



# **Victorian Local Governance Association**

Planning & Environment Act Review Submission  
February 2010

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## The VLGA

The Victorian Local Governance Association (VLGA) is a unique peak body for councillors, community leaders and local governments working to build and strengthen their capacity to work together for progressive social change.

We currently have 58 member local governments, as well as approximately 180 group and individual members.

Our Vision is for Victorian communities to be inclusive, sustainable and dynamic, characterised by strong leadership and effective local governance.

We believe that transparent, accountable and democratic governance policies and practices in all settings enable citizens to create their own sustainable futures.

The VLGA has participated in many reform processes in relation to Victoria's planning system. In relation to this Review, our main interests are:

- to protect the rights of local communities to have a meaningful say in developments that affect them; and
- to ensure that more environmentally and socially sustainable developments support human habitation.

## Summary

The VLGA is not able to support the Exposure Draft for the reasons articulated in this submission. We do not believe that the proposed changes are desirable from either local government or community perspectives.

Nevertheless, the VLGA welcomes the commitment of the State Government to a review of one of the most significant legislative tools in Victoria – the Planning and Environment Act.

The VLGA was pleased that the scope of the review embraced *“improvement of the system to provide greater certainty and efficiency in planning processes”* as well as *“improvement of the Act to more effectively meet Victoria’s planning challenges into the future”* and address *“issues arising from the Blueprint for Regional Growth concerning planning for regional areas”<sup>1</sup>*.

The VLGA notes that the State Government’s response has incorporated some recommendations made by the VLGA for improving the objectives of planning.

However, the VLGA is disappointed that the focus of the review has been on efficiency and minimising planning bureaucracy; and negligible attention has been afforded in the review process to meeting Victoria’s environmental challenges and issues of sustainability. Having been involved in many previous reviews, the VLGA

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<sup>1</sup> State Government’s Statement of Government Intentions in 2009

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.

These previous reviews and inquiries include:

- Planning & Environment Act
- Melbourne@5million
- Retail Guidelines (27 February 2009)
- Residential Zones (February 2008)
- Development Assessment Committees (May 2008)
- Activity Centre Zones
- Inquiry into the Impact of the State Government's Decision to Change the Urban Growth Boundary
- Inquiry into Agribusiness in the Green Wedge (October 2008)
- Review Parking Ratios (August 2006)
- Review of Precinct Structure Planning Guidelines (October 2008)
- Planning and Subdivision Fees Review, and
- Advertising Guidelines (2006).

So as not to duplicate the efforts of others, we also note that there have been many consultations convened by the Municipal Association of Victoria (MAV), with regards to this Review. We support the MAV in their position that:

*"Despite the review of the Planning and Environment Act presenting an important opportunity for local government in Victoria, the MAV does not support the reforms proposed in the Exposure Draft unless some aspects of reform are abandoned and significant changes are made and agreed with local government."*

*"Councils do not have sufficient confidence that a compelling case for such significant reform has been made and that the benefits to planning outcomes in Victoria justify the inherent risks contained in the Exposure draft proposals."<sup>2</sup>*

In addition, the VLGA is concerned that the review has failed to meet pressing environmental challenges and offers communities few initiatives or powers to ensure that planning in Victoria addresses future challenges including:

- climate change;
- livability;
- sustainable transport;
- food security;
- environmentally sustainable design; and
- the further protection of areas of significant biodiversity.

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<sup>2</sup> Municipal Association of Victoria, Planning and Environment Act Review Exposure Draft, 2010.

The VLGA is also strongly critical of proposed amendments that dilute, rather than strengthen the role of local government in planning processes – in particular the proposal for applicants to be authorised to prepare their own planning scheme amendments.

Throughout the past two years, local governments have experienced an increase in processes that diminish their authority to make planning decisions for, and in close consultation with, their communities:

- the pursuit of Development Assessment Committees;
- an increase in Ministerial call-ins and the failure of these call-ins to give due consideration to local planning policies;
- the removal of third party rights through the Activity Centre Zones;
- the failure to devise a fair mechanism for Growth Area Infrastructure Contribution; and
- the removal of consultation processes for stimulus package developments in housing and education (without maintaining consideration for local policies)

These policies have demonstrated a shift towards efficiency at the expense of local planning responsibility.

The VLGA contends that the objective of efficiency alone should not drive planning processes, and that a sole focus on efficiency can have adverse impacts on consultation and sustainable outcomes. Failure to address these priorities demonstrates a missed opportunity for embedding these goals in Victoria's planning structures.

### **Response to the key areas of reform**

Our members have been involved in the extensive consultation on the review process conducted through the MAV. The VLGA appreciates the work of the MAV in summarising the key positions of local governments on the Draft Bill.

