

21st April 2010

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
Parliament House
CANBERRA ACT 2600

Primary Schools for the Twenty First Century: Menzies Creek Primary School, Victoria

Introduction

My home shares a common boundary with the Menzies Creek Primary School (MCPS). This submission relates to the choice of site for the new MCPS facility funded by the Building the Education Revolution (BER) programme, the loss of protection for affected adjoining property owners arising from the exemption of normal planning processes, cost escalations resultant from poor planning and the handling of my concerns by the Victorian Government.

Site Of The Facility

The site of the new facility was formerly occupied by a demountable building comprising two classrooms and adjoining offices. The new building is about four times the floor area of the demountable structure that it is replacing. The Principal of the school advised me that only cursory consideration was given to alternative sites. She acknowledged that thinking never really progressed beyond placing the new building on the site of the one it will replace.

To prepare the site for the new building and works a belt of shrubs and mature native trees extending 20 metres into the school from the boundary was cleared. This has removed what was an effective vegetative screen and destroyed the bush land character that previously existed.

Planning Laws and Provisions

Pursuant to Section 16 of the Victorian Planning and Environment Act 1987 the Governor in Council issued an exemption providing that planning schemes shall not be binding on the use and development of land by the Minister for Education. This was

published in the Victorian Government Gazette of 10 February 1988.

The Victorian Government Gazette No S 142 issued on 22 May 2009 advised the approval by the Planning Minister of an amendment to the Victorian Planning Provisions (VPP) and the introduction of Clause 52.40 Government Funded Education Facilities relating to BER funded buildings. This VPP, which applies to Victorian Schools, waives the need to obtain planning permits and allows plans to be certified by a registered building surveyor if eight basic requirements are met. In the event that all requirements are not satisfied the plans are to be submitted to the Planning Minister for approval. VPPs are stand alone policy documents that do not constitute a planning scheme in their own right.

It is noteworthy that the Department of Education selectively draws on VPP Clause 52.40. It cites the provision as the authority for not obtaining permits for BER facilities. The Department is of the view that it does not need to comply with the eight requirements which must be met for a building surveyor to certify approval of plans. The MCPS site does not comply with three of the requirements.

Protections Foregone

My home and those of my neighbours are in a Green Wedge Zone which is designated as a bush land residential area. The local planning scheme, derived from the Victorian planning legislation and provisions, affords such homes a measure of protection. It is a requirement that new developments on sites adjoining green wedge zone residential areas protect established residential amenity through the provision of appropriate building design, setbacks and landscaping which are compatible with the scale of nearby residential development. The most substantial structure normally permitted on the property boundary is a 2.0 metre high post and wire fence. There is also a benchmark setback of five metres from any property boundary. By virtue of the exemption from planning schemes, the Minister of Education is not bound by these provisions.

Part 4 of the Planning and Environment Act relates to the issue of permits and requires that owners of properties likely to be affected by a proposed development be informed. It also provides a mechanism for objections to be raised. Clause 52.40 of the VPP waives the requirement for the issue of permits for BER facilities, thus these protections are not applicable.

The Victorian Civil and Administrative Tribunal (VCAT) is the statutory body that deals with planning disputes. As BER facilities are not subject to the normal planning approval processes, VCAT staff advised that consideration of related disputes is beyond the tribunal's remit.

The Victorian Ombudsman is unable to consider this BER matter. Legislation precludes the Ombudsman considering any matter relating to a ministerial action or decision.

The only legal recourse is a challenge in the Supreme Court of Victoria. What is usually the final legal resort has become the first and only avenue. Mounting such a challenge is beyond the financial capacity of most ordinary citizens. Thus the only option remaining is to make a submission to the responsible minister and, in the event that the minister does not handle the matter in a timely and satisfactory manner, the State Premier.

Approved Plans

My attention was drawn to the approved plans in November 2009 when the contracted Project Manager contacted me by telephone, seeking permission for workers to enter my property to build a retaining wall on the fence line with the school. The plans provided for a retaining wall 3.6 metres above natural ground level at its highest point along the fence line of my, and one other neighbour's rear property, boundary.

As the building design is a standard template, no attempt was made to adapt the plans to suit the site. Indeed the reverse was the case: the sloping site was adapted to suit the building. The retaining wall has been backfilled and the new facility, which is to a standard template, will be set back about three metres from the edge of the wall and will rise 5.4 metres above the new (filled) ground level. The combined height of the structures will be about 9 metres and will extend for approximately 80 per cent of the common boundary of my property and the school. As my home is downhill from the school, the height of the structures will be amplified. Their bulk will shade my house from the morning sun from mid-autumn to mid-spring.

As the building and works abut the property boundary, there is no scope to mitigate their visual impact through the provision of adequate and effective vegetative screening within the school property.

Approval

The MCPS plans were prepared under the supervision of the sub-contracted Project Manager and submitted through the Prime Contractor to the General Manager, Infrastructure Division in the Victorian Department of Education for funding approval. The chosen site does not meet three of the eight requirements for certification by a building surveyor laid down in VPP Clause 52.40. The most notable is that buildings and associated works be set back a minimum of five metres from any property boundary.

At no stage were the plans submitted to any person or office bearer with statutory planning authority. Had the plans been submitted to the Minister for Planning, his decision guidelines require that he consider the affect of the plans on the amenity of adjoining properties and the neighbourhood character.

Alternative Sites

There are two alternative sites within MCPS on which the new facility could have been constructed and the minimum setback requirements met.

