

# **S U B M I S S I O N**

## **PLANNING & ENVIRONMENT ACT REVIEW**

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**Community Based Organisation**  
**Network of 150 plus Resident Groups across City Coast and Country**

## **INTRODUCTION**

***PLANNING BACKLASH Inc*** is a network of Victorian Resident Groups linked together by opposition to the current State Government Planning Policies.

**We believe** that Councils, not controlled by government politics, should work with their communities in a transparent way to develop planning principles. We do not agree with the increasing number of government interventions.

**We believe** that there should be more prescriptive rules for planning, not superimposed by the State, but developed and agreed to by the community.

**We believe** that Council decisions that are made in accordance with Council Planning Policy should not be overturned by VCAT, they should be only able to review if Council has followed its own rules. Currently they have become a de facto planning authority.

**We believe** that VCAT appeal process must be independent of government and the planning and development industry, as it is our belief that VCAT currently heavily favours the development industry.

**We believe** that it would be preferable if the Tribunal were legal and independent, as planners and architects seem to be too subjective.

**We believe** that the discussion paper wants changes that would exclude the community from the planning process and this must not happen. This government talks democracy but these actions would be against democracy.

#### **YOUR SECTION 4 OBJECTIVES**

1. We do not agree that 'housing affordability' has any place in the planning process. This is subject to market forces and that is where it should stay.
2. We believe that health and wellbeing issues should be included.
3. We believe that heritage and landscape and culture should be included as it is important to prevent sensitive areas being destroyed or damaged by ruthless developers.

## **YOUR SECTIONS 5 & 6 PROCESS**

### **Permit Process**

At the moment it is unsatisfactory as it assumes that 'one size fits all'. The Process should take into account the differences in size and complexity of applications. Minor applications are easily dealt with in the prescribed time of 60 days, but that is quite impossible in complicated applications. This 'failure to determine' factor should go and adequate time should be allowed for complex proposals.

The present situation allows the developer to declare 'failure to determine' and go straight to VCAT with the full expectation that they will get it approved there because of the present mindset of VCAT.

### **Lodging an Application**

At present the requirements do not allow for enough detail of information when lodging an application, and instead of being simplified should be comprehensive, especially for complex proposals.

The idea of 'pre-lodgement' is rejected totally. This would lead to loss of Council control over planning and leaves the door open for conflict of interest.

### **Notice of Application**

A resounding NO to the suggestion of three classes of notification. General notification must be mandatory. There was an attempt to bring this in in 2008 with the New Residential Zones and was rejected by the public and has been dropped in the current draft of the NRZ. Don't try to bring it in by this, another door.

We believe that wider notification should be in place for wider interest proposals, nothing must be diminished.

## **Objections**

Each objection is entitled to be properly considered by the Council if they are handled according to the specifications as set out. All stakeholders must have opportunity to be involved in the appeal process and be advised of the decision and reasons for that decision. This for the sake of openness and transparency.

## **Responsibility of the Applicant**

The whole application process would be faster if the applicant obtained all the necessary information before lodging the application. Councils often are accused of being too slow whereas if the applicant obtained all necessary information ahead of time it would move much faster.

## **Enforcement**

This should be carried out properly and there should be no such things as retrospective permits. That makes a mockery of the system and is often abused. If built not according to the permit then it should be demolished and this should be spelt out clearly on giving the permit.

## **YOUR SECTION 7 PLANNING SCHEMES AND AMENDMENTS**

The long delays with Planning Amendments are entirely the fault of the Planning and Community Development Department. Councils and their communities spend sometimes 2 years working laboriously to prepare a Structure Plan or a Neighbourhood Character Study and it is sent to the Minister for permission to advertise it to the community for comment. It can sit on the Ministers desk for 2 or more years just for permission to advertise it. Then sometimes when they do come back it is to say, no, there is not enough development.

This is just to advertise it. This is a very poor system and does not seem to be taken seriously by the Department and Councils are blamed whereas the fault is squarely with the PDCD.

