



BLACKBURN VILLAGE RESIDENTS GROUP INC.

Protecting the distinctive features of Blackburn since 1987

BULLETIN

No. 59

October 15, 2006

End of Year Dinner – Something different

We will be having our annual dinner celebration at the
Gourmet Girl, 21 Salisbury Avenue, Blackburn on
Friday December 1, 2006, at 7.15 for 7.30 pm
\$43 per head – including corkage – three-course meal
BYO wine only (beer and other drinks available)

Join us for a relaxed social occasion to wind up the year.

If you would like to attend, please confirm by Monday November 27th
Seating is limited to 35, so the earlier the better to ensure a place at the table!

RSVP: Meg Probyn on 9878 7919 or Ron Grainger on 9877 3348
Email: bvrg@optusnet.com.au

Incorporation

You will see from the new letterhead that we have become an incorporated organization under the *Associations Incorporation Act 1981*. We have adopted the Model Rules, which result in very little difference to our organization except that the Chairperson now will now be styled 'President' and we must elect a Vice-President at the AGM in November. Under the rules, rather than having household membership, each member of the organization has to be identified and an annual fee charged. So that the membership fees remain the same for July 2007–June 2008, we intend to propose to the AGM that the membership fees be changed to \$5.00 per person so that a couple who now pay \$10 will still pay the same amount but each of them will be named on the membership list. As we also have to charge a joining fee under the rules, we will propose that the entry fee should be \$5.00. We will only send one printed copy of the Bulletin per household but email copies to all members who provide individual addresses.

AGM

The AGM will be held on Thursday November 2, 2006, at 40 Main Street, Blackburn, commencing at 8 pm. The election of the committee and officers will take place and the Annual Report and Financial Statements will be tabled. If anyone is interested in joining the Committee, or would be interested in offering assistance in any shape or form, please contact us.

Celebrations for 2006

The BVRG has had an extraordinarily busy year with a number of campaigns either successfully completed or near completion. We are very relieved that the three levels of government—Federal, State and Council—have agreed to purchase the land at 1 Lake Road. In September, almost two years since the first public meeting was held to consider the proposed redevelopment of the Lake Road nursing home, three residents, representing BLSAG and BVRG, stood on the open space surrounding the present buildings to hear Phil Barresi MP announce the Federal Government's decision to contribute to the three-way funding of its purchase. Being arranged at short notice representatives of other resident groups were unable to attend but both Mr Barresi and the Mayor acknowledged the active and persistent campaign waged by all local residents, which finally convinced the three tiers of government to repeat the previous bipartisan funding which provided for the important 1980 extension of the Blackburn Lake Sanctuary.

Although the final papers have not yet been signed, we are very optimistic that they will be signed and sealed before the end of the year. This excellent outcome for Whitehorse residents has been achieved by considerable support from our State and Federal members of Parliament and by our Council being resolute in standing by the residents. Norm Winn, who chaired the Blackburn Lake Sanctuary Action Group, put in hours of work for the community, and to him and his committee (including David Morrison, our President) we are most grateful. Tony Robinson, our State member of Parliament, secured funding very early on from the Premier and State Treasurer for this unique purchase. Phil Barresi, Federal member for Deakin, managed to persuade the Federal Government to find funds from the Environment portfolio, no mean feat when there are so many conflicting demands. There were those of us who were faint-hearted believing that we would never achieve the three-way purchase, but stouter hearts kept the campaign going. Once the formalities are over, the land will be planted, with the guidance of the Blackburn and District Tree Preservation Society. It's a win-win situation with a first-class aged care facility to be built and the extension of the Blackburn Lake Sanctuary allowing a corridor of vegetation from the Blackburn Lake to Morton Park. How much better the view will be of trees and shrubs rather than houses, washing lines and cars backing on to the aged care home? All the three levels of government deserve great praise for their work on behalf of the residents and we thank them most sincerely.

