



Friday, 3 July 2015

Planning & Environment Amendment (Recognising Objectors) Bill 2015 – Parliamentary Inquiry submission

Context:

The Victorian Chicken Meat Council is an association aimed at the promotion and protection of the interests of the chicken meat industry. Its members consist of the major commercial integrated processors (Ingham, Baiada, Turi Foods, Hazeldene's), contract chicken growers and other suppliers to the chicken meat industry.

The Committee may be aware that the Victorian Chicken Meat industry is now at a significant disadvantage in comparison to all other States in Australia. The costs of production are demonstrably higher in Victoria, which flows onto the costs of living, and employment in this state. Many of the cost imposts are outside the direct policy control of the Victorian Government, and the VCMC has made numerous submissions regarding these matters over many years, with minimal improvements being achieved.

This submission relates specifically to the manner in which appeals to planning permits for chicken meat farms might be considered by VCAT if this Amendment Bill is enacted by legislation in April 2016.

The Victorian Government forecasts the chicken meat consumption to increase by 9% over the next 5 years, while beef consumption falls by 15%. ABARES puts the national consumption at 41.7 kg (2010) per person per annum, increasing to 46.4 kg in (2016-17). Free Range Chicken meat consumption component is expected to increase by 20% pa.

Poultry processing plants have developed close to markets and labour sources, with many of the largest operations within 50km of a capital city. This keeps distribution and transport costs down and ensures labour and other services are available.

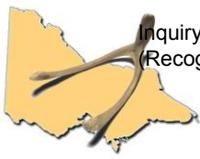
Chicken meat farms, where chickens grow from day-old until they are ready for processing, are generally within 1 to 2 hours transport distance of the processing plant.

Farmers look for Farm Zone land with:

- reliable water supply
- reliable three phase electricity supply
- access for heavy transport for feed and live poultry
- available labour supply
- available services such as tradesmen.

While major plants for chicken meat processing have developed near major capital cities, the industry is becoming more regionalised as urban encroachment spreads.

The main areas where meat chicken farming occurs are on the Mornington Peninsula, eastern regions of Melbourne around Geelong and Bendigo, and areas in the central north of the State.



New investment across the entire industry sector is required to meet this expected market demand, and processors like Ingham have already expended in excess of \$120m to re-build its Somerville plant (after being destroyed by fire in January 2010). Approximately \$200m has been invested during the past 2 years in upgrading farms, converting conventional farms to free range sheds, and building medium sized new developments in Victoria. A further \$800m has been invested in NSW and South Australia (that could have been invested in Victoria) in-part due to the protracted and costly appeals processes in this State.

The VCMC Strategic Plan 2025 estimates that a further \$640m investment is required over 10 years to grow the sector by a modest 3% pa.

The Chicken Meat industry is now “at the cross-roads” in Victoria in terms of investment and viability. Building applications to improve, upgrade, re-develop, and build new chicken meat farms are being represented by Objectors as “factories used for production”¹.

Victorian Government data illustrates that the State is currently a net importer of chicken meat. Industry data shows that the costs of production in the other States is lower than in Victoria, however some products are exported from Victoria to NSW and South Australia (to augment farm production scheduling).

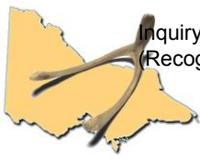
Free Range product demand is being driven principally by consumer preference and environmental considerations. Farmers are also keen to improve the environmental and animal welfare aspects of their operations, and supply the processors with the RSPCA “endorsed” product now mandated by the major supermarkets.

The VCMC Submission opposing the Bill:



The Planning Permit approvals process is near to being unworkable, with the majority of applications for upgrades, expansions and new farms being routinely sent to VCAT for decision. A broad based animal welfare lobby is frustrating proponents and some in the community simply do not want chicken farming in their vicinity. Councillors are being lobbied to overturn the approval recommendations of Council’s Planning officers and/or impose unrealistic Permit conditions.

¹ Toongabbie Objectors Facebook page: <https://www.facebook.com/pages/Toongabbie-broiler-farm-SAY-NO/1073293482697688>



The permit applications and Notices of Decisions that are appealed at VCAT delay development by more than a year on average and require a plethora of expert consultant reports and legal representation in order to reach a decision.

Despite the Broiler Code 2009 and Planning Practice Note #63², new chicken meat farm applications are commonly referenced to the State Environmental Protection Policies, and costly odour modelling analysis is frequently requested by VCAT. The odour emissions risk assessments routinely sought by VCAT are widely regarded as a “black art” by the both EPA and the professional expert witnesses.

The consequential additional cost amounts to several hundred thousand dollars, plus holding cost due to delays (being heard at VCAT and receiving a decision). This does not include the probability of a decision being then appealed at the Supreme Court.

The industry seeks to achieve a consensus whereby the conservative growth targets for Victoria are supported by greater investment surety via the Planning approvals process. With the sector in Victoria at the “cross-roads”, much needed investment and jobs creation is being secured in the other States, where some serious changes and commitments have been made in partnership with government.

