C O R R E C T E D V E R S I O N

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

Subcommittee

Inquiry into the Planning and Environment Amendment (Recognising Objectors) Bill 2015

Melbourne — 10 July 2015

Members

Mr David Davis — Chair
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Staff

Secretary: Mr Keir Delaney
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Witnesses

Ms Joanna Stanley (sworn), Brunswick Residents Network, and
Ms Ann Reid (sworn), Malvern East Group, Planning Backlash.

The CHAIR — I declare open again the public hearing of the Legislative Council environment and planning committee. I ask for mobile phones to be turned off. Today's hearing is being undertaken by a subcommittee of myself, Colleen Hartland and Simon Ramsay. The committee is receiving evidence about the Planning and Environment Amendment (Recognising Objectors) Bill. I welcome Joanna Stanley from the Brunswick Residents Network and Ann Reid from the Malvern East Group.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and subject to the provisions of the Legislative Council standing orders. Therefore the information you give today is protected by law. However, any comment repeated outside the hearing may not be protected. All evidence is being recorded. You will be provided with proof versions of the transcript in the next couple of days.

We have allowed 45 minutes. In a moment I will ask you both to make an opening statement, and that will be followed by a series of questions. Finally, I remind you that the inquiry is to obtain evidence in relation to the Planning and Environment Amendment (Recognising Objectors) Bill 2015 that is currently before the Parliament. I thank both Ann and Joanna for providing evidence at short notice, noting that Mary Drost is in London and would very much have liked to have given evidence herself. I am appreciative that both of you are providing evidence. Ann, do you want to lead off?

Ms REID — Yes, I will. Thank you. I also have copies of my address to that paper, which I have not submitted. Planning Backlash has a community consultation group. Joanna and I are on that committee and, alas, we were the only two available at this time to come here. I am the convener of the Malvern East Group, and I am presenting this on behalf of Planning Backlash.

You all have a copy of the item in the Stonnington council notice paper of 22 June. In this, council highlights some of the practical challenges of what is proposed. There is no question that objectors to planning applications want to be recognised, and there is doubt that the implementation of the bill will achieve this recognition.

It is my contention that the bill actually maintains the status quo. Decision-makers have to 'have regard to the number of objectors' in deciding if a proposal may have 'a significant social effect'. It is my understanding that that is what they are supposed to do now — that is, of course, if they are able to define a 'significant social effect'. The bill does not seek to define this and it does not provide guidance on its meaning, so let us look at what it might mean. Julie Szego in the *Age* of 18 June called the term 'a typically bland euphemism for traffic chaos and clogged lanes at the council pool'. In *Minawood v. Bayside* Deputy President Helen Gibson said that the social impact of approval must not be detrimental. She indicated that there must be clear performance measures and availability of community facilities such as roads, open spaces, community centres, noise impacts, access to public transport, schools and recreation facilities. Further to that, she said that social impacts are impacts on people with regard to health, safety, neighbourhood identity and so on.

That covers just about everything and applies to all planning applications, so what is new? It appears that the new factor is having regard to the number of objections. This matter was also dealt with in *Minawood v. Bayside*. Deputy President Gibson declared that decisions are not based on popularity, even though there were 4300 objections to that application. She said consideration of a planning application should not be a political exercise or a popularity contest. Clearly public opinion cannot dictate a decision. It is the substance or merits of the views expressed, viewed through the prism of planning relevance, that must guide the decision-maker. So 100 objections based on an irrelevant consideration will not outweigh a single good objection based on a relevant consideration.

She went on to say that numbers matter when a community is affected — the social effects on the whole community. The large number of objections were the result of a very proficient campaign on the part of local residents.

The Stonnington paper points out that the bill does not indicate what level of weight must be given to the number of objections in assessing social effect. Are we then to assume that weight must be given when the number of objections reaches 50 or 100 or 4000 and that all of those objections refer to an adverse impact on the community in terms of social significance, cultural identity and so on rather than on individuals and their personal issues — that is, the content is to be considered, not just the numbers? I suggest that this bill gives false hope to the community. As Stonnington indicates, it may provide greater impetus for groups to organise the

lodgement of potentially hundreds of objections in the hope that the decision-makers will be dissuaded from issuing a permit.

This happened in Malvern East over a McDonald's application, where community members were incensed that the leafy suburbs would be damaged by a McDonald's in the commercial area. There were over 700 objections. They were all pro formas except for 78. I know that people just signed the pro forma. One woman told me, 'They came at dinnertime. We'd sold the house to a person with two children and thought they mightn't like to have McDonald's a kilometre away, so I signed it'. What worth is that? I could certainly cite — as I am sure Joanna could also — other instances like that.

