more areas designated with the Neighbourhood Residential Zoning with schedules offering more protection for trees (larger minimum lot size for subdivision; larger private open spaces; lower percent site coverage; higher percent permeable surfaces and more trees planted than in the western wards.

In our submission WERA has argued that

- If the Ministerial Planning Panel fails to address the lower level of tree protection in Neighbourhood Residential Zones then other statutory controls may be required
- Prioritising native over exotic trees should be removed from statutory controls and policies
- Significant Tree Protection policy should be reviewed and expanded to include all healthy mature upper canopy trees and ensure that root protection and other measures are consistent with the national standards
- Council should develop an urban canopy strategy which measures mature upper canopy trees as a significant environmental and community asset regardless of the age or type of tree involved; measure the canopy and its characteristics with software now available and set preservation &/or growth targets to redress the loss of canopy
- The tree canopy should also be valued as is the case in the City of Melbourne and measured for the environmental, health and amenity values that they provide.

The next review of the City's urban strategy and local planning framework should include a review of the effectiveness of its tree canopy conservation strategy based on data collected over time. The most recent review was very limited because of the timeline for the introduction of the new planning zones. It should also remove the "discrimination" which exists between exotic and native trees and reconsider the implied valuation of native over exotic trees and vegetation as the basis of its character designations and housing strategy.