



**Toorongā Village**

**Boroondara Planning Scheme  
Amendment C70**

**Introductory Submission**

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A0048773B

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# 1 Introduction

Thank you for the opportunity to present this submission on behalf of the Tooronga Action Group.

1.1 In this submission I will broadly canvass some of the matters to be dealt with specifically and in greater detail by my colleagues, in order to provide the panel with a perspective for our submission.

## 2 Historical Context - An upgraded shopping centre

2.1 Statements have been made during this Panel Hearing to the effect that development at Tooronga has not taken place because this is a difficult site. There is a subtext here that seeks to justify a greater latitude to developers in terms of accountability and scale of development. However, as we will clearly demonstrate, this view is based on a false premise. In fact, there have been a number of very reasonable opportunities to redevelop the Tooronga Village Shopping Centre. These forsaken opportunities have nothing to do with any inherent complexities of the site. The following is relevant in this regard:

- In 1984 approval for Comprehensive Development Zone No. 4 was sought and given to enable construction of the Coles Myer Headquarters Building and to upgrade the Tooronga Village Shopping Centre to 11,200 sq.m. – both sites now being under the one ownership. In its June 1984 report<sup>1</sup> in support of the application, Perrot Lyon Mathieson stated:

*“...it will alter the zoning of the shopping centre site in order that the*

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• <sup>1</sup> Appendix 1

*inevitable upgrading that centre will undergo as a result of the introduction of a major office complex, may take place in an integrated and orderly fashion.”*

- In 1986 approval for an increase in size of the Tooronga Village Shopping Centre to 15,000 sq.m. was sought and given. In a letter to the Minister for Planning and Environment dated August 7 1986, obtained by the Tooronga Action Group on a Freedom of Information application<sup>2</sup>, Hudson Conway wrote:

*”It is clearly unrealistic to expect one of Australia’s largest companies, Coles Myer Limited, to be asked to occupy its outstanding office park development – an Australian first – adjacent to a rundown neighbourhood shopping centre...It is the desire of Coles Myer, as Australia’s leading retailer, not only to have its head office building in Melbourne, but to have a “Model” retail centre on the adjoining land to compliment the National Headquarters.”*

- In 1991, following the Amendment RL137 Panel Hearing and further negotiations between the Minister and Hudson Conway, approval was eventually given for a development incorporating 22,700 sq.m. of retail and non-retail, and 22,000 sq.m. of office.

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• <sup>2</sup> Appendix 2

2.2 In none of the abovementioned instances could the complexity of the site be claimed to have contributed to the failure of the development to proceed, nor did it inhibit the developer's stated intentions to build a new shopping centre and develop the sites.

2.3 In a 1990 Briefing Memorandum to the then Minister For Planning and Urban Growth, obtained by the Tooronga Action Group on a Freedom of Information application<sup>3</sup>, John Moir, Regional Manager of the Eastern and Upper Yarra Region, wrote:

*"Amongst other things they (Hudson Conway) are asserting that they have been trying for five years to obtain agreement to what they want to do on their land. I believe their main problem has been that what they want has regularly changed, generally upwards."*

### **3 A Lesson Learned?**

3.1 The 1991 Panel Hearing in respect of Amendment RL137 was initiated by the Minister against the advice of his own officers<sup>4</sup>. The following chronology is relevant:

- (i) The Panel made a recommendation to the Minister with a modified Amendment and the stipulation that the Amendment be abandoned should the developer not wish to proceed.<sup>5</sup>
- (ii) The Minister wrote to Hudson Conway accordingly<sup>6</sup>.

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• <sup>3</sup> Appendix 3

• <sup>4</sup> Briefing Memorandum to the Minister For Planning and Urban Growth, John Moir, Regional Manager of the Eastern and Upper Yarra Region Oct 1990; Appendix 3

• <sup>5</sup> Recommendation 7.

