

CUTTING RED TAPE IN VICTORIA'S PLANNING PROCESSES

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Introduction

Department of Sustainability and Environment has asked for advice on cutting red tape in the context of the planning process. The planning process is an important part of the economy both in terms of registering title to land and in terms of establishing the need for and determining priorities for infrastructure.

It is also traditionally important in ensuring that urban use of land in a particular area is not incompatible with its use elsewhere. Practical considerations have ensured that certain activities that impinge adversely on others are undertaken in areas that are separated. Traditionally, this has applied to manufacturing, especially manufacturing involving noise or air pollution. This has been extended to similar sorts of activities like wholesaling and transport centres.

Over recent years, planning in Australia and many other countries has assumed a greatly enlarged role in determining the use of land. This is an outcome which we regard as regrettable and one that imposes huge economic costs onto the community as well as undermining the property rights which are the bulwark of a free society.

The focus upon Red Tape has assumed a higher profile over the past year or so and both the State and Commonwealth Governments have placed a high priority to the issue. At the February 10 COAG meeting regulation was a major agenda item and governments agreed to:

- *establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition;*
- *undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community;*
- *identify further reforms that enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies; and*
- *in-principle, aim to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden.*

The meeting also agreed under Decision 5.9(a)

COAG will request the Local Government and Planning Ministers' Council to recommend and implement strategies to encourage each jurisdiction to:-

- (i) *systematically review its local government development assessment legislation, policies and objectives to ensure*

that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction, and

- (ii) *ensure that referrals are limited only to agencies with a statutory role relevant to the application and that referral agencies specify their requirements in advance and comply with clear response time.*

Urban Land Planning

The Motivating Factors

A great deal of planning is motivated by opposition to urban sprawl. Unlike in the 19th Century where the concerned elites had thought of cities as replete with Satanic Mills, new generations came to venerate the crowded urban landscapes. More importantly they resented the growth of suburbia, and its more recent incarnation "exurbia", said to be eating up rural land. Much of the genesis of this view was from England and the rural landscapes that were cherished were the villages, especially those in the south east. From the 1940s Green Belts surrounded London.

Other UK cities followed London and inexorably the new ideology came to infect the Oceanic outposts of Australia and New Zealand. Like many such infections, it took a highly virulent form here, despite the lack of any population pressure - unlike the England and Wales (and even there urban developments only covers 8 % of the country) in Australia the urban sprawl covers less than 0.3% of the total land area.

Cities like Melbourne have declined in density. People prefer to live in greater personal space, both internal and external, and detached somewhat from their neighbours. Urban sprawl is not the "inevitable unhappy result of laissez-faire capitalism" but embodies individual preferences. Technological developments and income growth allowed these consumer preferences to become manifest. Once technology allowed rapid journeys – first via rail and later by road – the cities expanded. Added to this, we have seen a great dispersal of work locations, partly due to the decline of large integrated factories, partly due to the changed nature of work: especially the growth of service industries which tend to be geographically dispersed.

In *Sprawl*, (University of Chicago Press, 2005) Robert Bruegmann traces the ebbs and flows of geographic dispersions and the policies attached to them. He finds a remarkable similarity across the world (Soviet-era Moscow being a rare exception made possible by total government control). European and Australian cities have tended to invest more than American cities in public transport and

have in many cases put in place much stricter planning ordinances and subsidised housing to prevent geographic spread. Nonetheless, the density levels are comparable.

He also points out that there is some reversal of trends as people see more merit in inner city living. In this respect he says, “One of the ironies is that much of what is most attractive about cities’ ‘traditional’ character, is that many of the things that once defined them has disappeared. The decanting outward of all kinds of manufacturing and warehousing functions led to a dramatic reduction in street congestion, truck traffic and pollution”. In the process, factories were converted to lofts and the city centre itself became focussed on entertainment and other leisure activities. This has also led to a reversal in cities like San Francisco (and Melbourne and Adelaide) of the affluent/slum centre/suburb polarity.

Bruegmann also points out that the trend back is not leading to the higher concentrations favoured by anti-sprawl activists but that new in-fillers and those finding their homes in leafy suburbs have used ordinances and other measures to stop densities from rising – a phenomena best observed in Melbourne in the suburb of Camberwell.

Anti sprawl campaigns now dominate urban planning. Fuelling them and mightily facilitating their media profile are the *arrivistes* and others seeking to preserve a suburb or a favoured rural hideaway by keeping out the *hoi polloi*. Contradictions abound in this series of alliances. Thus, while the incumbents (Bruegmann calls them the “sensitive minority”) want to preserve a suburb, the planners want to re-create the denser populations that they hope will feed the café latte society they favour.