In giving this false hope to the community that numbers are going to count, Stonnington indicates that it may provide greater impetus for groups to organise the lodgement of potentially hundreds of objections in the hope that the decision-makers will be dissuaded. Referencing the number of objections may establish expectations that numbers alone is the critical defining point.

The other issue that may tend to leave decision-makers in a quandary are the words 'where appropriate'. Just when is this to be applied? Is it to be only when there is a large number of objections, or is it to be applied when there is one objection which accurately addresses the adverse social impacts a development may have on a community? Which takes precedence — the number or the relevance?

Clearly this bill does not deliver on the promise of putting the voice of the community back into the planning process. The question of how it can be implemented for the benefit of objectors is not clear. It is ambiguous in nature. As it is written, it is just not acceptable. It is not giving us any more than we have got now, and we want more than we have got now.

The CHAIR — Ann, thank you very much. That was a very succinct presentation. Joanna, do you want to add to that?

Ms STANLEY — I have another two-page presentation as well.

The CHAIR — Why don't you present that now, and then we will ask questions, because I think some of it will interact with some of Ann's and others' points.

Ms STANLEY — Planning Backlash Victoria thanks the Environment and Planning Standing Committee for the opportunity to submit feedback on the proposed recognising objectors bill, which is to be debated in coming weeks in the Victorian Parliament.

Overall, PBV acknowledges the Victorian planning minister's aspiration in designing a bill that aims to give community members confidence because considering community views is vital to the health of Victoria's planning system. However, we believe there may be a need for potential clarifications and changes to the proposed bill in order to ensure decision-makers give more weight to community views than is currently the case.

As the bill stands, a false expectation in the community — one where volume matters — could arise that reduces resident confidence. The bill is a logical step on from the findings of the 2014 decision in *Stonnington City Council v. Lend Lease Apartments (Armadale) Pty Ltd.* The ruling identified that when decision-makers are assessing if a proposal will create significant social effects they should take into account the number of objections. In simple terms, the bill is looking to give the extent of objections more consideration in assessing whether a proposed use or development may have a significant social effect, in appropriate cases. The bill, however, does not clarify if this is the overall number of objections to the proposal or if it is simply the number of objectors who specifically address social effects as a specific ground.

If you look at the bill's explanatory memorandum, an example on page 3 states:

> … if … 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 …

This implies only those objections which specifically address social effects will have weight through numbers in this case. This is different from the number of objections to the same proposal which address other impacts, such as height, overshadowing et cetera — which I have left out of that sentence — or the overall number of

objections that is a total of the specific ones on social effects as well as all the other potential impacts. The bill's impact will be on most occasions limited to the question of significant social effects and likely be a nominal part of a raft of guidelines on which decisions are made.

There is also an issue, we find, with the onus on the objector to provide evidence of social effects. The bill allows consideration of the extent of community opposition in determining social effects where appropriate, so this bill influences only one of a large number of considerations for decision-makers to take into account. Other considerations include the relevant planning scheme and any significant economic and environmental effects. Despite the bill being passed, if that eventuates, all issues raised by objectors in the planning process must be relevant, they must be evidence based and clearly demonstrate impacts. In the case of objections, it is the usual practice of the proponents to demonstrate how the proposal will not have negative effects. A developer takes it as part of its usual operations to employ experts to argue against any negative effects that objectors feel will arise, and demonstrate otherwise. This will still apply post this bill being passed, if that is the case.

It is also important for the committee to consider that many exemptions apply to various types of applications in the Planning and Environment Act and also in the planning schemes. I am happy to give you examples of those if you would like to ask me afterwards. Therefore only a proportion of proposals in the state of Victoria give residents or adjoining properties rights of notice, objection and appeal.

Overall this bill is a negligible step in giving more voice to community members. As it stands, the bill will not necessarily benefit the community in a noticeable way. Or it may on occasion — and, I will stress, rare occasion — have a positive effect on objectors' rights. A recommendation we have is that the government amend the proposed bill to add the word 'overall' to 'objections', so it reads 'overall objections' in clauses 1 to 5 of the proposed bill. This will go some way to giving weight to community opposition.