In addition to the comments made above, the VLGA, reflecting the views and voices of our members, makes the following additional comments on the specific components of the review.

### **Objectives of the Act**

The language of the new objectives of the Act represents a modernisation of the legislation, however, our support for the revised objectives would be conditional on the following two concerns being addressed.

## **Concerns about the diminution of environmental factors**

We believe that the removal of Sections 4 (1) (b), 4 (1) (d) and 4 (1) (e) and their replacement with “to balance environmental, social and economic considerations”; “to achieve high quality and sustainable design”; and “to integrate land use, transport and infrastructure... provision of sustainable transport” have the net effect of reducing the importance given to environmental and ecological considerations.

Moreover as there is no mechanism to enforce sustainable design, we also believe that the replacement serves limited value.

We note the MAV also raises concern about this issue (p7):

*‘Councils have expressed concern that there may be unintended consequences as legal interpretation evolves and as such further legal advice should be sought and guidance material prepared to ensure the changes do not result in a ‘downgrading’ of environmental considerations or other unintended consequences’.*

Therefore we would suggest that an alternative form of words is enacted that both strengthens the environmental objectives of the Act and defines the notion of sustainable design.

## **‘Balance’ versus ‘consider’**

The VLGA notes that a number of local governments would prefer the word ‘consider’ than the word ‘balance’ when it comes to the range of factors that a local government must take into consideration when assessing applications. Greater clarification about the interpretation of both words is required – particularly whether all issues will require consideration or just significant issues.

## **Health**

The inclusion of a reference to ‘health’ in the objectives of planning is welcomed as a significant step forward, recognising the link between health, wellbeing and the environment. However, we would argue that there is also a need to include the following wording “climate change, health and other policy related issues” in the objectives.

## **Permit processes including secondary consents & code assess**

The VLGA supports the concerns and comments of the MAV and many local governments in relation to secondary consents and code assess applications.

However, we would question why it is necessary to institute two new processes (i.e. Code Assess and Merit Assess) when many local governments already have a ‘fast track’ planning stream.

In addition, the VLGA does not support reductions to notice requirements.

As we have stated on many previous occasions, we are concerned that there is no high-level recognition of the systemic limitations that see many local governments unable to afford or attract a workforce to sustain the development load they face. We would like to see more emphasis placed on these systemic problems, as simply changing the rules may not address these challenges.

## **Planning Scheme Amendment processes**

### **Technical amendments**

The VLGA has consistently advocated for a simplified process for minor 'technical' planning scheme amendments. Local governments should be in a position to regularly update their planning schemes, and to correct minor errors and anomalies, without having to experience significant delays in the planning system.

The VLGA does not, however, support other parties being able to apply to the Minister for streamlined technical amendments as there are no suggested regulations on how such requests would be treated. The VLGA believes that the Minister for Planning should consult meaningfully with local governments **before** any streamlined technical amendments can be applied for by other parties.

### **Applicants to be authorised to prepare amendments and Ministerial powers to approve or refuse**

This is clearly the most controversial aspect of the Draft Bill, as many local governments and communities are concerned that it would profoundly weaken local planning powers.

The VLGA would argue that the proposal stands in stark contrast to the roles of local governments as stated in the Victorian Constitution and the Local Government Act as being far more than an administrative arm of the State Government.

We support the considerable opposition from many of our local government and community members to this proposal. Key concerns exist that undermine the partnership approach of the State Government to planning, including:

- perceptions of inequality, as only those who can afford to pay for amendments may expedite their proposals, yet local governments with limited resources are constrained
- the incentive for applicants to constructively negotiate with local governments is effectively removed if local governments cannot refuse to prepare or abandon an amendment

- some applicants will be tempted to simply exhibit their preferred development without any prior discussions with local governments and communities
- there is no indication of how complaints or disputes between applicants, local governments and members of the community will be resolved, and
- local governments may be placed in the position of making reactive submissions to panel hearings, rather than working co-operatively and strategically with applicants and local communities. The cost of participating in panel hearings would also escalate. Both factors would not only have an unintended impact on the quality of planning outcomes, but also diminish the standing of local governments in the community.

The VLGA is also concerned about the practical implications of applicants preparing planning scheme amendments, such as:

- the legal and privacy implications of sharing property ownership data
- the mixed signals sent by way of local governments managing the public notification and submissions processes and yet having no meaningful role in whether or not the amendment is approved, and
- the potential weakening of the status quo in relation to prohibited land uses.

The VLGA is also deeply concerned that the net effect of these and other issues may be a decline in community confidence in the ability of citizens to comment on major development proposals. We believe that this will damage the reputation of all levels of government and may lead to a significant community backlash. We submit that this is not in the interests of any level of government, as there are unavoidable costs associated with such a backlash.

Finally, we do not support the proposal to remove the power from local governments to abandon an amendment and to substitute this with a power for local governments to make a recommendation to the Minister.

