

6th July 2015

Dear sir/madam,

Re: Planning and Environment Amendment (Recognising Objectors) Bill 2015.

I write to make a submission to the committee. Some of the below talks about VCAT and planning in general but it is all about resident rights or lack of rights and this amendment is a great start but it sounds like it will achieve very little unless the four changes below are not added. Please add them and let's move forward together.

I applaud the changes recognising objectors as for far too long, residents, ratepayers, tax payers and voters have been getting no respect by developers, councils, state governments and VCAT. Money talks and development seems to be everything at any cost and residents are nothing more than collateral damage. This has to change and change NOW, the anger in the community is building as people have had enough and are ready to fight.

Please also see vested interest are what they are, like the Property Council of Victoria that has stated 'don't give Victorian residents a bigger say'. Please find attached article about their comments and views, that I find offensive.

I find the whole planning process is against residents, we have nothing to gain expect to protect our suburbs and environments. We have limited resources and time and are fighting developers with their lawyers and Queen councils and planners with millions to be made. We have nothing expect the will to fight and then we have pay nearly \$1000 dollars to fight a matter at VCAT and we normally lose as the attached article state "Residents rarely win" and 'developer are odds-on to win at planning tribunal' discuss. What really concerns me greatly is the percentages like 73% where permits are granted after appeal.

This is not a fair system, this is a broken and biased system and I would even say a corrupt system wher money talks and must be reviewed.

The system as it is now leaves residents feeling totally powerless and we feel like no one cares what we think.

At the moment residents are totally disenfranchised in the planning process, full stop.

When I dare stand up against development and use my rights I get aggressive emails from a land development consultant that are working for a developer that dismisses my points and objections. They use words like 'miniscule' and states that there client will 'potentially seek costs against you if the case they you put forward is so weak that it has no practical chance of success.' When did developers and consultants who represent them became VCAT and when did they start to believe they can pass judgement on objections, is that not the job of VCAT?

If the committee or any members of the committee would like to see a copy of the email and my letter to VCAT about the threat, I would be happy to email a copy. Is this where planning is in this state, where threats and aggression wins?

This amendment should be only the start of listening to the voters of Victoria that booted out the last government that did not listen and give us powers, rights and affordable ways to fight at the moment we have very little. The charges and fees at VCAT only work to support developers and appeals and are not affordable or fair and a total and utter disgrace and **MUST BE REVIEWED NOW.**

I totally support 'save our suburbs' and the request for four changes:

1. The requirement to consider the number of objectors must be mandatory.
2. The amendment should define the number of objectors as a quantification of the democratic right of a community to refuse developments that would deleteriously effect their well-being (analogous to s3.3.7 in the Gambling and Regulation ACT 2003).
3. The amendment would thus also need to define the concepts of community well-being and deleterious social impact, and mandate the consideration of any evidence of such impact as likely to be experienced by the local community.
4. The significance of the number of objectors under s85B(2)(f) of the ACT as interpreted by the Supreme Court in the Orrong Towers case needs to be clarified in parallel with evidence of defined social impact.

I vote and I pay tax and I want my voice heard and respected, this is a very good first step but one step is not enough. Power to the people.

Yours sincerely,

Stephen Koci

Developers odds-on to win at planning tribunal

March 21, 2015 - 6:28AM

[Jason Dowling](#)

Senior Reporter for The Age

The house always wins, or in the case of Victoria's planning tribunal – big housing developments nearly always win, new research indicates.

Councils have almost become redundant in the decision-making process for controversial residential developments in Melbourne's suburbs, according to a RMIT University analysis of permit applications.

When councillors refused a permit, almost nine out of 10 permit applicants went to the Victorian Civil and Administrative Tribunal and in 73 per cent of cases the council's decision was set aside and the permit granted.

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When councillors supported a development and residents appealed to the tribunal, the tribunal upheld the council's approval in 85 per cent of cases, the report by RMIT planning researchers Joe Hurley and Brendan McRae showed.

Once councils and the state government set strategic planning rules for an area, the power of a council to influence contentious individual planning applications diminishes considerably, an extract of the draft report indicates.

Although councils and third-party objectors, such as residents, may be able to slow or modify a development – often at a cost of millions of dollars to the project – they are rarely successful in stopping it.

The researchers looked at 759 development applications across the 31 metropolitan Melbourne councils in 2011 using minutes from council meetings, with the full report expected to be published later this year.

The research focused on new residential development applications considered by councillors to highlight decisions in the context of urban consolidation policy.

The report, *Competing objectives, interests and politics in development assessment*, said in contentious planning cases the tribunal has become an entrenched part of the application process and the tribunal offered developers "another spin of the wheel" at attractive odds.

It said given the number of cases where council planning officer recommendations were overturned, "[the tribunal] is going beyond providing oversight on the political influence of councillors".

Dr Hurley said planning law was often not black and white and included a level of discretion that assisted both developers and councils to deliver planning outcomes tailored to individual sites and the character of an area.

The research indicated a "protectionist impulse of local-level elected representatives and the role of the tribunal in making decisions that significantly diminish this protectionist influence".

"The system at the moment is doing a pretty good job of papering over the fact that local representative decision-making is really being circumvented," Dr Hurley said.

"For contentious issues, they are effectively withdrawing that delegation from the local level of government," he said.

Going to Victoria's planning tribunal is not cheap.