We do not agree at all with pro forma objections being ignored or discarded. People do not sign those unless they understand what they are signing. It is not easy for some people to cope with a proper submission and when they agree with the wording their signature should be taken seriously. Otherwise it is against natural justice.

It is absurd to say these add to the cost. They also have the right to be heard.

## **YOUR SECTION 8      SIGNIFICANT PROJECTS**

This is an absurd situation where the Minister can just call things in at whim, sometimes on the pretext of saying they are of State Significance. This usually appears like an excuse, as in the case of Stocklands Tooronga which was given to the developer against the council, the entire community and even the appointed Panel. Point in case, this development started and now is totally stopped as they have not been able to sell their highly priced apartments and instead now are trying to sell offices. Obviously the Ministers decision was a flawed one and taken without proper consideration of the facts.

Therefore, it is not a good idea for the Minister to have too much power as often his advisers have a biased view. The wisdom of the crowd is much safer, eg the community.

Let us not move towards more power to the Minister. This leads it wide open to abuse. We believe that the Minister's power should be curtailed not extended. We believe there are many cases of abuse of power, eg the one being investigated at present by the Ombudsman, Kew Cottages.

Then there is the case on the 1<sup>st</sup> May 09 when the Minister called in River Street South Yarra, approved by VCAT for 12 storeys as a maximum, applying to council for 16 storeys, refused and again back at VCAT and called in by the Minister before the hearing and approved at 16. This is clearly against the spirit of the law, as was another call in by the Minister in South Yarra of an approved building that started building outside the area of the permit and when told to stop by the council was approved by the Minister. There are many examples like this that show clearly the Minister's power need curbing not extending.

It there is to be a framework re significant sites, this must be established by the community and not at the whim of the Minister. There should be a panel made up of professionals and community and it must be free of political interference. There is too much possibility of corruption unless there is a transparent system.

The Minister's intervention power must be strictly prescribed and under legal review.

## **YOUR APPENDIX 3      ACT TECHNICAL ISSUES**

### **COMPULSARY ACQUISITION**

The second item on this page is the most worrying of all the changes suggested in this document.

It quite clearly talks about increasing the Ministers power to take over land from private ownership for development, eg Activity Centres or obviously anywhere. They refer to Sections 171 and 172 in the Act.

This power must never be given to any Minister. Property rights are sacred in our country and that must be maintained. Otherwise we are in a communist or fascist country, where they regularly bulldoze properties to make way for massive high rise blocks of flats. In fact this very issue was floated by Jason Black head of the Planning Institute last week when he talked about bulldozing houses on large blocks in leafy green eastern suburbs. Of course he is not a government spokesman but I do know the government does listen to the Planning Institute and ideas like this start to get a life of their own once they are aired.

We do not want power to the Minister increased as it would fall into the hands of unelected and unaccountable nameless faceless planning bureaucrats in the Department of Planning.

### **PAGE 61 ITEM 3    SECTION 16**

Refers to Section 16 in the Act. This Section 16 can be abused as it can be used to get around the Act and ignore Parliament, as was the case with the Barwon Heads case, where the Minister was able to ignore a democratic vote in the Upper House and approve something that had been turned down by Parliament. This is an abuse of the Act which gives too much power to the Minister. This Section 16 should be severely curtailed to avoid any repetition of this type of occurrence.

## **CONCLUSIONS**

This Review of the Planning Act must not be used to fast track development in this State that we will end up regretting. This Act has worked well and any changes must be considered with great caution. Rather than make mistakes with changes it would be better to leave it alone.

The Minister must not be given any more power. Power is dangerous in the wrong hands. It can lead to loss of democracy and corruption. It would give too much power to the unelected people behind the Minister.

There should be no reduction in Council authority in Planning.

It is not true that too many planning applications go to VCAT. Quoting Boroondara Council, who probably send more to VCAT than any other Council, in the last calendar year they had 1,342 applications, only 142 received objections and 201 applications went to VCAT. So the vast majority or 1,141 went straight through.