

Extracts from Real Estate Practice in Australia, by Edward Guthrie, published by the Real Estate Institute of Australia Ltd., Canberra, in 1988, now out of print.

Special Note: Disclaimer. This is not necessarily current legal practise and should not in any way be considered a guideline for a real estate approach in 2004. This is simply information for use in the completion of this webquest.

## **THE NEED FOR PLANNING**

The following examples of sights seen around Australia point to the need for planning:

- standing out from an otherwise neat row of houses, an obvious former shopfront extended from the house up to the front boundary of a block; now obviously used as a bedroom or lounge
- semi-detached houses, detached dwellings or terrace houses with no car access and a long line of cars parked on both sides of a narrow inner-city street
- a street with purely residential dwellings surrounding a greasy, dilapidated motor car repair shop with motor car parts spilling into the footpath and cars in disrepair parked on the street.

It is to avoid this type of problem that Australian states have developed planning controls since the end of the Second World War.

## **PLANNING PRINCIPLES AND PRACTICE**

In most states, planning the use of land is initiated at local or state government level. At times, by legislation or by directive of the Minister for Lands, certain land is designated for specific types of development. Within shires, municipalities or cities, local governments are empowered to initiate planning schemes. These schemes are then passed to a state planning authority for approval. Once obtained, the local government can approve development within the guidelines of the local planning scheme. For certain projects, such as military use or for international airports, the Federal Government can supersede state planning schemes by legislation.

## **BUILDING AND LAND USE CONTROL**

All states empower local councils to prescribe a municipal building code and to approve buildings within that code. The states also provide local councils with guidelines for subdivision and development of land in their area. At times, federal approval is needed for matters such as the height of buildings near an international airport. Local government, in conjunction with the states, also stipulates height of building, type of construction, and various land uses in each zone.

State authorities are involved in land use controls: for example, the Maritime Services Board for land that adjoins a waterway; the Health Department for unhealthy building land; the Education Department for land that may have to be resumed to expand adjoining schools; and the Department of Main Roads for developments that may affect the flow of traffic.

## **SUBDIVISION PLANS**

Subdivision plans are judged on the following points:

- Aesthetic: whether the subdivision contributes to the beautification of the area
- Environmental: whether there is any ill-effect on the environment or whether the subdivision contributes to the preservation of the environment
- Health: whether the subdivision is conducive to the health of those affected
- Traffic: whether the subdivision creates or abates traffic problems
- Land services: whether the appropriate land services such as electricity, water, sewerage, kerbing, guttering, tar sealing, draining and street lighting are available
- People services: whether the subdivision provides or is serviced by people requirements such as schools, churches, shopping centres, transportation, parks and playgrounds, recreational facilities, hospitals and fire brigade
- People capacity: whether the environment and services can cater for the number of people expected to occupy the subdivision

- Standardisation: whether the services provided such as electric voltage, waterpipe sizes, street width, street paving thickness, kerbing, guttering and land sizes are of standard quality for the number of people per area.

## **ZONING POWERS AND PRACTICE**

Every state has the power to protect the general welfare, health, safety and morals of its citizens. Zoning regulations are an exercise of their power. There is a state body that is charged with the task of planning each state's development. Local governments usually define and regulate the zoning of land within each local government area. These plans are submitted to the state body and any departure or improvement is done under the guidelines or with the approval of the state authority. On certain minor details, the local government has leeway to exercise its judgment. However, the powers or regulation of other government bodies such as water and sewerage, electricity and main roads must be taken into consideration. In some cases, such as for heights of buildings, the Civil Aviation Authority must also be consulted.

## **HISTORICAL BUILDINGS**

The National Heritage Act (Cth) has empowered the National Trust to identify and preserve historical buildings. The reason was to preserve some of the historical buildings of our young country. Under this Act, many historical buildings have been refurbished and sometimes included in their restored elegance in large developments. It is important for real estate agents engaged in development, valuation or sales to know and identify the buildings classified by the National Trust in their area of operation.