Another report by Dr Hurley showed a tribunal case can cost developers several millions dollars and residents more than \$100,000.

Asher Judah from the Property Council said the report indicated the planning tribunal was doing its job and councils were not.

"[The tribunal's] job is to determine points of law, in these cases, planning law," he said.

A spokesman for Planning Minister Richard Wynne said the government was preparing legal changes so that the Victorian Civil and Administrative Tribunal must, where appropriate, take into account the extent of community opposition to permit applications.

Municipal Association of Victoria president Bill McArthur said councillors had "the complex task of considering an application in the context of the planning scheme and local planning policy, not based on councillors' personal views, while also fairly representing community views".

Don't give Victoria residents a bigger say - developers

March 12, 2015

Jason Dowling

Senior Reporter for The Age

Residents should not be given a bigger say at Victoria's planning tribunal because it would not be "fair", according to a developer lobby group.

In a letter to the Premier and ministers, the Property Council's Victorian executive director Jennifer Cunich said they opposed "the Government's plans to add additional weight to community opinion in regard to VCAT decision-making".

"Such a move goes against the very basis of a just and fair legal system. We would consider any attempt to make such changes a fundamental deterioration of Victoria's legal apparatus," it said.

Labor has pledged to amend the Planning and Environment Act "so that, where appropriate, the Victorian Civil and Administrative Tribunal (VCAT) must take into account the extent of community opposition to planning proposals".

"The changes would see significant community opposition – such as that in response to Tecoma McDonald's or Prahran's Orrong Rd Towers – formally taken into account," Labor said in its election commitments.

Labor said the changes were not about appeasing a noisy minority and instead would give locals a fair hearing and recognise a community standing together.

James Larmour-Reid, from the Planning Institute, urged caution in relation to the proposed reforms.

"Community engagement is central to our planning system, but we need to make sure that VCAT decisions are based on planning principles and policies," he said.

While it was completely reasonable for the planning tribunal to take into account community sentiment, "sentiment alone cannot be allowed to drive the outcome".

Opposition planning spokesman David Davis said the government's promised tribunal changes were "light on detail".

"What does it really mean and how will this actually operate?" he said.

"If the plan is to make the capacity of people to object more accessible in a reasonable way, we're in favour of that," he said.

The Property Council's priorities letter also called on the government to sell Victoria's share of the Snowy Mountain Hydro Scheme, old school sites and disused rail land to help fund new infrastructure.

It also calls for a flexible urban boundary - "a firm urban growth boundary will unnecessarily restrict supply" and calls on the government to continue support for the Victorian Energy Efficient Target Scheme to reduce energy bills and emissions.

Some of the former Coalition government's planning actions were criticised in the letter.

"The former government's decision to undertake rezoning prior to the release of the masterplan or vision for the precinct (Fishermans Bend) has caused widespread confusion and uncertainty," the Property Council said.

On new housing zones, Ms Cunich said: "As they currently stand, the zones have caused much community angst, and will adversely affect Melbourne's housing supply and affordability".

Municipal housing targets should be set based on up-to-date population and demographic modelling.

A spokeswoman for planning minister Dick Wynne said: "The Andrews Labor Government promised it would give communities a fair go at VCAT, and this is what we will do."

Residents rarely win, says seasoned VCAT campaigner

March 21, 2015

Clay Lucas

City Editor, The Age

Lynette Stewart is a regular at the state's planning tribunal.

"I've been there 40 times, maybe 50," says the seasoned campaigner from Toorak, who fights against what she calls "bad development".

The 58-year-old says she's rarely had a satisfactory outcome on her many visits to the Victorian Civil and Administrative Tribunal over planning matters.

And far from being the "low cost, accessible" jurisdiction the tribunal bills itself as, Stewart says it is instead a haven for wealthy property developers.

"My experiences with VCAT are that money talks," says Ms Stewart.

Indeed, at VCAT, the best QCs who regularly appear there cost from \$7000 a day for a senior barrister, up to \$12,000 for the most experienced silk.

The current focus of Ms Stewart's attention is a proposed apartment tower on the corner of Toorak Road and Chapel Street, on the site of the old Fun Factory (some still know the building by its original name, the Capitol Bakery).

In 2008, Stonnington Council rejected a plan for a 38-storey apartment tower on the site. Then owner, The Capitol Pty Ltd, took it to VCAT and won – even getting three extra levels added to the plans.

The tower was never built.

That didn't stop the developer going back to VCAT and getting a whole new scheme approved in 2013 – to a striking new design by Bates Smart architects.

Now the site's new owner, Dodo Internet founder Larry Kestelman, has had his application to go even higher on the site – 50 storeys – rejected by Stonnington councillors.

The rejection was despite a recommendation from council planners the tower be approved.

Mr Kestelman's company is now fighting the decision in VCAT. He says the finished product will be something spectacular – an "icon" for Melbourne.

Last week under a million-dollar-plus marketing package, actor Charlize Theron flew in to Melbourne's Grand Prix to promote the \$300 million, luxury [Capitol Grand](#) apartments.

If Mr Kestelman wins at VCAT and it gets built, the tower will be the tallest outside Melbourne's central business district.

"We are obviously disappointed that the councillors rejected the application that was encouraged and fully supported by the council officers and urban designers," Mr Kestelman says. "But we trust in the system and await the VCAT hearing and its decision."

Ms Stewart, for her part, says the outcome of this case is entirely predictable: "They'll win."