• <sup>6</sup> Appendix 4

- (iii) Notwithstanding having just completed an exhaustive Panel Hearing review of Amendment RL137, Hudson Conway responded to the Minister's letter and persisted in requesting a more intensive development.<sup>7</sup>
- (iv) In December 1991, the Minister finally approved Amendment RL137. Though Hudson Conway did not get the more intensive development they did achieve reduced setbacks to Tooronga Road and Gardiners Creek.<sup>8</sup>
- (v) In 1995 and 1997, Coles Myer purchased the Tooronga Village and Brickworks sites from the joint owners for an estimated price of \$15 million<sup>9</sup>.
- (vi) In 2004, Coles Myer and Stockland entered into an agreement that gave Stockland the option to purchase the Tooronga Village and Brickworks sites for a price reported to be \$30 million<sup>10</sup>.

3.2 The value of this site has been inflated due to a failed planning process. Initially this took place as a result of the granting of a permit by the Minister in 1991 which, of itself, caused an increase in the value of the land which was borne by Coles Myer in 1997. Now, Coles Myer seeks to recoup that previously inflated cost from Stockland. Commercial reality suggests that the selling price sought by Coles Myer from Stockland reflects a significant dividend that would arise from the passage of the

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- <sup>7</sup> Appendix 5
- <sup>8</sup> Appendix 6
- <sup>9</sup> Australian Financial Review , 31 Jan 2000; Appendix 7
- <sup>10</sup> The Age, 3 August 2004; Appendix 8

proposed Amendment before this Panel. In effect, what we have here is a series of cascading increased land valuations, one built on top of the other, more significantly the result of a planning process than any general economic conditions.

3.3 With respect, there are lessons to be learnt here for this Panel and the Minister. We cannot sustain a process whereby a reasonable development is priced out of the market, or conversely an unreasonable development is marketed, because profit is being extracted from the land without any investment of value – the shopping centre has not been upgraded and the brickworks site remains derelict. Were it not for the fact that the price of the land had been inflated by a rezoning without a development outcome, we would now be in a far better position to attain an optimal development that would pass on real value to the community and the developer. We believe it is up to the Panel to determine a manner of recommendation to ensure this process is not repeated. We will return to our specific recommendations regarding this issue later in our submission.

## **4 Coles Myer Headquarters - Overflow Car Parking**

4.1 In our Car Parking submission we explain, that even taking into account the 500 car spaces proposed to be provided for the staff of the Coles Myer Headquarters, there is an additional overflow of approximately 400 cars currently on the Brickworks site, the shopping centre car park & the residential streets.

4.2 Apparently, this is to be in part addressed by the introduction of the so called Coles Myer “Green Travel Plan”. In our Traffic submission we

explain that this plan cannot be relied on as a realistic means to truncate the demand for car spaces. We sense that the provision for parking of the overflow cars, over and above the 500 spaces allotted to Coles Myer by Stockland, is likely to be a matter beyond the control of this Panel.

4.3 Nevertheless, now is the opportune time to deal with the permanent disposition of the 500 car spaces to be provided for Coles Myer by Stockland, an issue that we believe lies within the parameters of your jurisdiction. It is important to emphasise that the overflow car parking problems will subsist beyond Coles Myer's tenancy agreement and endure beyond any contractual agreement made between Stockland and Coles Myer. In our submission, this problem can be best mitigated if the 500 space car park, intended to be built by Stockland for the sole use of Coles Myer office staff, is formally assigned to the building currently tenanted by Coles Myer.

4.4 Arguments have been presented to the Panel, by the lawyers for Boroondara and Stonnington City Councils, that the recommendation for the assignment of the 500 space car park is within your jurisdiction and there are planning controls available to the Responsible Authority to implement this course of action.

4.5 We ask that you also be mindful of the following in regard to formally assigning the 500 space car park:

- (i) The existing Comprehensive Development Zone 4 encompasses the land on which the Coles Myer Headquarters is located, the Toorong Village Shopping Centre site and the former brickworks site. All were previously owned by the same companies.
- (ii) Coles Myer, the source of the overspill parking, purchased the Toorong Village and the Brickworks sites;
- (iii) This purchase took place with full knowledge of a Comprehensive Development Zone over all the land which included the Coles Myer Headquarters building;
- (iv) 58 of the 500 spaces are in any case linked to the Coles Myer Headquarters building;
- (v) Coles Myer participated in the development of the Urban Design Framework where it was determined:  
*“...to ensure that all parking is contained on the site (this includes the satisfactory resolution of any overflow parking from the existing offices at 762-838 Toorak Road, Hawthorn East).”<sup>11</sup>*
- (vi) Ample opportunity existed for Coles Myer to address the ownership issue of the 500 space car park with the owners of their building, and together with Stockland if necessary, prior to the exhibition of Amendment C70.

