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## SOS Submission Melbourne 2030 Audit Committee

September 24, 2007

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# 1 Summary

All the critical points made in the SOS submission on M2030 in 2003 remain valid.

SOS continues to support the concept of a plan like Melbourne 2030 that can address fundamental issues of demographic change and the provision of adequate infrastructure to guide the sustainable development of Melbourne and its environs over the next few decades. However, our support for such a planning strategy was and still is conditional on the adoption of the following relevant SOS policies:

- A detailed public analysis of strategies to accommodate sustainable population growth throughout the state, first directing population growth into Victorian regional centres where feasible and then prioritising provision for increased population densities across the metro area
- A more prescriptive approach to RESCODE and local planning policies to provide greater certainty for all stakeholders, maintain basic residential amenity standards, protect against intrusion of inappropriate development into non targeted residential zones and prevent creep of activity centre development
- A transparent review of selection techniques for determining the most appropriate areas for higher density development and activity centres, and for their prioritisation.
- Immediate development of a plan for the upgrading and implementation of a greatly expanded rail network to service Melbourne's outer suburbs
- Establishment of an independent statutory mass transit authority to drive the implementation of the expanded mass transit network
- VicRoads to be brought under the control of the Department of Planning and Community Development and relegated to road construction rather than having responsibility for decisions concerning new roads and freeways (the WA model)
- Reform the Planning and Environment List of VCAT to remove its ability to ignore properly constituted local policy and require it instead to provide a Council oversight function to guide improvement in municipal performance.

Until these interrelated issues have been transparently and adequately addressed, a moratorium on M2030 should be imposed.

Local councils in consultation with their communities must be given adequate resources and time to decide the location and form of new development in their municipalities.

The WA model of community consultation on planning issues could also be adopted.

## 2 Population projections and Sustainable Development

The Melbourne 2030 strategy is based on one future scenario only, i.e. the need to absorb 600,000 new dwellings within 30 years. Instead, a comprehensive transparent strategy should be developed with public consultation that also addresses the wider issues of sustainable development, including water and energy conservation, provision of infrastructure, food production and distribution, and private and public transport.

A range of scenarios should be considered along with a corresponding range of guidelines. A timely monitoring program should also be included for any ongoing planning regime.

Consequential outcomes must be addressed prior to stimulation of further development e.g. the imminent exhaustion of water reserves and insufficient provision of adequate infrastructure with continued additional housing.

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

Languishing rural and regional centres should have first allocation of growth kick-started by co-location of government departments, incentives for small business & sunrise industries, employment programs, etc. The market should not be allowed to drive development purely for short-term financial gain, when this may be diametrically opposite to the needs of orderly forward planning.

The lack of controlled planning – ie market driven development – has got Melbourne into the position it is in today. The slide can be arrested with direct government (local and state) intervention, such as releasing permits for new housing in the five designated zones in the same way that new land releases are managed. This would ensure that new development doesn't flood into one zone leaving potentially lower return areas till last.

**There is a desperate need for more mandatory mechanisms to give planning policies and guidelines more direction and teeth (eg, Rescode, local overlays, Clause 12 of each planning scheme that describes desired planning outcomes, etc).**

Greenfield sites should be the priority locations for high density housing because

- The prospective residents know what they are getting
- It makes no sense to visualise how activity centres can be transformed if new developments are not prescribed in this form (eg, “making car-based centres work” M2030 page 32).
- Integrated higher density housing with high quality public transport and local work opportunities ought to be prerequisites for new suburbs.

### 3 Strengthening Rescode

The market cannot be allowed to decide how state and local policy will be implemented. 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 elected local governments in consultation with their communities.

There is an imperative to empower Councils through local variations and neighbourhood zones to give proper effect to the government's repeated election commitments to protect and enhance residential amenity. 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 which are now recognised as necessary not only for soil and water conservation but also to reduce air pollution and the heat island effect (preserving optimum micro-climates), as well as their considerable aesthetic and psychological benefits.

Key M2030 issues in relation to Rescode that still need to be addressed include:

- the interface of activity centres and established residential areas
- the consequences of increasing residential density in activity centres - increased vehicle density can exacerbate already inadequate parking capacity
- protection for existing residential areas to prevent overflow development

These are issues that can best be resolved by strengthening Rescode with prescriptive measures to ensure that the government's commitment of protecting and enhancing existing residential amenity is delivered. The strategy currently offers no concrete measures to enable protection outside activity centres.