Dealings With The State Government

After being contacted by the Project Manager in November, it quickly became apparent that the triad of the contractor, Department of Education and school was difficult to deal with. Few straight answers could be obtained to my questions and each element tended to indicate that responsibility for various matters rested with one of the other two parties. Accordingly I wrote to the Minister for Education, explaining my concerns and seeking her intervention to revise the chosen site.

In January work resumed on clearing vegetation on the site. Apparently the Department had confirmed with the Project Manager prior to Christmas that work was to continue on the approved site. No advice of the decision had been provided to me. Accordingly I wrote two letters to the Premier, outlining the issues and seeking his intervention. Another lull in activity ensued. When work again resumed on site in late February I was informally advised that the Department had reaffirmed the site selection with the Project Manager about three weeks previously. Again, I had not been provided with formal advice of the decision.

Construction of the retaining wall commenced in March. There followed a succession of emails and letters from me to both the Minister and Premier which went unacknowledged. On 17th March the Minister signed a brief and patronizing response to my original letter that completely failed to address the key points that I had raised. On 25th March a staff member in the Premier's office signed a letter acknowledging receipt my recent correspondence.

On 30th March a Stakeholder Relations Officer from the BER Project Office visited my home. Although too little, too late; this was the first meaningful engagement instigated by the State Government. On sighting the completed retaining wall the officer acknowledged its scale and, with the benefit of an elevation drawing, agreed that the wall and building would have a substantial effect on both the amenity and character of the immediate neighbourhood. He expressed surprise that my concerns had not been taken more seriously and acted upon when first raised with the Minister last year.

Evolution Of The Approved Plans

The original approved plans for the MCPS BER facility provided for the standard template building with a suspended wooden floor on stumps. This was a staggering choice for a site in the Dandenong Ranges which is subject to a Wildfire Management Overlay; even more so considering that a building of the same construction at MCPS was damaged five years ago by a sub-floor fire. VPP Clause 52.40, had its guidance been

followed, would have ensured that relevant overlays would have been identified and considered.

Work on the sub-floor structure to the original plans was commenced, then halted and demolished. The plans were revised in October 2009 to incorporate a concrete slab floor on the ground. Due to the slope of the site the requirement arose for a retaining wall and backfill to provide a level site. As a consequence of the space constraints on the site, this could not be achieved within the specified minimum setbacks. This consideration apparently went completely unnoticed, as did the green wedge zoning of the adjoining residential properties on the boundary. The approved revised plans provided for a timber faced retaining wall.

In discussions with the Project Manager in January 2010, I questioned the wisdom of specifying a timber retaining wall. The anticipated service life of a timber wall in a high fire risk, termite prone, M1 landslip risk area was much less than the planned life of the building that it was intended to support. I also asked how it was envisaged the wall could be repaired or replaced from within the school property when it deteriorated and lost its structural integrity. The wall design was subsequently revised to concrete rather than timber.

The evolution of the plans demonstrates a lack of thorough research and consideration of all relevant factors from the outset. It is damning that a layperson such as me can identify basic flaws in the thinking and plans of the Project Manager, a contractor engaged for his supposed professional building knowledge and expertise.

Each revision to the plans has been attended by contract variations and an escalation of costs to the taxpayer. In comparison with the two alternative sites within MCPS, the chosen site, which has by far the greatest adverse impact on adjoining residential properties, has also required the most extensive and expensive earth works. If the Minister for Education and her department had been more attentive to their responsibilities they could have achieved a far better outcome on both counts.

Accountability

The State Minister for Education has not provided any meaningful response to my request for her to intervene in this matter. Indeed, in her letter she attempted to distance herself by implying that responsibility for the decisions rested with the Project Manager. This is an astounding abrogation of responsibility noting that the Department of Education is the client and the Project Manager is a contracted service provider. Apparently, the signing of contracts and contract variations by the General Manager, Infrastructure Division constitutes department approval and acceptance of the plans. The Minister's intervention was sought because her department appeared to be in such disarray. She failed to demonstrate the oversight or clarity of thought that would indicate the effective discharge of her ministerial responsibilities.

When work on the site resumed in January 2010, as the Minister for Education had not acted on my concerns or provide a measured response, I wrote to the Premier drawing attention to the unsatisfactory manner in which the minister had handled the matter and requesting his intervention. Emphasis was given to my concern that if the opportunity to revise the site selection was not seized before construction work commenced, a point of financial no return would be passed.

The response I received was a letter in late March from a member of the Premier's office staff acknowledging receipt of my recent correspondence and indicating that the matter had been referred to the Minister for Education as it was within her portfolio responsibilities.

Neither the Minister for Education or the Premier has given any indication that they take seriously the issues that I raised with them. Instead, they prevaricated and allowed bureaucratic inertia to carry the MCPS project forward. Their approach I describe as culpable inaction. They have not even had the courtesy to provide me with timely and well considered responses to my letters and emails. It is unacceptable that after having a poorly considered decision drawn to their attention they have chosen to dismiss the matter entirely. In effect, they have endorsed a flawed and unreasonable decision and the consequent unwelcome and unnecessary imposition on neighbouring residents.

Having overseen the establishment and implementation of an approval process that circumvents all the normal planning checks and balances, the Premier and his Minister for Education appear quite content to ride roughshod over the interests of ordinary citizens. Neither has demonstrated the moral courage to acknowledge that an unsound initial decision was made in relation to the BER site at MCPS or the leadership qualities to direct that it be corrected. Fairness seems to count for nothing.

Adrian Kops