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• <sup>11</sup> p.6, Section U2

## 5 Expert Witnesses

- 5.1 During cross examination, Mr Murphy from MDG Landscape Architects, an expert witness for Stockland, strongly disagreed with the following statement:

*“the brickworks site, sitting as it does, in the shadow of the Coles Myer complex (is) effectively isolated from other residential areas by the SE Arterial and Gardiners Creek, Tooronga Road and the existing shopping centre. It will never enjoy a level of amenity that would be acceptable for residential use.”*

- 5.2 This in fact was a statement made by an expert town planning witness, on behalf of Hudson Conway, at the RL137 Amendment Panel Hearing. The Tooronga Action Group was the only party to that Amendment Hearing to suggest that the brickworks site was appropriate for a residential development. Of course, Hudson Conway wished to deflect this suggestion, and predictably their expert witness agreed. Fast forward to today – should we be surprised that the equivalent expert now supports a proposal for a residential development?

- 5.3 To state the obvious, expert witnesses are inclined to favour the party who engage them. But even stating the obvious, we must take serious issue with the experts’ opinions regarding the number of dwellings that are supportable on this site.

- 5.4 Issues of setbacks and building heights; articulated architecture and building mass, dominating towers and sensitive interfaces; the Gardiners Creek corridor and open space experiences; traffic volumes and car parking; and even flood water management – all these discussions and differences are about resolving the number of dwellings.
- 5.5 Stockland have determined that 600 dwellings is the number they require to make the development viable, factoring in the cost of the land. Whether this ‘cart before the horse’ approach makes for good planning or not, Stockland was constrained to seek a favourable opinion from their experts for a 600 dwelling development – that is the reality of the process. We might make an educated estimate that the cost of the land is made up of:
- (i) land purchase price (\$30 million);
  - (ii) car park price (\$1.5 - \$2 million per year till 2016); plus
  - (iii) any penalties incurred as part of their agreement with Coles Myer.
- 5.6 We submit that the Panel keeps this in mind when assessing the evidence of the expert witnesses who supported the intensity of this development.

## **6 Urban Design Framework 2001**

- 6.1 The Urban Design Framework (UDF) endorsed by Council in 2001 may not have a status of inclusion in a Planning Scheme but that should not diminish its importance and relevance to the Panel’s considerations. It was a process that included the Council, the owner of the land Coles Myer, Urbis JHD (Coles Myer’s consultant), and the community.

6.2 The reasons it did not attain the status of inclusion in the Planning Scheme had nothing to do with its utility. In this regard I refer you to the Minutes of the Urban Planning Special Committee Meeting of 7 November 2001, p.1, contained in Appendix 9:

*“The purpose of this report is for Council to endorse the draft UDF for use as guidelines to inform the preparation of a future planning scheme amendment and ultimately specific development proposals. The Working Group recommended that there be no planning scheme amendment exhibited for public comment until Council has more detail to inform the community about the future of the site.”*

6.3 Certainly parts of the UDF can be called into question given the largely residential nature of this development, such as the road network.

Nevertheless, there are fundamental principles underlying the UDF that apply equally to a retail, office or residential development for this site.

6.4 In our Built Form submission we will articulate key elements of the UDF, particularly as they relate to building heights and setbacks.

6.5 It is well worth noting that the UDF adopted by the Working Group represented a retreat from the community’s original position in that it added to the building height and reduced the setbacks that were acceptable to us at the time. We agreed to the UDF in the spirit of compromise and the recognition of commercial realities. It is therefore galling to now find ourselves in a situation where that framework, which represented a good faith compromise on our part, is put forward as the starting point.

6.6 It is also worth noting that at the time Coles Myer was a willing party to this compromise and accepted the UDF as a workable framework.