In fact, urban change is endemic. The row houses on the periphery of major cities that were the sprawl of the 1930s and 1950s are now highly valued by the *avant-garde*. Daly City in San Francisco about which folk singer Pete Singer disparagingly sang in “Little Boxes” (“all made out of ticky-tacky and all look just the same”) is now respected and preserved. There is of course little different in this from even earlier eras – many of the most prized real estate in Australian cities was last century’s urban sprawl – the Prahrans, and Richmonds.

Demographia has assembled house prices across a hundred cities and demonstrated a remarkable relationship between housing costs and restrictive land planning regimes. Those cities with the lowest prices include those enjoying rapid growth like Atlanta and Houston as well as those declining somewhat like Pittsburgh. They all have in common a relatively unrestrictive planning framework. In Europe too these same cause and effects are found – British house prices are over twice those found in Germany

where there are constitutional rights that restrain planning regulations.

Melbourne’s Urban Land Planning

Melbourne Planning Operations

It is exceedingly difficult to construe the present operations of the State’s planning rules as being compatible with ensuring the wisest and most economically advantageous use of land for activities normally associated with urban life. Planning at its basic level is the response to the community’s common infrastructure needs (roads, water provision etc.). This involves weighing up different needs for housing, jobs, leisure facilities and commerce, and projecting them forward in time; it means assessing consequential requirements for infrastructure, its costs and alternatives.

But this planning role can be abused – instead of responding to consumers’ market based needs, planners have sought to impose their own preferences or paid undue regard to those who have only an incidental interest in the development. We should be most wary of giving rein to specialists in planning and other disciplines who make claims to be better placed than individuals in deciding the best use of resources. In almost all other areas of economic activity such notions have been abandoned – markets based on free exchange and property rights have brought better outcomes.

Proponents of the sort of detailed planning restrictions found in Victoria would doubtless maintain that they are merely engaging in setting broad parameters for activities and not micro-managing within those areas. Some argue that this is not the case and that the extensive interaction between applicants and regulatory authorities demonstrates this. Others, we among them, would also argue that the planning requirements amount to a gross set of restrictions on land use, generate wasteful lobbying and restrict land availability for the purposes most valued by its owners and those seeking to make use of it.

DSE appears to be very supportive of the planning role it performs. In its *Development Contributions FACT SHEET*, DSE says, “Decisions by State or local government to designate, rezone or subdivide land for urban development creates significant increases in land values.” This illustrates a serious misunderstanding of the economics of supply shortage creation. It is DSE’s actions which give rise to the high values. But unlike actions in the commercial world that create value by applying capital or skills or new technologies, the value of developable land arises largely because the government regulates its supply. The Government, in reserving land from development, creates its scarcity.

The value of the scarcity which the government has created becomes apparent when some of the land is released, unfrozen, from the condition mandated by planning controls. And such land can only be worth the sort of sums the Fact Sheet discusses (\$300,000 to \$400,000 per hectare) as long as an artificial scarcity remains in place. Land used for alternative purposes to urban development (i.e. agriculture) on the periphery of Melbourne is worth only a few thousand dollars per hectare. The fact that it sells for a premium, even before its release, reflects speculators' views that the authorities will eventually designate the land as usable for purposes the community actually values most.

Land prices on the urban boundary that are considerably in excess of agricultural land prices reflect the inflated scarcity value caused by regulatory restrictions on supply. Any cost-based causes of high prices are dwarfed by those attributable to regulation-induced scarcity. Were it not for this, it is barely conceivable that a block of land on the periphery of Melbourne would command a price in excess of some \$60,000 per hectare and much of this would be caused by development costs.

DSE has introduced a new tax on land released from its regulatory corset. This tax is set at \$2,700- \$3,100 per block (11 blocks per hectare) for UGB land already zoned for urban development, \$4,000-\$4,400 for such land that is not yet zoned; and \$4,900- \$5,400 for land brought within the Urban Growth Boundary in November 2005. These new taxes represent an attempt by the government to obtain a share of the scarcity value its planning regulations create. They have little relationship to the costs of the infrastructure that people would otherwise willingly pay for.

By requiring those in new suburbs to bear costs for sewerage systems, roads, parks, schools, community facilities etc., the tax discriminates in favour of those living in the established suburbs. It is far from clear that the costs of the latter are less than those of the former, especially with regard to water and sewer systems which are far more expensive to replace in crowded urban areas than in new suburbs. Moreover, the transport systems (bearing in mind that at least 80 per cent of the costs of public transport is paid for by the community in general) can never be as intensive and useful in suburban developments as in densely populated central areas.

The legacy of the increasingly tightened planning regulations in escalating house prices driven by land costs is demonstrated below.

	1976-77	1992	2005
Melbourne House	\$63,200	\$169,000	\$340,000
Land share	24%	24%	38%

Planning and Public Transport

Much of the basis of planning is posited on outdated notions of the city. These notions see the city as a radial development centred on the CBD. Yet, facilitated by the car and communications advances, different work patterns and increased need for space extensive shopping centres, have been among the factors that have refashioned modern cities. These trends and developments have changed the nature and importance of the CBD.

