



BLACKBURN VILLAGE RESIDENTS GROUP INC.

Protecting the distinctive features of Blackburn since 1987

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Blackburn Village Residents Group Inc (BVRG) Submission on the Discussion Paper on Opportunities to Improve the Planning and Environment Act.

INTRODUCTION

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The Planning and Environment Act review provides an opportunity to freshen the existing Act not replace it. In our view, the current Act generally serves the community well and does not need replacing. Opportunities that this review presents include:

- Opportunities for better integration of the Planning Act with other land management acts such as Environment Protection, Crown Land Management, Regional Development, Road Management, Transport etc. by adopting a more holistic approach.
- Ensuring that governance issues are addressed.
- That ministerial power does not bypass the planning process.
- The present and long-term interests of all Victorians and communities, for whom the act is designed, are maintained and that their voice and rights to participate in the decision making process are not diminished.

The Blackburn Village Residents Group Inc (BVRG)¹ was established in 1987 to represent the interest of residents in planning matters. BVRG have over the past 22 years represented community views in planning related matters in various forums.

The Planning Act has not always resulted in outcomes that the community would prefer but the process, supported by the Act, and the checks and balances it provides, ensures that there is sufficient scope for review which, with other mechanisms in place that temper extreme planning proposals generally result in good outcomes.

¹ BVRG formed in 1987 to promote the interests of residents in planning issues affecting Blackburn. BVRG has participated in various planning working groups and committees of review at State and Local Government level and made submissions to a number of Planning Tribunals. The local community has long identified with the distinctive character of Blackburn, a predominantly residential area in which the built environment is typically subservient to vegetation, notably trees, on surrounding private and public land. BVRG makes submissions to various state and local government reviews relating to planning as well as representing the community at VCAT, planning amendment and community forum hearings.

COMMENTS ON DISCUSSION PAPER

Our comments related to particular sections of the discussion paper are detailed below:

1.2 Scope of the review – a new car or a major service?

A major service is required but there is no need for a completely new Act. The main structure of the current Act and its contents has generally proved to be robust and effective.

3.1 The 1987 position

We agree that most planning, as such, does not require legislation and that appropriate subordinate instruments such as Planning Schemes provide for more flexibility. The Act should be primarily a directive as to use and development of land where property rights are affected.

3.2 The current position

The Act should only state desirable objectives and should not determine which objectives take precedence or by what measures they are assessed. What constitutes a ‘pleasant environment’ and ‘sustainability’ can only (and to a limited extent) be determined by VPP’s and/or Planning Schemes e.g. ratio of buildings to open space, permeability etc. There will be a need for these to be supported by building or other regulations, which have a direct bearing on those aspects of development.

4.0 Are the objectives of planning in Victoria still relevant?

Objectives should be retained in the Act and they continue to be relevant. Objective g) could be modified to read: ‘(g) to balance the present and future interests of all Victorians including sustainability and the impact of climate change’. For example, affordability is a desirable outcome but is driven by market forces and should not be an expectation of Act.

6.1 One size fits all?

Currently only one permit process applies to all applications, irrespective of size, complexity or significance. A new “short” process is suggested, subject to “triggers” and definition of the classes of development that could be covered. Such a reform should only cover minor, domestic and exclusively private, single residential applications; and definitely not multi-dwelling, commercial, mixed use or industrial developments.

6.2 Lodging an application

The Act should only state principal requirements of the Permit applications process. Amendment to provide the ability for a Responsible Authority to reject an application if it is incomplete is supported. More prescriptive criteria would need to be developed in the Planning Schemes to provide more certainty. The onus should be on the applicant to ensure that the application is of a suitable standard so that planning staff are more effectively utilised.

6.3 Notice of an application

Streamlined notices are proposed, according to the class of notification, namely
Class 1 – No notification
Class 2 – Notification to adjoining/opposite owners only

Class 3 – General notification

We query the proposition that the Responsible Authority should have more discretion in deciding who should be notified.

A Class 3 general notification should be mandatory in every case that includes multi-dwelling, commercial, mixed use or industrial developments. Any exemptions applied by the Planning Authority should be publicly explained and recorded.

6.4 Objections

The Act currently requires all objections received by the Responsible Authority to be considered. The question is asked whether the Responsible Authority should have greater discretion to reject an objection. The paper also comments that some objections do not properly address how the objector would be affected by the grant of a permit.

This should not be a reason to scrap the requirement to consider each objection. If the Responsible Authority determines to reject an objection, it should only do so on properly considered grounds, whether substantive or procedural: e.g. It is insufficient to state that an objector doesn't have standing, or the objection is out of nominated time, or the objection does not disclose a proper basis to refuse the application. The public interest is best served by affording all stakeholders reasonable opportunity to participate in the review process. In all instances, the objector must be notified of the grounds on which the objection was considered and finally determined. Anything less would make the review process opaque and open to abuse.

