

Submission by [REDACTED] from Inverleigh Victoria

The context of the Parliamentary Inquiry seems in essence to be whether the planning process is adequate to address 21st century planning issues for our fast-growing state.

Introduction

For rural and regional Victorians the planning and review process is plainly no longer fit for purpose. It is too bureaucratic, driven by vested interests with very deep pockets and largely only pays lip service to the interests and concerns of local communities.

It is also top heavy with professional planning law firms who in turn retain very expensive teams of senior and junior counsel. Likewise the system at all levels is dominated by professional planners and professional expert witnesses. These experts, who are not truly independent, turn up, time and time again, often regurgitating submissions made in previous Panel Hearings or VCAT Hearings. Their expertise is often accepted uncritically. These experts would not be considered to be independent under the *Civil Procedure Act* in civil proceedings and are often very carefully schooled by the law firms who retain them.

Local community organisations and individuals cannot compete on a level playing field. In a very recent Panel Hearing in Golden Plains Shire Scheme the developer effectively created the agenda briefing Australia's largest law firm, senior counsel and two junior counsel for the preparation and the hearing. This firm also retained a team of well known expert witnesses to drive their case.

No local community can possibly afford the hundreds of thousands of dollars needed to match this firepower. The process is a very unequal contest and needs to be reviewed and reformed urgently.

Key issues

First, I adopt and support the Submission made by the *Friends of the Barwon* and reiterate what they have submitted.

In the interests of time I will summarise my Key Points as follows:

1. VCAT appeals and Planning Panel processes favour those who can afford the best lawyers and expert witnesses to represent them. (See above) Such representation is beyond the means of the average citizen or concerned community group who might want to object to the many proposals to over develop outside the intent of the Planning Scheme.
2. Composition of Panels Victoria, VCAT and Great Ocean Road Regional Standing Committee (GORRSAC) members appear to be mostly professional planners, architects and engineers, with rare mentions of environmental qualifications. The system also appears to be top heavy with urban focussed practitioners.
3. Various State and Local Government provisions contradict each other, leaving it up to the Panel member, who will invariably be a practising planner, or a VCAT member to determine these issues without adequate consideration of the local environment, fire safety or other community raised input. The system is dominated by developers and local government which seems often to be wedded to a Ponzi like appetite for so called 'progress' to bolster their rate base. So much so that many Council usually do not even bother to brief lawyers and simply ride on the coat tails of the developer and their expensive team of advisors and independent (sic) expert witnesses.
4. Importantly, a number of Councils have no requirement in their governance rules to record or keep records of meetings between developers and their lawyers and councillors or local planning staff. The new process must urgently address these governance and probity shortfalls to ensure that the whole system is transparent. Councils currently respond to Freedom of Information requests claiming that no such records exist. The *Local Government Act* and the *Planning Act* need to impose strict requirements for transparency, disclosure of meeting information and so on.
5. Where various state legislative and planning policy provisions contradict each other there needs to be a hierarchy established where environment and community come first and the detrimental impacts of development, business, economy and tourism on their communities and precious environment are put last. The process must redress the current unacceptable imbalance.
6. Coastal & regional planning is overly influenced by urban planning considerations. One look at the recent Inverleigh Structure Plan adopted by the Minister will illustrate how our ancient and precious

rural environment is now far too strongly influence by urban planning considerations.

7. Too many grey and discretionary areas are created by Panels and the VCAT by the use of language that creates vagueness and is impossible to administer. No certainty is created in any legislative or policy context which predominantly uses words words like 'should' rather than words like 'must' or 'shall'. This gives Councils and developers a free hand and the system becomes impossible to properly regulate much less administer.

The Planning process needs certainty. Not vagueness. The community, Local Government and developers alike will all benefit from greater certainty in the process.

The Committee is respectfully asked to ensure that its recommendations are forthright here.

8. The Planning Process should adopt the Supreme and Federal Courts' code of conduct for all Expert witnesses as a key step. Independence will then be assured and proper use of expert witness conclaves will save the process significant time and money.
9. Developers and Councils should be required to adopt the provisions of the *Civil Procedure Act* which enable judges to require parties to disclose their legal budget to the Court. A similar disclosure alone would lift the lid on what the legal fees and expert disbursements really are and support expert witnesses really being independent as has long been the case in litigation in Victoria, New South Wales, the Federal Court and the UK following the Woolff Reforms including the subsequent changes to their expert rules.
10. Likewise ,there may be scope to consider a budget cap or daily fee limit on developers' law firms and counsel as well as independent witnesses to restore some equitable balance between the protagonists.

I would like the opportunity to address the Committee at an appropriate time either in person or by Zoom if that is possible. I can also provide hyperlinks to some of the matters above should that be required. I only became aware of the inquiry by chance at lunch time on 31 January and did not have time to insert them. I apologise for this.

Thank you for inviting these submissions which are respectfully made.



31 January 2022.