The CHAIR — Joanna, thank you. I think both submissions are quite succinct and clear in what they mean. If I summarise them, it seems to me that essentially you are arguing that there will be little change in effect from the bill. In fact it is possible that it may in some cases have a negative effect because of some false hope and people not being able to get an outcome that they want but feeling, because the numbers are pointed to in the legislation, that they should gather up large numbers, but ultimately to often have hopes dashed.

Ms STANLEY — Yes, I think that is generally what we are saying. Nobody really knows what the immediate effect will be, but there will be potentially a flurry of confidence in the community whereby campaigns gain a bit of momentum against not just potential social effects but effects in all of the prism of effects that objectors have rights to object to. In the short term there may be a flurry of activity. However, the objectors who get organised to increase numbers in the short term may be misguided in that they may be unaware that specifically if they do not point to a social effect in their objection initially — —

The CHAIR — And prove it.

Ms STANLEY — And have means to prove it in the case of a council gallery or in the VCAT chambers, they may reach a point where a lot of effort has gone into a misguided campaign, and the flow-on effects of that we have seen in the past. We cannot necessarily see what will happen there, but that is a scenario.

The CHAIR — Joanna, on the recommendation that you make at the bottom of your submission to add the word 'overall', have you had some legal suggestion involved in that? I am just looking at the meaning of words and so forth.

Ms STANLEY — No. I am a resident. This is just anecdotal evidence based on appearing at VCAT over the last 15 years, as Ann can attest to as well. Just on experience of attending VCAT in particular — however, it has flowed forward into the council decision process from a resident's point of view — objections will be gone through with a fine toothcomb by the proponent's representatives to see what they point to and whether they can be counted in terms of content. It is really that I am speaking on behalf of an objector who has been in VCAT and who has also sat in galleries at councils.

Having seen the proposed bill online, I feel that it just leaves it ambiguous. Ann and I discussed this bill and what potentially could be of benefit to the residents of Victoria by instructing a decision-maker to take the number of objections into consideration when they are determining if a social effect is potentially going to apply. We figure this bill will create a pause in time, not a very big pause in time but a pause long enough to

count the objections again. I guess it is a matter of: is it the overall number of objections that apply here, or is it just the objections that point to a specific social detriment? Because it could backfire both ways, on everybody in the system. Because if there are 4000 objections, as Ann has pointed out, to a specific proposal and yet only 4 of them point out the specific social detriment, are they only going to count those 4, therefore not have to consider the social effect? These are things to be debated.

The CHAIR — Fair points.

Ms HARTLAND — Thanks for the submissions. I think you have made your position very clear. Given some of the scenarios we have been talking about this morning and some of the I suppose campaigns that I have seen against social housing and against, say, a mosque or an Islamic school, how do you feel that this might be used when it is just that someone does not like it rather than there is actual planning merit to their objection?

Ms REID — Used by whom? The developer or the — —

Ms HARTLAND — The objectors.

Ms REID — I think the problem is that nobody is sure. The Stonnington councillors, when they noted this report, said that the terms are not defined. If they are not defined, how can we predict? We — Joanna and I and Jack and Mary and the other people — would be able to whip up some social effects, but we are not sure that everybody will be able to whip up some social effects. And if the bill is not defined, what are we going to do?

The CHAIR — It is very open.

Ms REID — You have to define the terms in order to give us a go, because at the moment we have not got a go. The recent RMIT investigation into VCAT decisions, you might have seen, just weighs so heavily against the community, the people. If the bill is meant to give us a go, then let us be clear so that we know how to use it.

Ms HARTLAND — That is my experience, too, having been a councillor and a resident, that VCAT usually always overturns a council decision.

Ms REID — Not always but a huge percentage.

Ms HARTLAND — That is my experience. Should we be looking at planning in terms of how we actually give residents a real say in planning, rather than this, which I would agree is very vague?

Ms REID — Over the years we have met with Attorneys-General. We have met with Justice Kevin Bell, Justice Iain Ross and Justice Greg Garde. We have been to forums. We have made many submissions about how to reform the process of VCAT so that fairness will prevail. Fairness does not prevail now. Nobody has taken any notice of us at all. The then government did not take any notice of Justice Kevin Bell's recommendations, which would have made the system fairer. That is not really a separate issue from this bill. Other than in terms of fairness, what Parliament ought to be looking at is the reform of the VCAT process in order to deliver us what we have asked for so often in so many meetings.

Ms STANLEY — Colleen, I am happy to address your question as well. My understanding is that you are asking: could one secular group use it against another secular group in order to engineer a campaign to up the numbers? It is potentially possible. The campaign can be engineered. However, if you were the decision-maker, you could look at the bill and possibly use the 'where appropriate' clause there. I am just giving you a suggestion, but definitely the groups we represent would never endorse any engineered campaign to — —

The CHAIR — Misuse?