## Projects of State Significance

While the VLGA agrees with the MAV, that the proposal:

*'Proposes a more certain process for the identification, assessment and approval of projects of state significance'*<sup>3</sup>

the VLGA has three main concerns with this proposal and we cannot support it in its current form.

Firstly, given our earlier concerns about the bias of this proposal against applicants working constructively with local governments and communities, we fail to see how such an adversarial approach will meet the needs of all stakeholders in the planning system. We are therefore concerned about the impact on community satisfaction with planning issues and how they are handled by the State Government.

Secondly, this proposal does nothing to address systemic concerns previously expressed by the VLGA and others regarding delays in processing, and the quality of application material. There appears to be an assumption that the considerable workload to be transferred to the Department of Planning and Community Development (DPCD) can be managed. Yet, there appears to be significant evidence that the Department does not have the resources to manage what it already has on its agenda, especially within existing staffing.

Therefore, the question of whether this proposal will only apply to a limited number of applications rather than a significant list of application classes needs to be addressed.

Our third concern is one shared by the majority of our local government and community members: namely that there is a lack of clarity concerning the criteria that the Minister will use to justify calling in a project.

As well as the above, the VLGA also has a number of specific concerns about this proposal, including:

- there are no appeal rights regarding the Minister's decisions;
- planning panels are not required to have regard to local government views or policies, nor do they have to inform local governments of their findings;
- the requirement for local governments to hold a register of State Significant Projects rather than the Secretary of the Department (DPCD);
- local governments being unreasonably burdened and responsible for negotiating and enforcing permit conditions, after a decision has been taken by the Minister; and
- the fact that there is no mandatory requirement to notify adjoining property owners of decisions, a basic planning principle upheld in most other cases.

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<sup>3</sup> Ibid, p.10.

The VLGA believes that all stakeholders in the planning system need to enter into explicit agreements about what ‘partnership’ means. At the core of ‘partnership’ should be a set of mutually supportive principles that respect the different and complementary roles of each stakeholder group. This will require a process for informing local governments prior to call-ins occurring and working with local governments to address concerns prior to matters being considered of State Significance.

We believe that the Development Facilitation Unit of DPCD should be given the resources to enable it to work more effectively with local governments to facilitate developments that take account of local needs and State needs, rather than the wholesale diversion of applications to DPCD and the Minister.

Finally, the VLGA requests that the State Government rules out that any matter can be delineated as a State Significant project after it has been rejected by local governments or the Victorian Civil and Administrative Tribunal (VCAT).

## **Conclusion**

The VLGA accepts that there has been ongoing criticism of Victoria’s planning system, and that this has been from a range of stakeholders. We also note that in times of economic downturn the pendulum has swung towards developer interests.

However, we would respectfully remind the State Government that it came to power in 1999 promising to return democratic processes to the way in which governments conduct their business.

It appears to the VLGA that many of the modified procedures for development approvals are concerned with facilitating development regardless of merit, rather than reflecting the overwhelming feedback given in original submissions by nearly all local governments and community organisations.

We do not believe that the case for the proposed changes to development approvals has been made, and we are therefore unable to support the Draft Bill in its current form.

Specifically, in this submission, the VLGA:

- is disappointed that the focus of the review has been on efficiency and minimising planning bureaucracy; and negligible attention has been afforded in the review process to meeting Victoria’s environmental challenges and issues of sustainability
- contends that the objective of efficiency alone should not drive planning processes, and that a sole focus on efficiency can have adverse impacts on consultation and sustainable outcomes. Failure to address these priorities demonstrates a missed opportunity for embedding these goals in Victoria’s planning structures

- would suggest that an alternative form of words is enacted that both strengthens the environmental objectives of the Act and defines the notion of sustainable design
- would agree with some concerns expressed that there is also a need to include the following wording “climate change, health and other policy related issues” in the objectives
- is concerned that there is no high-level recognition of the systemic limitations that see many local governments unable to afford or attract a workforce to sustain the development load they face
- believes that the Draft Bill be amended to require the Minister for Planning to consult meaningfully with local governments **before** any streamlined technical amendments can be applied for by other parties
- supports the considerable opposition from many of our local government and community members to the proposal for applicants to be authorised to prepare amendments
- does not support the proposal to remove this power from local government and substitute this with a power for local governments to make a recommendation to the minister
- cannot support the proposals regarding Projects of State Significance in their current form
- believes that it is time for all stakeholders in the planning system to enter into explicit agreements about what ‘partnership’ means, and
- believes that the Development Facilitation Unit of DPCD should be given the resources to enable it to work more effectively with local governments to facilitate developments that take account of local needs and State needs, rather than the wholesale diversion of applications to DPCD and the Minister.