Reducing the amount of discretion exercisable in Planning Schemes (eg by making key amenity standards mandatory) will greatly reduce the legal load on the planning system by minimising ambit claims while simplifying development application assessments.

This will meet the desires of all parties - developers, objectors and councils - for greater certainty while simultaneously minimising ambit claims, speculative development and appeals to VCAT. It will by definition reduce the operational complexity of planning

schemes while providing the improved planning outcomes which should be the key focus of any democratic planning regime.

#### **4 Activity centres**

The techniques used to select activity centres best suited to higher density development are seriously deficient and seem to rely on pre-existing retail floor-space and trip generations as though they are capable of attracting even greater development when there is no evidence that they can absorb more.

Instead, the key pre-requisite should be location at mass transit public transport nodes and the potential for integrated mixed use development which would facilitate existing and new economic and residential activity. The one size fits all approach is obviously inadequate and individual detailed assessments are essential for any area being considered for significantly increased development.

Planning and development of activity centres should be prioritised in consultation with local communities. Our earlier criticisms of the inadequacies of the initial implementation of M2030 have been borne out only 5 years later and we can confidently predict that unless these basic issues are corrected, community dissatisfaction will continue to grow.

Councils also require the flexibility to respond to the need for increased housing by directing new higher density development to the most appropriate strategic sites, which may not always be associated with activity centres.

The City of Yarra, for example, has identified a number of major re-development sites outside activity centres and attempted to protect existing built form and heritage streetscapes in its activity centres from high-rise development. However, despite the fact that in Yarra these centres are close enough together to overlap, a government panel recently rejected this approach and the use of height controls in activity centres as inimical to the aims of M2030. But the aim of M2030 is to accommodate population increase, not to encourage high-rise development for its own sake.

These sorts of predicaments and incompatibilities with the different policies of M2030 that seek to increase housing densities but also preserve neighbourhood character were highlighted in the Stewart Street case in Richmond where the status of M2030 was challenged (*O'Connell Street Developments PL v Yarra CC, VCAT 448, 30 April 2003*).

At paragraph 64, that legal decision stated: *“No particular aspect of the Strategy itself necessarily carries greater weight than another...In some situations there may be conflict or tension between the respective policies. In those circumstances it will require the tribunal to balance those conflicting interests”*

This illustrates one of the fundamental flaws of M2030 (and some other urban consolidation policies) - in most instances there is no way to balance conflicting policies without some detriment, so guidance on priorities is required. For example, heritage streetscapes are incompatible with most modern high-rise development. In such cases, if

heritage protection is to have any real meaning, this should have priority over any proposed new development that would potentially conflict with existing built form.

## **5 Reform of VCAT**

The Planning and Environment List of VCAT has become a major determinant of planning outcomes in Melbourne, often overriding local Council policies and priorities. It is notorious for inconsistent decisions which are usually biased in favour of developers.

VCAT should not be able to ignore or override incorporated local provisions in planning schemes by invoking state or metropolitan objectives. Otherwise there is no point in councils wasting scarce resources attempting to implement local controls and variations to democratically reflect local conditions, constraints and priorities.

Permits should not be amended without going through the usual notification and advertising process, unless with the consent of all parties concerned.

VCAT should be a body of review and not a decision maker not subject to review itself. The only grounds for appeal should be based on the failure of the Council to apply local or state policy in reaching its decision.

An appeal to VCAT should not be seen as a chance for a second bite at the cherry. Permit applicants should not be able to benefit from ambit claims to VCAT. For this reason, amended plans should also not be allowed - development applications should be crafted to fully reflect state and local planning priorities and should stand or fall on their merits.

Thus Councils must also be able to refuse to consider applications that are not in accord with their policies and objectives. Such decisions ought to be appellable but VCAT's options should be limited to either upholding the decision or directing Council to accept the application.

These last two reforms will remove ambit claims and speculative development from the system and allow Councils to focus on strategic planning issues and permit applications of merit.

## **6 Is new development reflecting M2030 policy?**

The latest ABS figures reveal a surging fringe population more reliant than ever on private cars. M2030 was supposed to control urban sprawl and concentrate development around public transport and services in major centres. Central to the strategy was the upgrading and integration of public transport, which has simply not been budgeted for nor even planned.

Instead, more than 50 per cent of recent metropolitan growth has been in fringe municipalities and the rate of car ownership is in line with population increase, showing

that the growing outer suburbs are reaching a point of total car dependence because of the lack of adequate public transport.

