

# Residents' Voice



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GPO Box 5042 Melbourne 3001 \* (03) 9513 9674 \* [www.sos.asn.au](http://www.sos.asn.au)

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President's Address

Dear Member,

Victoria no longer has real urban planning - we now have **knee-jerk adhocacy**:

- political donations linked to favoured developers
- unfair and poorly structured Growth Areas Infrastructure Contributions draft legislation
- undemocratic Development Assessment Committees and open-slasher Activity Centre zones mooted
- Urban Growth Boundary set in concrete one day but with new land releases the next!
- continued delays with Myki and rail reforms
- unprecedented number of ministerial call-ins with little transparency or justification
- no genuine consultation with councils or the community over planning changes...

Recent planning "reforms" have seen less accountability and less transparency but more power for the minister, more fast-tracking, more deregulation....

But less regulation and more exemptions can't help to meet worsening challenges like climate change, peak oil and lack of infrastructure like community facilities and a properly integrated metro-wide mass transit system. That will take a significant change of policy direction and tighter rules to direct development and infrastructure to where it's most needed and most appropriate.



Possible extension of the Urban Growth Boundary (hatched areas) - not on ecological grounds but to meet short-term housing industry demands, despite speculative "landbanks" held by developers in some residential areas to maintain real estate prices [see <http://www.theage.com.au/victoria/huge-land-bank-puts-squeeze-on-buyers-20100317-qflq.html>]

The irony is that only a few months ago Madden was put in charge of the new "Respect Agenda", to counteract racism and violence by inculcating more mutual respect in the community.

Yet this minister is arguably the least respectful and the most manipulative and arrogant when it comes to listening to the community, as so well demonstrated by the leaked email from one of his ministerial media advisors in late February and the subsequent Windsor hotel decision (see media links at [www.sos.asn.au](http://www.sos.asn.au)).

What's missing (particularly in the Draft Planning Act Bill (see *Planning Act Review*, page 1) is a future vision for our city that comes to grips with the need for environmentally sustainable development (see *the Age*, <http://www.theage.com.au/opinion/politics/lost-in-a-state-of-confusion-20100404-rlk1.html>)

A first step should be a democratic City Plan for (continued on p.2)

Melbourne, devised in conjunction with academics, the community and professional expert groups via an independent Inquiry similar to the SMH Independent Public Transport Inquiry just completed in Sydney (see story, page 4)

Ian Wood, President

PS: Check out the Project Melbourne series of Age articles:  
<http://www.theage.com.au/victoria/projectmelbourne>

## Planning Act Review: **Draft Bill flies in the face of community and expert opinion**

Late last year the Draft Bill to amend the Planning and Environment Act was released for comment over the holiday break - a brief and inappropriate consultation period, especially for councils.

Despite the fact that the Act is almost a quarter of a century old and needs updating to remove loopholes and anachronisms and reflect the environmental imperatives of the 21<sup>st</sup> century, the suggested changes merely weaken existing controls.

The Draft has taken no account of community criticism; instead, the government has continued its focus on deregulation.

What's also missing is any future vision for the sustainable development of Melbourne - there is no focus on environmentally sustainable development and design.

Ministerial discretion, already excessive, is increased. It is totally inappropriate that a developer should have the power to prepare amendments to planning schemes. Council and Community involvement is reduced, as well as residents' rights of notice and review.

In general, there is a lack of transparency and accountability. For example, a new "code assess" process is proposed for non-contentious, low-impact types of permit applications. But unelected council CEOs will decide these applications, despite having no experience or training in planning. Permit applicants will be able to appeal to VCAT if there's no decision within 14 days, if the application is refused, or if they don't like the permit conditions (as at present). But there will be no parallel rights of review for the public!

The proposed changes regarding State Significant Development read like something Stalin might have come up with - no criteria, no transparency, and no obligation to publish panel reports. Residents will not be able to appeal to VCAT for review, cancellation or amendment of permits for state significant developments.

## VLGA & MAV not happy with Planning Act Review

"The Victorian Local Governance Association is disappointed that the focus of the review has been on efficiency and minimising planning bureaucracy; and negligible attention has been afforded to meeting Victoria's environmental challenges and issues of sustainability. Having been involved in many previous reviews, the VLGA expresses disappointment that the systemic changes and improvements suggested in previous reviews have been ignored by this Review."

"There is considerable 'unfinished business' from previous reviews that can be implemented without legislative amendments and with minimal disruption. We note that most of these reviews or inquiries are as yet incomplete."