6.6 Making a decision

Section 60 of the Act sets out all the matters to be considered when the responsible authority assesses an application. It poses the question whether the Act should provide for a “clear hierarchy of policy documents” to be considered and for different decision-making considerations for different classes of applications.

This must be viewed in the light of the defective implementation of *Melbourne 2030* and the exploitation of that policy by some development interests who apply it selectively in order to support inappropriate high-density proposals, without allowing for the other balancing principles set out in the policy blueprint.

If the “clear hierarchy of policy documents” means that those such as *Melbourne 2030* can be selectively used to override local objections, then we cannot support the proposal.

6.8 Amending a permit

Amendments to a planning permit are seen to be in need of streamlining. We contend that the rigorous process of assessing a planning application and, if appealed to VCAT, the detailed reassessment of that application provides ample opportunity to make amendments along the way. VCAT and the responsible authority should have limited powers to amend a granted permit. Granted permits should have been the result of prior consultation or mediation forums therefore the opportunity to make amendments to a granted permit should be limited, otherwise deliberate ambit claims will be made. Unless there are strong grounds for not doing so the formal planning application process should begin afresh with revised plans.

6.9 Enforcement

The Act should include requirements for mandatory enforcement and penalties.

7.0 Planning schemes and the amendment process

The Amendments process is basically acceptable but safeguards are needed against bypassing by fast track/Ministerial interventions, which override fundamental safeguards such as due notice and exhibition, objections and independent review.

In the same way we suggest the fundamental safeguards provided for in the Amendment process, even if modified, should apply to those special categories of land defined in the Act as distinct from municipal districts. This would allow excision from the Act of those detailed clauses relating to the operation of areas such as 3A Upper Yarra Authority, 3AA Green Wedges, 3AAB Growth Areas, 3C Melbourne Airport, 3D Williamstown Shipyard etc.

It seems that, while their existence should be 'enabled' by the Act it should not be necessary to specify their operation in the present amount of detail. Where process varies from the norm this should be incorporated in some related legislation or instrument if not in each separate type of 'special' Planning Scheme. It is acknowledged that each of these 'special' Planning Schemes would need cross reference to those 'municipal' Planning Schemes with shared interests over specific areas of land – and vice versa. The relevant Schemes would also need to establish precedence and priorities etc. But at least these provisions would not be 'cluttering' up the Act.

7.6 Submissions for planning scheme amendments

The Discussion Paper points out that there is currently no requirement for a submitter to show how they are specifically or directly affected by a proposed amendment to a planning scheme. It also raises the problem of irrelevant submissions and comments that these are "often 'pro-forma' letters of objection.

The fact that some responses are 'pro-forma' or raise common or similar issues is not a valid reason to disregard them. To suggest "they can add significantly to the processing costs of planning authorities" is a specious argument. It is generally very difficult to engage the general community in planning and development issues, even where their own interests as community stakeholders are affected. To devalue and discount the 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.

8.1 State Significant projects

The Discussion Paper points to the lack of formal criteria about which projects are of State significance, thereby allowing the Minister to intervene and 'call in' a particular project; and suggests that such criteria would make the decision-making process more transparent.

The current provisions of the law regulating the exercise of the Minister's powers are totally inadequate and the scope for abuse is very high. Projects in Boroondara and Collingwood have been inappropriately 'called in'.

There should not be a specific planning process for the assessment of State-significant projects. The exercise of Ministerial intervention must be strictly prescribed and subject to review by the courts by any interested party.

9.0 Governance and decision-making

The introduction of accreditation for planners to encourage professional determination of permit applications should not be permitted nor should the role of private sector professionals in development assessment be expanded. The introduction of private sector professionals adds another layer that needs supervision to ensure compliance and significantly weakens the link between authority and responsibility.

10.1 Section 173 agreements

The options recommended by the 2004 expert group are appropriate, provided the instrument has more certain validity.

10.4 Cash-in-lieu schemes for car parking

The introduction of a simplified system for seeking cash-in-lieu payments for the provision of car parking would need to be accompanied by transparent accounting regulation that ensures funds collected were used for their intended purpose.

CONCLUSION

In conclusion, the review of the Planning Act provides an opportunity to freshen the existing Act.

The review also provides an opportunity for better integration of the Planning Act with other land management acts such as Environment Protection, Crown Land Management, Regional Development, Road Management, Transport etc by adopting a more holistic approach.

Care however must be taken to ensure governance issues are addressed, that ministerial power does not bypass the planning process and that the present and long-term interests of all Victorians and communities for whom the Act is designed do not lose their voice and rights to participate in the decision making process that impacts their amenity.

We look forward to participating in future consultative processes.

David Morrison
President
Blackburn Village Residents Group
25 April 2009