Although it is early days yet for a long-term policy, M2030 is clearly failing in its goals, because its implementation has been severely flawed so that it has not been a strong enough influence to counteract prevailing socio-economic and development pressures.

Development in existing and particularly inner suburbs seems to have become more opportunistic judging from the number of ambit claims at VCAT. A number of cases submitted to the Activity Centres Thematic Working Group (see Point 7) as alleged “M2030 best practice” examples were also severely flawed.

Some of these have been analysed by SOS, along with several dozen examples of local planning permit and enforcement cases from one municipality alone which exhibit flawed process that seems to derive mostly from the vagaries and pitfalls inherent in the exercise of discretion, which provides the opportunity for inconsistency and the exercise of undue influence. The imposition of M2030 simply adds to the complexity of assessments and exacerbates these already existing problems.

In another policy failure, new Victorian homes have been found to be less sustainable than older houses because they use more power and produce more greenhouse emissions than before the five-star rules were introduced. This can only be addressed with further legislation, including updating the Planning & Environment Act.

## **7 Recommendations of M2030 Implementation Reference Group**

The recommendations of the 3 IRG reports must be acted on - most have simply not been met and remain largely unaddressed (see IRG website <http://www.dse.vic.gov.au/DSE/nrenpl.nsf/LinkView/A851C2CBB0D142CCCA256DDC007FE5154761677A5E8BBC52CA2572DB00128993>).

The IRG identified 12 priority issues critical to the successful implementation of M2030:

- 1 Ensuring there is whole of government and bipartisan support for *M2030*
- 2 Getting community and stakeholder buy-in to M2030
- 3 Resourcing local government and defining responsibilities
- 4 Managing outward growth and green wedges
- 5 Significant investment in public transport is required
- 6 Integrating and managing infrastructure provision
- 7 Facilitating investment and development in activity centres
- 8 Ensuring high quality residential development
- 9 Increasing supply of well-located affordable housing, ensuring housing affordability
- 10 Building more equitable, stronger, healthier and safer communities
- 11 Moving towards more environmentally sustainable design and development
- 12 Improving planning decision making processes

In relation to activity centre policy, the IRG identified 11 key issues to be addressed in the short term if the policy is to be successfully implemented:

1. Community attitudes and expectations
2. Partnership and governance arrangements
3. Resources
4. Planning system
5. Infrastructure planning and provision
6. Access and public transport
7. Economic constraints and drivers
8. Land availability
9. Implementing sustainability principles
10. Incorporating housing into activity centres
11. Demonstration projects

The most significant role for state government in implementing Melbourne 2030 is to provide sufficient funding for infrastructure. Relying to any significant extent on developer contributions detracts from the ability of government to direct development to preferred locations and also invites corruption.

In relation to the Melbourne Transport Plan, the IRG noted that M2030 stated a vision for change that the MTP does not adequately convey - *“no specific details, timing or funding commitments...The current disaggregated approach to transport and land use planning and implementation is not delivering the outcomes it should.”*

The IRG recommended provision of a substantial increase in the allocation of State Government funding for improvements to the public transport system to ensure targets can be met (e.g. 20% by 2020); and that the integrated transport plan (Metropolitan Transport Plan) must have guaranteed funding for implementation and delivery. Neither of these recommendations have been acted on to any significant degree - some rail network extensions have actually been cancelled or shelved.

A subcommittee of the IRG, the Activity Centres Thematic Working Group, investigated a number of cases submitted mostly by industry bodies as “best practice” examples of M2030 in action. While some had considerable merit, others were severely flawed (eg, in terms of not meeting some requirements of local policy, neighbourhood character guidelines, preferred community outcomes and appropriate planning process). As mentioned, SOS was on this Working Group and analysed some of these cases and has presented its submission to the M2030 Audit Committee.

## **8 Other Related Issues**

**M2030 Audit Committee Terms of Reference too narrow:**

To state that “fundamental change to the strategic direction within the first 5 years would be premature” is non-sensical. If M2030 is being seriously reviewed with the genuine intention of making it more effective, the government must be open to changing whatever is necessary about both the fine print and the overall approach if the evidence on the ground so warrants. Any faults should be detected and corrected as soon as possible before too much detriment occurs. This will be far more time and resource efficient in the long run than continual band-aiding of a flawed strategy, as has been occurring with ongoing changes to the Planning & Environment Act and to Planning Schemes (VPPs).