Bill McArthur, the President of the Municipal Association of Victoria, isn't happy with the Draft Bill either:

*"Of primary concern is that the Exposure draft fails to acknowledge*

*and strengthen local government's roles in planning, creates risk and uncertainty for local government and fails to take into account many local government submitters strong views."*



Bill McArthur, MAV President

*"In comments received by the MAV from the sector, there has been substantial concern that a compelling case for such significant reform has not been made and the benefits to planning outcomes in Victoria are questionable. The cumulative effect of the proposed reforms move towards a more centralized and directive system that will increase uncertainty, potentially reduce third party involvement, provide unnecessarily for private interests and weakens the role of local government."*

*"Is it of grave concern that the 2006 Labor election platform - of planning in partnership with local communities and supporting local government - does not accord with the Exposure draft. At the time, the ALP policy stated the need to work with local government to improve planning and that '...clearly the power of local planning decisions rests in the hands of local government. Councils are democratically elected and best placed to reflect the aspirations of their communities.'"*

## Councils also critical of Planning Review

Hume City Council has summarised the frustrations of many councils:

"These changes take away local government's role in the strategic planning process significantly reducing

the value of local government having a Municipal Strategic Statement or undertaking strategic planning."

"This further reduction of planning powers follows other areas where local government is no longer the planning authority:

- \* Growth Areas: the GAA is now the Planning authority for Precinct Plans
- \* Social Housing & Education Stimulus for Schools: the Minister is the Planning Authority - consultation not required with adjoining residents
- \* Central Activity Districts: Development Assessment Committees are to be the Planning Authority
- \* Projects of Merit: the Minister has called in a number of these. "

Source: VLGA President's News:  
<http://www.vlgapresident.blogspot.com/>

## DPCD biting off more than it can chew.....

Local government professionals are concerned that the state planning department is taking on too many reviews of planning regulations while not being able to deal with what it's already got on its plate.

The Department has failed to finalize a number of reviews:

- Planning & Environment Act
- Melbourne@5million
- Retail Guidelines (Feb 2009)
- Residential Zones (Feb 2008)
- DACs (Development Assessment Committees, May 2008)
- Activity Centre Zones
- Inquiry into Agribusiness in the Green Wedge (Oct 2008)
- Review of Parking Ratios (Aug 2006)
- Planning & Subdivision Fees Review
- Advertising guidelines (2006)

The only reviews finalized so far are:

- Inquiry into Impact of State Govt Decision to Change the Urban Growth Boundary
- Review of Precinct Structure Planning Guidelines (Oct 2008)

## VCAT Review - a wasted opportunity for needed reform

The long-awaited VCAT Review Report was finally released in late February after three months on the Attorney-General's desk.

It makes some timely and useful recommendations, but they're focused mainly on operational and administrative issues, including more staff and even a new logo.

Unfortunately, the Report hasn't come to grips with community complaints about many aspects of the VCAT process and there's no mention of an earlier suggestion for a possible ongoing advisory committee of various stakeholders, including community representatives

Not surprisingly, one controversial recommendation the government will implement immediately is to fast-track cases of projects worth over \$5 million, reflecting the controversial trend to "minimise red tape".

But at least the Report partly addresses the widely-acknowledged lack of consistency in VCAT decisions by recommending an internal appeals and complaints process, continuing "in-service training" and consideration of the performance of Members prior to their re-appointment.

The other areas of negative feedback the report responds to are unequal access for minority groups and for those outside the metro area, and perceptions of creeping legalism that have undermined public confidence in the tribunal. There is also more emphasis on dispute resolution.

But most key issues that concern the community have not been addressed, although VCAT head Justice Bell publicly identified some problems and possible solutions last year, including limiting the submission of amended plans and recommending that the government impose more

prescriptive planning scheme standards to reduce inconsistency and bias in VCAT permit decisions (a major step which would also have the same positive result for council assessment of permit applications). (<http://www.theage.com.au/national/vcat-chief-admits-faults-calls-for-overhaul-20090811-egz3.html>)

### **Key issues that still remain unaddressed include:**

- \* the widely-acknowledged bias of expert witness reports and testimony

- \* disproportionate weight given to Delegate (council) Reports despite the fact that the Auditor- General's Office pointed out in May 2008 that in a staggering 78% of council permit assessments, "officer reports did not give adequate consideration to matters specified in the Act, planning scheme, or both".