Seventh Day Adventist Site

The future for the old campsite at the SDA site is still not clear. The decision handed down by the Victorian Civil and Administrative Tribunal (VCAT) last month clearly delighted all of us trying to stop the inappropriate development and destruction of the endangered Valley Heathy Forest. The church's plans were rejected by VCAT, who said that the plans required to be 'comprehensively reconsidered'. In its decision VCAT said: 'We have formed the strong impression that this subdivision has been driven by conventional subdivision and engineering priorities rather than by the need to tailor the layout . . . to the quite unique natural attributes of this site.' In response Council at its meeting on Monday 16 October 2006 proposed to seek a Ministerial Amendment to apply an interim Environmental Significance Overlay over the subject land while concurrently exhibiting an amendment for a permanent overlay. The strategic justification for this action is that under the *Planning and Environment Act* there is a need to provide for the protection of natural resources and the maintenance of ecological processes and genetic diversity and to conserve and enhance places and areas of scientific interest. In addition the Act establishes a framework for the appropriate balanced development of the state to ensure the impacts on the environment are considered in planning decisions on development proposals.

At the previous meeting of Council (Monday 9 October 2006) John Bergin, chairman of BLEEP (Blackburn Lake Environmental Education Park), gave a presentation outlining a proposal to save the endangered 'Valley Heathy Forest' and to push for the site to become a

public park. The BVRG supports this move and David Morrison and John, with the support of Council, have initiated the formation of the Blackburn and District Environment Protection Fund Inc, which if set up, would seek philanthropic donations from Corporations, Private Foundations and individuals to contribute to the protection of important remnant vegetation or the enhancement of degraded habitat that supports the long-term stability of existing high value land in Blackburn and district. The Tax Deductible Gift Fund would operate under 'model rules' as specified by the Australian Tax Office. Further meetings with Council officers and resident groups will be taking place over the next few weeks to finalise the establishment of the fund.

Third Party Rights

In the last *Bulletin* we mentioned that the VCAT Tribunal hearing the application on 75 Railway Road made reference to the fact that the '*situation continues to arise in Tribunal proceeding*' that '*permit applications are being advertised without reference to specific provisions requiring notice or without indicating to a prospective submitter that their rights to participate are limited to matters not exempted.*' We thought it worth taking this up with Council and asking if such important information to prospective submitters could be provided as a matter of course.

We were surprised at the less than sympathetic response. We were informed that submitters can themselves find out what the Act and Planning Scheme allows, that Planning Officers are not there to give advice on what to put in a submission (we never suggested they were) and that, in any case, Council should not be expected to change its procedures because of the comment of one Tribunal member. (In the 75 Railway Road case we might add the proceedings were chaired by a Senior Member of the Planning and Environment List).

A gratuitous piece of additional advice was that submitters could benefit by studying the Officers' Report. This last comment failed to acknowledge that the application in question was brought before VCAT because Council had failed to make a determination within the prescribed time. There had therefore been no report to Council and, despite repeated requests, one was not available until the eve of the VCAT Hearing, far too late for the BVRG to start preparing its own submission.

On a slightly more encouraging note we were told that the listing of permit applications on the internet was still being investigated. (We have been asking for this service—see item below—because of the increasing tendency not to advertise applications and the obvious difficulties in physically searching the register during the limited times it is available).

Note: Advice to Members

Despite the tone of the letter referred to above most Council Planning Officers will readily assist residents with useful planning information and we urge members to contact them if they are concerned about inappropriate development. We also remind you that, while the BVRG does not have the resources to engage in every case brought to our notice we have produced some general notes on the process, which are available on request to members and may assist you in formulating your objections.