### **“Cutting Red Tape in Planning Progress Report - July 2007”**

This document is an excellent illustration of the fact that a decade and a half after the dismantling of the previous planning regime, the present system is still in need of ongoing and extensive revision. It is a clear indication that the discretionary system is far too complex, lacks certainty and is not delivering optimum planning outcomes or even realizing Government policy on urban growth and sustainability. The planning regime in general must be operating efficiently before a major development strategy like M2030 can be superimposed.

#### **Flawed permit assessments**

As mentioned, many individual permit application and enforcement cases reveal some aspects of flawed or incompetent process, even without the added impost of M2030, which has exacerbated the lack of sufficient state or local controls to limit and direct development to appropriate locations.

SOS has also noted inconsistencies and other evidence of possible corruption in planning matters in general in a number of municipalities, including issues associated with the granting and enforcement of planning permits and with contributions to the election campaigns of candidates for council elections.

Consequently, SOS advocates an Independent Crime & Corruption Commission in Victoria that would have the power to investigate reported instances of alleged corruption, conflict of interest and chronic systematic flaws in municipal planning and development matters. The state Ombudsman’s office does not seem to have the ability to investigate such cases properly.

#### **Housing choices:**

Requires serious commitment by the state government in cooperation with local councils. This may require mandatory designation of a percentage of new developments to contain affordable housing to prevent dislocation and “ghetto-isation” of local communities.

#### **Public Transport:**

A detailed plan for a greatly extended and fully integrated PT service must be established as soon as possible to facilitate appropriate development in areas identified by state and local governments in consultation with local communities. Obviously this cannot all be achieved in the short-term so key areas need to be prioritised for immediate funding and implementation. Such a metro-wide plan driven by a new independent authority would allow both councils and developers to plan for ordered growth that can optimise benefits to local communities and build a more functional and sustainable city

### **Local Government Act 1989 and Planning & Environment Act 1987**

Both Acts need to be seriously updated or re-written, given the degree of change over the last two decades in communities, in the operation of local government and in the importance and perception of environmental issues. The Local Government Act admirably stresses community benefit and consultation (particularly the Best Value provisions) but without detailing sufficient specific mandatory provisions to actually give these clauses any teeth.

## **9 Conclusion:**

### **Moratorium on M2030 until implementation flaws rectified**

**SOS believes that the following steps are necessary to regain a balance in forward planning for Melbourne and to protect the residential amenity of the city:**

- Overhaul the outdated planning Act and stop "band-aiding" present planning controls which only increase the complexity and uncertainty of the planning assessment process
- Introduce more prescriptive controls for amenity standards and overlays to simplify council assessment process and provide more certainty and better planning outcomes
- Change the role of VCAT to restrict it to reviewing Council planning processes
- Completely review M2030 to address its current failings, including (but not limited to) -
  - revise designated activity centres consistent with M2030 sustainability principles and guidelines, not on the basis of other factors such as retail floor area
  - allow councils significantly more time and resources to complete the development of Structure Plans with full community consultation and participation
  - transparently reassess population trends and adopt a range of strategies to accommodate population increases in rural centres as well as metro Melbourne
  - plan for and allocate funding for a comprehensive fully integrated public transport plan for metro-Melbourne, to be implemented by a specifically-appointed statutory authority

Because of the above issues, there should be an immediate moratorium on Melbourne 2030 until it is transparently reviewed. Existing state and local planning controls are adequate to control and guide development until M2030 can be revised (as before M2030 was introduced) but immediate changes that are necessary include tightening Rescode amenity standards and local overlays by making compliance mandatory.

It needs to be remembered that the great majority of development proposals already meet state and local guidelines - it is only those that seek to exploit loopholes and push the limits that would be hampered by the reforms suggested here. No developments will be stopped but those that are excessive or otherwise inappropriate will require scaling down or a re-design.

Green Wedges and the Urban Growth boundary are protected to some extent by specific separate legislation (Amendments VC 23, VC16) which need to be further tightened, and the scope for the Minister of the day to vary boundaries and controls should be reduced (note that Ministerial Practice Direction No 10 was revoked in June 2003 after being in force for less than a year).

The government should establish a timeline for Melbourne 2030 to become the default policy after the deficiencies outlined in this submission have been adequately addressed.

The bottom line is that if the State Government is serious about shaping an appropriate sustainable future for Melbourne, it will have to take a much more proactive role in mandating planning mechanisms and providing infrastructure that can direct and attract development identified as desirable by both state and local government in consultation with the community.