## **SUBDIVISION PRINCIPLES AND PRACTICE**

The following principles must be considered when contemplating subdivision:

- whether the subdivision would harm the local ecology. An environmental impact study is required. This can be carried out by professionals if necessary.
- whether the subdivision is out of character with its surroundings. A public relations study and programme should therefore precede each subdivision of importance.
- whether proper water, sewerage and drainage is available, or could be provided. Developers should consult with their state water, sewerage and drainage authority. At times, imaginative solutions can be conceived, such as use of artesian well or bore water.
- whether electricity is available or could be provided.
- width and thickness of road surface and type of surface required. Whether kerbing and guttering are required and whether footpaths are to be surfaced.
- if the subdivision is large enough, whether enough land is available for a neighbourhood or regional shopping centres, whether there is enough land available for schools, reserves, open space, playgrounds and playing fields.

## **STAGES IN DEVELOPING A PROPERTY**

The following stages are usually followed in developing a property.

- (1) Enquiry Stage. Determine from a reading of the local planning regulations whether the property can be developed as envisioned. Then approach the local planning authority for informal talks on the feasibility of the project. The help of other state authorities may be enlisted.
- (2) Acquisition. If adjoining properties need be acquired, conduct a programme of obtaining options to purchase these properties at a certain price and date.
- (3) Initial Plans. Enlist the services of a surveyor and if necessary an architect to draw initial plans of the development.
- (4) Environmental Impact Study. Armed with initial plans, employ professionals to conduct an environmental impact study.
- (5) Public Relations. Enlist the help of professionals to present the proposed development to the public.
- (6) Final Plans. Submit final plans to the local government authority for approval. Usually, the authority will consult other state authorities as required. However, the developer must be prepared to seek advice and alter the plans as required.

## **Development by Stages.**

Large developments are usually done by stages for the following reasons:

- A large amount of capital is required. To aid funding it is important to realise profit in stages as the development progresses.
- Marketing strategy: in order to maintain price levels, it is important not to flood the market. Some parcels will undoubtedly be easier to sell than others and it is important not to leave much product unsold for any length of time.
- Some parcels of land do not become valuable until later in the development. For example, only a neighbourhood shopping centre may be required in the early stages of a subdivision. However, later on, land for a regional shopping centre would become very valuable real estate.
- In a large subdivision, it is sometimes practical to donate land for a church and school complex on the condition that they are built within a certain time schedule. These facilities will attract purchasers.
- Dedicate land unsuitable for building to the public reserve. In a residential subdivision a certain percentage of land must be dedicated to public reserve. Much of this land is gullies, filled land and adjoining creeks and waterways. Land adjoining waterways has the tendency to stay green and enhance the general environment.

## **FINANCING SUBDIVISIONS**

Banks, finance companies, building societies, merchant banks and at times, even development banks, will finance land subdivisions given the right economic climate. At times, development banks will enter the subdivision project on an equity or profit-sharing basis. Methods of financing subdivisions are limited only by the imagination. These include delayed settlement of land acquisition. In order, to accelerate development, land is sometimes sold to builders with a delayed settlement of up to six months after expected date of completion of the building or until it is sold, whichever comes first.

At times, building societies finance the subdivision and refinance the purchasers of the end product, the new home. At other times, tie-ups are made between the government, speculative developers and builders, offering the homes under state-subsidised loans or under schemes connected with the Federal Government first home ownership scheme. A major consideration in all developments is holding costs, that is, interest paid while holding the land. The major consideration is to hold as little developed land as possible. Land is therefore developed in stages and more is developed as the stock is depleted.

## **REAL ESTATE AGENT - ARCHITECT - BUILDER - CLIENT RELATIONSHIP**

As the architect and builder are engaged as professionals by the developer or landowner, and charge a fee-for-time, so too should the agent who is engaged to prepare a marketing plan. The real estate agent's qualifications and time are every bit as valuable as those of other professionals who charge a fee-for-service.