## **7 Development Plan & Third Party Rights**

### **7.1 Flexibility v. Prescriptive Guidelines**

7.1.1 Stockland claim that they require flexibility within the Planning Scheme Amendment. They cannot have it both ways. Either they are required to provide sufficient detail so that we know, at this time, exactly what we are getting; or they are given some flexibility and as a consequence must provide development plans that can be effectively scrutinised by local Council and the community.

7.1.2 The earliest possible projected time to complete the development is seven years, but as has been suggested to the Panel, it may be as much as ten years. In tandem with this long term and staged development project, Stockland can incorporate a process which includes community consultation and does not trigger major delays. It merely represents an extra step in the process, and properly managed should not be cumbersome, costly or prejudice their ability to profitably develop the site.

## 7.2 Development Plan

7.2.1 In the ‘Version 1’ revision of the Schedule To the Priority Development Zone, Stockland has included a Development Plan section should it be required by the Responsible Authority. However, the following clause<sup>12</sup> is unacceptable to the community:

*“The development plan may be amended to the satisfaction of the responsible authority without the need for display”*

7.2.2 In the worst case scenario, display of the plan adds a mere 42 days to the process – this cannot possibly be said to prejudice the rights of Stockland given the anticipated duration of the development.

7.2.3 In addition to the reasons already mentioned, for the surrounding community a mandatory stipulation to display a Development Plan is crucial because:

- the site includes our community’s neighbourhood shopping centre; and
- the development includes more amenable facilities including a better shopping centre, an open space area, and a more attractive Gardiners Creek frontage, all intended to attract the local community to and through the site.

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• <sup>12</sup> ‘Version 1’ revision of the Schedule To the Priority Development Zone, p.12; Appendix 10

7.2.4 A requirement for a development plan is essential to bind any developer, whether Stockland or another, to the principles of the Planning Scheme Amendment.

### **7.3 Third Party Rights**

7.3.1 For the reasons already cited in this submission we assert that third party rights must be maintained. Should Stockland's claim for maximum flexibility be granted there are far too many contingencies over too long a period of time to remove this fundamental and democratic right of the community.

7.3.2 It is also important to note, that Stockland may not even be the company to benefit from the removal of third party rights.

7.3.3 A bad development outcome can never be revisited; the inclusion of third party rights provides some protection.

## **8 The Accountability of a Responsible Authority**

8.1 Stockland argued that its dealings with Boroondara Council have been so disruptive as to jeopardise a workable relationship. Mr Garde has adequately dealt with this issue on behalf of the Council. We merely wish to add that we take issue with Stockland's view, and do not blame the Council for delays in putting the Amendment forward. In reality, some of the details they requested were the same details that the Panel itself requested as early as the Directions Hearing. The community would certainly have benefited if this detail and more had been available during the exhibition of the Amendment.

8.2 We believe criticism of Boroondara Council, and specifically the attack on the Council during this Hearing, was contrived in order to create a façade of an unworkable relationship and bolster the argument that the Minister should be the Responsible Authority. This best suits Stockland’s purposes and is reminiscent of an eerily similar set of circumstances that took place during the deliberations of the 1991 Amendment RL137. I refer the Panel to Appendix 11, which is a letter from Hudson Conway to the then Minister for Planning dated 31 October 1990, obtained by the Tooronga Action Group on a Freedom of Information application:

*“We confirm we are prepared to commence construction of the subject scheme proposed to you in April 1992, once approval has been granted. At a cost of \$240M it will be the largest construction development in Victoria at the time.*

*After five years of inept decision making by local authorities, and without any true objections of merit from the community, we hope you will place the project on exhibition immediately with your full support.”*

8.3 In our submission, it is most advantageous for Stockland to do all they can to ensure that the Minister is the Responsible Authority.

8.4 The community needs to know that whatever the outcome, now and in the future, the integrity of the planning process will be paramount and untainted by the political process.

8.5 I can only echo the words of John Moir, Regional Manager of the Eastern and Upper Region contained in the previously cited 1990 Briefing Memorandum to the then Minister for Planning and Urban Growth<sup>13</sup>:

*“What is needed now is a clear statement from you of the strategic parameters for the development in the Tooronga area, including a statement on the nature and levels of development which (you) consider appropriate for the various areas...”*

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• <sup>13</sup> Appendix 3