The Victorian Government has articulated its support for the chicken meat industry and provided significant funding for infrastructure, skills training, investment attraction, market development, and strategic planning. The relevant Departments of Agriculture; Environment & Primary Industries; Planning; Water; State & Regional Development; and Small Business & Industry uniformly regard the chicken meat industry as important to the State.

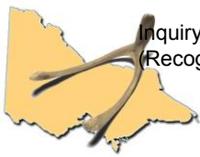
The EPA in particular is unequivocal in its regulatory role in ensuring that the industry adheres to the highest environmental protection standards in Australia (and in some cases the world). While odour emissions from primary agriculture may not be noxious and accepted as normal to many rural communities, urban encroachment into previously adhering buffer separation areas is a matter for Local Councils and industry to address. Legally operating existing farms are being required at VCAT to justify their continuance to local Authorities.

The State’s Planning Policy Framework proactively encourages rural production on appropriately zoned Farm, Rural Activity, and Green Wedge land, and differentiates Intensive Animal Husbandry from lower density farming. Local Council Municipal Strategic Statements similarly encourage primary agriculture production and support the economic development created by value adding the produce locally.

The Metropolitan Planning Authority has carriage of the Plan Melbourne strategy, and is undertaking Precinct Structure Planning in Melbourne outer growth areas. Strategic Principles of the Plan Melbourne strategy to 2050 are that Victoria will be a State of Cities, where employment creation will be within designated employment precincts. Jobs should generally be closer to where people live, thereby reducing the need for commuting to work, and reducing traffic congestion. Much of Plan Melbourne impacts upon the current and future operations of the chicken meat Farmers and Processors, particularly the Processors located in peri urban areas.

The Bill proposes that the Planning and Environment Act 1987 be amended for the purposes of section 60(1)(f) of that Act, for the responsible authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.

² Practice Note 63 - Applying for a planning permit to farm chickens, Department of Planning, December 2012



While the responsible authority must presently consider all objections to a permit application which have not been withdrawn, as required under section 60(1)(c) of the Planning and Environment Act 1987, there is no express requirement currently in that Act for the responsible authority to consider the number of objectors to the permit application.

A proposed new subclause inserted into a new section 60(1B) would expressly require the responsible authority to have regard (where appropriate) to the number of objectors in considering whether a use or development may have a significant social effect.

For example, the number of objectors may be indicative of the significance of a social effect that a proposed use or development may have on the community or of the presence of a specific social need in the community that may be affected by a proposed use or development.

VCAT and responsible authority would have regard to the new consideration "where appropriate". It will be a matter whether it is appropriate for the number of objectors to be considered in a particular case.

For example, if a proposal requires a permit for development for a chicken meat farm but the objectors to the proposal are concerned about the environmental impacts of the proposed use (which meets the requirements of the Victorian Broiler Code 2009), it may not be appropriate for the decision maker to consider the number of objectors in that case.

However, if a proposal requires a permit for use, the impact of that use on the safety or amenity of the community is a matter required to be considered under the planning scheme, and a large number of objectors raise issues that point to a detrimental effect on the safety of the community at large, it may be appropriate to consider the number of objectors in that case.

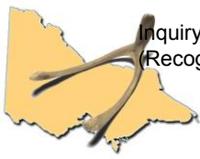
The use of the internet and social media to communicate pro forma objection submissions has become increasingly prevalent, and it is common for the number of objectors to chicken meat farm applications to exceed the number of actual residences in the specific rural municipality. Local Councils are being inundated with thousands of these on-line submissions, many of which emanate internationally.

It is common for these objections to be more driven by animal welfare concerns than the site specific considerations of the farming development itself. Odour, noise, and road transport issues are being submitted on mass, without reference to the specific site. The large number of submissions places great weight upon Local Council staff resources and financial budgets. VCAT appeals can commonly cost the farm proponent several hundred thousand dollars and tens of thousands of dollars for Councils.

The time involved in hearing appeals at VCAT has increased, and the period taken to receive a judgment has been several years in recent times³.

The VCMC questions why the number of objectors should be highlighted and given greater weight by VCAT than the number of supporting submissions. It is generally accepted that supporters of applications are less inclined to make submission.

³ VCAT: Heath Hill Poultry Pty Ltd v Cardinia Shire Council (Red Dot) [2012] VCAT 1444



It could presumably be acceptable for the 10,000 + employees within the Victorian chicken meat sector to be organized on mass to submit supporting submissions to VCAT or the responsible authority. Furthermore, could the decision makers have regard to submissions interstate and internationally on the same basis?

The VCMC submits that these submissions should be regarded equally on the basis of natural justice and procedural fairness. The proposed Bill Amendment would not provide for this, unless “where appropriate” – an ad hoc judgment that would introduce increased uncertainty and ambiguity into the planning process.

Presumably this Bill may be focused upon the building sector, but its implementation would have considerable impact upon the intensive agriculture sector, and further disadvantage primary production in Victoria.

The VCMC urges government not to proceed with enacting the Bill, or at least amending it to allow for a fair and practical assessment of farming developments. Pro development citizens of Victoria should not be denied natural justice.