## **BUILDING ECONOMICS**

The main criterion of building economics is market. Does a market exist for the finished product? What has been the recent history of supply and demand? What rentals are achievable at this time? If it is an office building to be leased, what is the present market? How many square metres are available? Based on local or adjoining council figures, how many square metres are planned? What are the planned amenities in these buildings? What is the estimated time of completion?

Once these questions have been answered, the developer can plan the size of building, stages if applicable, and amenities such as lifts, escalators, air-conditioning, heating, car parking, loading and unloading docks to be included; road widening; and contribution to municipal or department of main road costs, such as erection of traffic signals.

If possible, building in stages is always economical, as the completed buildings can produce income or a sales return to finance the succeeding stages of development.

Quality of construction will always depend on how long the building is expected to last in order to serve its purpose. At times a shopping centre is built of relatively cheap materials on a single level. Once the centre becomes popular, which may take several years, the temporary construction can make way for multi-storey development of more permanent material.

## **CLASSIFICATION OF BUILDINGS**

Buildings of more than three storeys require a lift and are classified as high rise. Below this, buildings are classified as single level, two storey or three storey. At present, buildings are of either steel frame or prestressed concrete construction and are sometimes loosely classified according to class of construction. The latest modern buildings using the best construction materials are classified as first class buildings. Those with less than first class construction, for example without air-conditioning, are looked upon as second class, while the cheapest buildings such as a single storey constructed of timber would be considered third class. Usually, class of building is important when advertising a first class building for sale or lease.

## **SUBDIVISION APPROVAL PROCEDURE**

The first step in obtaining subdivision approval is to have an informal conversation with the local Town Planner, who may immediately present you with some negatives; for example, the land to be subdivided slopes downhill into a long row of houses, and subdivision will not be approved unless it is shown that storm water can be drained from the land. This may necessitate purchase of one of the houses downhill from and adjoining the subdivision in order to drain water into the nearest stormwater pipe, or at least negotiating to pay one landowner for construction of a drainage easement through his or her land.

Once the negatives have been cleared, a surveyor is called in to draw plans of the subdivision. These are presented to the local council for approval. The plans are then advertised by the council to elicit local residents' comment. Objections on serious grounds are considered. The draft plans are then passed through a committee. If approved by the committee, the plans are then placed before the entire local council for approval.

Upon approval, final plans called 'line plans' are prepared by the surveyors and sent to the Registrar General as a Deposited Plan. Each lot is then given a Volume, and a Folio number and registered with the Registrar General. Each lot is also given an individual Certificate of Title showing the owner, a technical description, an outline of the land boundaries in scale and a list of any encumbrances. The land is then ready for sale.

## **AGENCY IN RELATION TO NEW HOMES**

A real estate practitioner may be an agent for the sale of three classes of new homes according to the intention of the builder. The first type is where the builder builds a certain number of houses in a subdivision as exhibition homes. The village is planned so that prospective homebuyers walk through an open plan office serviced by salespersons, on the way into or out of the village. Any prospect wishing to buy a home selects a certain design. Sometimes, the homes will be built only on the developer's subdivision land. At other times, purchasers must select their own land. In selling homes based on exhibition types, the agent must ensure that the builder will comply with the Trade Practices Act 1974, particularly Section 72 (editor's note – this law has been updated but remains essentially the same requirement), which states that the finished product must correspond with the sample in quality. At other times, a builder may build a home in the hope of finding a buyer on completion. These are commonly referred to as 'spec homes'. Some builders are very experienced in the requirements of the market. Others are not. It becomes the duty of the agent to advise these builders as to what is required by the market, particularly if the builder hopes to continue in the speculative building trade. If you become an agent for such a builder you must ensure that the finished product will comply with federal, State and local laws and regulations.