

Modernizing Victoria's Planning Act

Submission from Boroondara Residents' Action Group

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INTRODUCTION

Boroondara Residents' Action Group (BRAG) is a community organization with a paid up membership of over 500 residents and others, formed to *“protect what we love about our neighbourhood”*.

A council conducted survey indicated that 83% of residents in our area support BRAG's stance on planning issues and a readers' response survey by the local paper, Progress Leader, confirmed this support.

The members of BRAG believe that planning outcomes should be controlled by Council, appropriately informed by relevant community stakeholders and planning principles. We also believe that the increasing number government interventions are abhorrent.

Councils and their communities need to be able to rely upon prescriptive guidelines that have been through a democratic consultative process for inclusion in their planning policies.

Councils' decisions should not be subject to routine over-rules by the undemocratic, “captive” VCAT process which is heavily influenced by planners-for-hire who rely upon the development and construction industry for their livelihood.

However, we do accept and advocate the need for an appeal process that is independent of government and the planning industry.

While it is beyond the scope of this submission to propose a detailed structure, we observe that the current make-up of the Planning & Environment List of VCAT is subject to too much tunnel vision and decision-making that heavily favours the industry, to the detriment of other legitimate interests and views.

It seems to us that Tribunals made up predominately of independent legal professionals would make better and more democratic decisions.

We repeat that any appeal process must be, and seen to be, totally independent of the planning industry and the government.

4. OBJECTIVES

BRAG rejects the notion that housing affordability should be included in the planning process although all development considerations should include health and wellbeing matters and we do accept and insist that specific objectives relating to heritage and culture should be included to ensure protection against unacceptable development in sensitive areas.

5 & 6. PROCESS

This section deals with streamlining applications. BRAG is firmly of the opinion that a more comprehensive application form could allow for differences in complexity of a proposal.

The discussion paper goes on to suggest a system of pre-lodgement certification by private practitioners. We say that this would lead to diminution of councils control over planning and this notion is rejected.

The idea of cutting red tape by having three classes of notification is rejected. We say that general notification must be mandatory in every case involving multi –dwelling, commercial, mixed use or industrial developments.

We believe that triggers for wider notification could be included where development sites are of wider community interest .

With regard to “objections” we say that this term should be replaced with “submission” and these submissions could be specific to the submitter or could be related to broader community concerns.

Planning decisions must remain open and as inclusive as possible especially in view of the government’s appalling implementation of Melbourne 2030 and the exploitation by some developers in their applications to council and appeals to VCAT. The current Act requires all “objections” to be considered by the responsible authority. However if the responsible authority determines to reject an “objection” it should be on properly considered grounds, whether substantive or procedural ; e.g. the objector does not disclose a proper basis for refusal, the objector does not have standing or the objection is out of time.

The public interest is best served by affording all stakeholders reasonable opportunity to participate in the appeal process and be advised of the grounds on which the objection was considered and finally determined. Anything less would make the review process open to abuse.

7. PLANNING SCHEMES & AMENDMENTS

Criticism of “pro forma” objections is not relevant. The fact that some responses are pro forma or raise common or similar issues is not a valid reason to disregard them.

To say they can add significantly to the processing costs of planning authorities is a specious argument. It is generally very difficult to engage community in planning or development issues even when their own interests as community stakeholders are affected.

To devalue or discount submissions of those who do get involved is a denial of natural justice and will inevitably lead to unrepresentative decision-making and lack of transparency.

We say that this happens far too often especially at VCAT, where pro-forma Form B’s are virtually ignored.

8. SIGNIFICANT PROJECTS

The discussion paper points to the lack of formal criteria about which projects are of state significance thereby allowing the Planning Minister to intervene at VCAT at whim or “call in” a particular project; and suggests that such criteria would make the decision making process more transparent.

Rubbish! The current provisions of law relating to the exercise of ministerial power are totally inadequate and the scope for abuse is very high. There are many instances of abuse of ministerial power especially recently, e.g. Kew Cottage site, Tooronga Village site and others in Boroondara , Collingwood and elsewhere. The latest on developing along tram routes irrespective of council or resident views is a classic case of Ministerial power in over-drive.

There must be a specific, transparent and public process for assessment of state significant projects and the exercise of Ministerial intervention must be strictly prescribed and subject to legal review.

FINALLY

WE note the potential action for consideration on page 59 indicating the desire to extend the powers of the minister under sections 171 & 172 of the Act.

We say that the Minister already exercises such power too often and unaccountably, to the detriment of many local communities and their elected local government representatives and we demand that any extension of ministerial power be specifically rejected.

To provide the Planning Minister with unfettered power would result in more dictatorial government action and put much of the decision making in the hands of the faceless and unaccountable bureaucrats in the Department of Planning.

Jack Roach
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Boroondara Residents' Action Group.