Ms STANLEY — Yes.

The CHAIR — I agree.

Ms STANLEY — When there is a secular argument I do not see that. No-one really knows what the outcome is going to be, so you would have to play through the scenario really in conversation. We would not endorse any of that. Objectors and representatives of the community who have been guiding and advising and collecting information on behalf of other groups across Melbourne and Victoria know how the game is played.

Most objector groups do not engineer campaigns that way because, as Ann has clearly said before, it is the content of the objection that actually really counts.

What this bill is doing is just putting a little pause in there to say, 'Hang on a minute. Look, there are a lot of residents here. You need to count how many, and you make a decision on that number'. That number could make you decide if you are going to consider whether they hold weight in the social decision here.

Mr RAMSAY — A quick question, and thank you for your submissions. It would appear that the intention of the bill is to provide opportunity for objectors to have a say in the planning process, but both of your contributions have indicated there is perhaps more confusion and grey in the proposed amendment than there is some certainty. In relation to the decision-makers and how they weight what you talk about as 'social effect' in the bill, in relation to a speedy outcome in relation to a planning decision: do you think the bill will provide more or less certainty in the planning system and VCAT decisions? And/or do you think it might allow a disproportionate voice to a vocal minority in some of the decision-making process?

Ms REID — The possibility is of course that it will allow a disproportionate voice to a vocal minority, of course it could. That is to address the last part of your question. I think it is going to take longer to make decisions, and I think that is what you referred to. The length of time is just going to take longer. Everything is going to take longer. Even to teach residents that if they do a mass protest, they have to find a social effect. They have to have their own definition because the bill does not give a definition of the impact of a social effect. All right? They have to provide evidence of that too. It has got to be evidence based; they cannot just say, 'There are too many cars at the council pool'. They have got to count them. They have got to go down there and provide the figures every day, day after day after day, to let the decision-makers know that they really have evidence to say, 'This is going to have a terrible impact on our community at the council pool'. I do not know if that answers your question or not. Does it?

Mr RAMSAY — In part. Joanna, do you want to say something?

Ms STANLEY — I do not believe there are going to be that many occasions where there are clear grounds for social effect that hold up the system, because I think the bill is designed to capture the rare occasion. I really do. If you read the rulings from the Supreme Court, it really was trying to decide if a council had erred in its way by not considering a large number of objectors when weighing up potential social effects. The ruling says, 'No. We do not think they were in error. However, there could be a case where it could have been an error'. We do not want to say there could not be a large number of objections that point to it, because there may be. We actually do not know what that social effect may be, because it is such a case-by-case basis of the proposals coming in. But I believe it is just not taking any chances, and it is allowing for that rare case where there will be a clear future impact to a community at large.

Its intention is there, that it wants to involve the broader community on a certain level, as opposed to what we generally see at VCAT and what we see in council chambers. It is really the adjoining neighbours who are the ones that the VCAT representatives and the lawyers and the barristers and the QCs listen to. It is really, 'You are living next door to this place, so we are going to make sure it does not overshadow you. If you are being overlooked, we're going to stick up some screens, don't worry about that. If you live two doors away, forget it'.

This is really a broad way of saying: how can the broader community be involved, and how are we going to give them a voice? I can see the intention of the bill, so in just going back to your question: it is really about how communities are dealing with changes in their neighbourhoods. Even so I do not think VCAT is going to put a lot of weight on people who, say, live in St Albans and who are objecting to something that is going on in Moonee Ponds, for instance. It is really about what the broad community thinks and feels and how it is going to change how they identify themselves within their communities. The bill has a great intention. However, it needs to be worked through a bit more.

The CHAIR — You think it is a bit of a hoax in that sense? It has the intention, but it just does not get there.

Ms STANLEY — Yes.

The CHAIR — Ann and Joanna, thank you. We very much appreciate your input. If there are further points you want to make, do not hesitate. The secretariat may want to talk to you about some of the bits as we go forward, but I am very thankful for you making your submission today.

Ms STANLEY — Before we go we have actually got a package of small submissions from the Boroondara Residents Action Group, which sent out an email and got about 10 back, so they wanted me to hand those to you, and we shall do that through Anthony.

The CHAIR — We appreciate that. Can you thank Jack and Mary for that.

Witnesses withdrew.