Victoria's Planning Minister Rob Hulls on VCAT

Last week (Wednesday 11 October 2006) an article by Rob Hulls appeared in the *Age*, which contained some interesting comments on VCAT from the Minister. It is clear to us (the BVRG committee) that despite the problems sometimes associated with decisions of VCAT, no other system has been proposed that would resolve the issues. We, as a group, have not become involved in the campaign against VCAT because of concerns about the over-politicisation of the debate. However, we note recent analysis of VCAT decisions (2005) on medium and high-density permit applications which appears to show that some members are

biased towards developers (one member, for example, has supported the developers in 91.7% of his decisions). On the other hand, we have been fortunate in many of the hearings recently by having members preside who are demonstrable more even-handed in their decisions. Hulls main concerns appear to be the ‘constant vilification of VCAT’. He goes on to say that ‘Planning is complex, sometimes contentious and, at times, political. Sometimes councils make decisions for political and other reasons. And sometimes councils simply get it wrong. That is why we need an independent umpire.’ He quotes the figures that ‘only 2.1 per cent of the state’s 53,000 planning applications ended up at VCAT last year because councils refused to issue permits. For the most part, the tribunal deals with cases concerning permits approved by councils, cases in which councils have not made a decision in time and various other matters such as enforcement.’ He states:

‘Further, the vast majority of all cases before VCAT involve minor design matters, such as window screenings. Only a handful turn on local policies or the **Melbourne 2030** framework. Once the situation is put in perspective, the argument that the tribunal is somehow the *de facto* planning authority in Victoria cannot be sustained. Very clearly, the power rests in the hands of local government. Councils are democratically elected and best placed to reflect the aspirations of their communities . . . VCAT must take into account the same local and state frameworks as councils. This is why we will be working with councils, with expert teams, to clarify and strengthen their local planning policies so they are less open to interpretation. The first five-yearly audit of **Melbourne 2030** is already under way, and all stakeholders will be encouraged to participate in the consultation phase next year so that the policy can be fine-tuned. But make no mistake—fundamental changes to the principles and directions of **Melbourne 2030** will not be an outcome of this audit. Neither will the State Government be nobbling the independent umpire. While we can argue about how well **Melbourne 2030** is being implemented, there is broad support for the principles underlying it. The State Government is resolute in its goal of building a fairer, greener and more prosperous city for all families.’

While we agree that there needs to be a final arbiter such as VCAT, our main concern is that the Tribunal too often get involved with the planning details of a proposal rather than deciding whether Councils and others appearing before them have duly observed the relevant policies and procedures.

The critical point is whether Councils generally, and Whitehorse in particular, are protecting their municipalities effectively with their planning policies and overlays. VCAT is bound to apply the law, and policies under *Melbourne 2030* have legal effect. While the 2030 policy aim is to curb urban sprawl by concentrating development round the 120 suburban activity centres, it is clear that residents living in those areas find it very difficult to fight developers unless the Council policies are quite explicit on height, design, heritage and landscape. We await with interest further developments. As Ron Grainger so succinctly put it: ‘The whole 2030 exercise is like wrestling with a blancmange’.

Streamlining – a return to more haste less speed ?

Streamlining the Planning Process—Cutting Red Tape Review, the report due for release in June, was made public at the end of August. We trust the irony of the delay was not lost on those promoting the first of the ‘quick fix’ changes in the planning permit process, simultaneously introduced. More of these seemingly innocuous exemptions from planning permits applications will follow—they include fences; swimming pools in heritage areas; satellite dishes; and single-storey extensions where neighbours are not affected. One professed outcome of all these changes is contained in the words, ‘where neighbours are not affected’, a situation envisaged in the average 96% of cases which are decided by Council staff acting under delegation.

While there is no hard evidence that the changes will even marginally speed the process in Whitehorse, they do increase the threat of amenity loss to those unfortunate enough to have inconsiderate neighbours. And for those developments which will still require a permit application, consideration is to be given to further restricting their notification and to disregarding objections which don't relate specifically to the stated object of an application.

The average resident is both the most directly affected interested party and the only one without ready resource to legal or planning expertise. Such restrictions can substantially negate their legitimate protests. In these circumstances, especially as other proposals contemplate greater use of a computerised process, their situation should be recognised by maintaining a version of the permit application register on the internet, a service as mentioned above that we have urged Council to introduce.