- \* no requirement for Members to give priority to government-approved local variations to zones and overlays which have been incorporated in planning schemes specifically to modify state policy to reflect local conditions (this would back up statutory Rescode requirements that are frequently ignored- *see box below*)

### **VCAT should support local variations in zones & overlays....**

Zones & overlays include Schedules that can incorporate government-approved local variations reflecting the local municipal land use context (eg, larger backyard dimensions under the Residential Zone)

**The introduction to Rescode (clauses 54 & 55 in planning schemes) states clearly under "Requirements" that these local variations take priority over the usual Rescode requirements:**

*"If the schedule to a zone specifies a requirement of a standard different from a requirement set out in this clause, **the requirement in the schedule to the zone applies.**"*

- \* the right of reply for all parties at VCAT hearings (developers speak last after other parties and often introduce new information that ought to be challenged if the rules of natural justice are to be upheld)

- \* unfair different timeframes for objectors and developers in which they are able to lodge appeals

- \* curtailing substitution of amended plans; just the opportunity to do this encourages ambit claims by less scrupulous developers. Otherwise, they would have to submit more accurate and compliant plans at the start of the assessment process instead of wasting taxpayers' resources to massage non-compliant and inadequate plans through the council and VCAT process

- \* VCAT members should be required to uphold compliance with state and national standards (eg, for vehicle access and parking), and to enforce VCAT rules and processes

- \* VCAT members should be required to use more specific wording in permits ("*development must accord with approved plans*", not "*should generally accord*") - this is vital to ensure that building plans accurately reflect planning permits as legally required, and for enforcement if necessary later on.

**Overall, the VCAT Review focuses too much on bureaucratic and administrative reform and does little to resolve the legal and procedural issues that bedevil so many VCAT hearings.**

\* See the VCAT Review Report at: <http://www.vcatreview.com.au/presidents-report>

**AgePoll - HAVE YOUR SAY!  
"Is Melbourne growing too fast for its infrastructure?"**

<http://www.theage.com.au/polls/national/is-melbourne-growing-too-fast/20100330-rb7y.html>

[online poll closes Sat. 1<sup>st</sup> May]

## Community win: social impact of poker machines

The Court of Appeal and VCAT have noted the importance of community attitudes and the negative 'social impact' of poker machines in a series of interesting decisions which may make it easier to argue for wider consideration of social impact.

The case involved an application by the Romsey Hotel for poker machines, a campaign by concerned locals, an appeal by the Macedon Ranges Shire and a re-hearing.

In November last year, Justice Bell, President of VCAT, finally dismissed the application. He said that 'the attitude of the community is a factor of considerable importance.' He noted that although Romsey is not disadvantaged or specially vulnerable and gaming machine density and expenditure is below the state average, 'the idea of the gaming machines represents a major challenge to the way many in the community see themselves'.

Justice Bell found that the economic impact of the pokies would be slightly positive but the social impact would be strongly negative and thus dismissed the application.

The dismissal follows five years of legal action. In 2006 the Commission for Gambling refused the application because of negative social impact. In 2007 Justice Stuart Morris (then President of VCAT) set aside the Commission decision at VCAT and approved the application.

### **Implications for future cases**

In 2008 the Court of Appeal held that Morris had erred when he disregarded

evidence of community opposition. The Court of Appeal noted the community opposition and a survey opposing the pokies, and said there should be a proper and wide consultative process and that 'social impact' should not have a narrow focus.

See: *Romsey Hotel v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275  
<http://www.austlii.edu.au/au/cases/vic/VCAT/2009/2275.html>

## Independent Inquiry into Public Transport in Sydney - a process for a Community Vision for planning in Melbourne?

In August 2009 the *Sydney Morning Herald* launched a public inquiry into the city's transport needs. Its objective was to gauge public opinions and suggestions because it appeared that Sydney was missing out on federal infrastructure funding and that the residents were paying the price - in frustration, lost time and economic opportunities forgone, because of this lack of state government vision.

The SMH proposed rising above party politics to produce a 30-year plan allowing Sydney to make the right decisions no matter who is in power.

The inquiry acted as a full commission, with public hearings and submissions. Its scope included all aspects of how public transport services can function as an integrated

network for the future. It evaluated options against economic, social and environment goals, all based on a sustainable funding model.

For SMH coverage of this issue: [www.smh.com.au/national/transport](http://www.smh.com.au/national/transport)



**Dr Garry Glazebrook**, from the University of Technology Sydney, is one of Sydney's leading transport and land-use planners. He proposes a 30 year, \$40 billion blueprint to link the city's heavy & light rail and buses in one network including an extensive system of new mostly underground Metro trains.

## **SOS Updates...**

The SOS website upgrade is underway; find our latest planning updates and submissions, and contact us for further information: <http://www.sos.asn.au>

Also check out Planning Backlash for the latest community news: <http://www.marvellousmelbourne.org/drupal/?q=node/6>

### **SOS Committee, 2010:**

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