One other area of dissatisfaction, which the report acknowledges but for which it doesn't really suggest solutions, is the failure to enforce permit conditions.

While it does make some reasonable suggestions others, like revisiting standardisation, it is tinkering around the edges of a system, which absorbs resources largely because it cannot operate without subjective decisions having to be made by under resourced staff every step of the way. This situation is exacerbated by work on major activity centres taking precedence over the formulation of much needed local policies. And moves to design models to help Councillors delegate even more planning decisions will only add to the residents' inability to have any worthwhile participation into the process.

Watch for Mitcham and Nunawading Activity Centre Structure Plans

We have tried to keep you informed about the various manifestations of the Mega Mile—in our latest sighting it stretches from Peel Street, Mitcham, to Vine Street, Blackburn, a distance of about two and one half miles in the old imperial measure. The proposed Mega Mile can be seen in the Context and Local Study map, which accompanies the Draft Structure Plan for the Nunawading/Mega Mile and Mitcham Activity Centres, which is now available for comment. (See the Council website or copies in the Libraries and Council Offices). Anyone who visits or uses the relevant areas, as most Blackburn residents probably do, should take the opportunity to study the Draft and submit any comments before 10 November.

Morton Park and the Library Precinct

One of the legacies of the planners of the Blackburn Model Township of the 1880s was the provision, within attractive parkland, of community facilities such as cricket and football ovals and tennis courts together with a Hall, later replaced by the Branch Library. More recently The Pines, the Baby Health Centre and the War Memorial have been located in the same area and several of these facilities have in turn undergone extensions, which, together with car parking, have taken up much of what was previously public open space.

The impending closure of The Avenue Neighbourhood House has prompted Council to undertake a feasibility study of community facilities in what they term the Blackburn Library Precinct and those who hope to have some input should contact Susannah Petris, Social Policy Officer.

Phone: 9262 6534, Fax: 92626117, email: blanhprecinct@whitehorse.vic.gov.au

In our submission we have acknowledged that, while it is essential for Council to provide alternative facilities for the soon to be displaced Avenue House community services, no major development decisions should anticipate the long awaited Structure Plan, a plan which will hopefully retain those features which contribute to the distinctive character of Blackburn.

Pushing the Boundaries

Some of the few permit applications to which the BVRG objects seem to us to make no serious attempt to meet the objectives of the Planning Scheme; the following are two typical examples:

- **124-126 Blackburn Road**

The proposed development for 124-126 Blackburn Road has raised a large number of objections from residents, including many of our members. Our objection noted that the four double storey dwellings constitute an overdevelopment on the site. The proposed individual houses are each extremely large (4 bedrooms plus study) and because of the sheer size of the buildings, the setbacks are not consistent with the SLO(2) guidelines. The houses will have a detrimental impact (visual, shadows and loss of privacy) on the properties in Windermere Street, which are on the southern boundary of the site. The removal of 21 trees and shrubs and the considerable damage that will be caused to other protected trees due to the buildings and works being within four metres of the trees make it an unacceptable design for the environment under SLO(2) objectives. The houses are over eight metres in height and will not be inconspicuous to the neighbouring properties. The site contains important vegetation for the area and is the home for the Powerful Owl and although a proportion of the block will retain trees, the mass of building together with the loss of vegetation constitutes a threat to the habitat.

- **9 Oliver Avenue**

BVRG has also registered an objection to the granting of a permit for development at 9 Oliver Avenue where the proposed building does not conform to the SLO(2) guidelines on setback, site coverage and the protection of trees.

Blackburn Village Residents Group Committee

If you wish to discuss any planning issues with the committee, please contact them either by the email (bvrg@optusnet.com.au) or in person. Any correspondence or payments may be delivered to your nearest committee member. We have enclosed a payment sheet for those of you who have not yet paid their contribution, which was due 1 July 2006. Sincere thanks to those of you who have already paid.

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