These trends are exemplified by a declining share of employment in CBDs. In Melbourne, jobs in the central area fell from 55% to 28% of the total between 1961 and 2001. In that latter year, the CBD accounted for only 10% of jobs. This has immense ramifications for planning, especially road development and public transport.

Mass public transport cannot operate at acceptable cost in a city where workplaces and houses are highly dispersed. Melbourne's density levels have fallen to 1,500 per square kilometre and is now about one third of its level 50 years ago. The densest suburb, Port Phillip, has 5,500 people per square kilometre which is about tenfold the density of Frankston East and Casey. It takes a modern city of the density of Hong Kong (40,000 people per square kilometre) to make mass transit acceptable and affordable.

Trying to force the city's development around a mass transit system will constrain its adaptability and result in it losing relevance and attractiveness. It was Charles de Gaulle who proclaimed, to the wrath of youthful demonstrators, that Paris must adapt to the car and in doing so allowed the centre of Paris to be compromised but at the same time retain its commercial viability, preventing its relegation to that of an ancient curiosity shop.

A planning system built around arrogating public transport to a prime role is one that will strangle the city's adaptability to the needs of the people living within it.

Shopping Centre Regulations

Under *Melbourne 2030*, retail activity is to be increasingly concentrated in a limited number of existing large centres. This is reinforced by existing planning laws which require new retail developments to prove they will not have a deleterious impact on existing retail centres in their region -- in other words, they will not compete with existing centres.

The planning laws also require that new centres provide the same level and character of public amenity and access as existing facilities, irrespective of their clients' desires and nature.

As such, planning laws have greatly reduced the scope for expansion of retail infrastructure and handed monop-

ly development rights to shopping centre owners.

The laws have also reduced the scope for new forms of shopping such as factory outlets and bulky goods centres. These types of retail outlet place a higher premium on car transport than existing centres and planners. It is, after all, hard to bring a dishwasher, a lathe or 20 boxes of shoes home on the tram.

They also aim to provide a low-cost, single-purpose experience rather than the high-cost, all-things-to-everyone environment forced on shopping centres.

Take the example of the recent redevelopment of Essendon airport. In the late 1990s the Federal Government decided to sell Essendon, along with most other airports around the country.

While Essendon was to remain a functioning airport, use of it would have been small-scale, providing scope to divert a substantial amount of land in a rapidly growing area to other purposes.

Being a Commonwealth entity, the airport was exempt from state and local government planning laws and specifically from the tentacles of *Melbourne 2030*. In pursuit of a higher price and good policy, the Government sold the property with the exemption largely intact.

Not surprisingly, the purchaser of Essendon airport paid a premium for the property and announced its intention to redevelop the site as a large retail centre, starting with a 120-store, Direct Factory Outlet centre.

Again, not surprisingly, the owners and financiers of existing shopping centres were furious and pursued legal actions to stop the development.

The development undermined the monopoly powers they had obtained and the profit that flowed from them.

The State Government and its planners also resisted the decision, as they undermined the ability to extract their own share of the excess prices stemming from the protection of existing centres, as well as their control over people's actions and lifestyle.

Here is a clear case of government seeking to impose its own views and preferences on those of the consumer. Just because not everyone has access to a car, it is presumed that nobody may use a centre which does not give the same advantages to car owners as non car owners. Just because some developers have paid their political dues and gained a priority planning permission as a result of offering outlays that government bodies demand means that all should pay these. Taxation is available to provide distribution of resources from those who are deemed able to support others to those deemed worthy of support.

Shops exist to supply services to willing consumers. They do not have a reason for existence per se and to offer them protection detracts from their reasons for establish-

ing in the first place. Regulatory measures like those identified and proudly paraded in Planning Schemes constitute a hidden form of taxation that makes it difficult for the community to evaluate, or even to recognise, as a charge on their purchases. And, as recent events in northern Melbourne, Geelong, and the Gold Coast have demonstrated, it provides a pool of resources that corrupts the democratic processes.

Rural Land

The zones for rural Victoria require 40 hectare per lot size for subdivisions in the "farming zone". A new definition designates a "rural living zone" in which an 8 hectare minimum prevails.

Farmer representatives are reportedly against urban expansion. They maintain that it pushes up land values (and therefore rates) and brings about restrictions on farming activity. There is merit in having regard to these matters – it should for example be incumbent on any people electing to build near farms that have objectionable features to accept those features and relinquish any grounds for seeking to have them curtailed. Similarly, it appears unfair to charge farmers increased rates unless they obtain correspondingly increased value.

However, we should be wary of accepting farmer views that amount to vetoes on the use of land other than their own. It is easily possible to create a surfeit of democracy whereby the individual is oppressed by a majority. Land is something individually owned and not the responsibility of something called "the community". It is not appropriate that organizations should be able to successfully lobby for others not to use their property as they see fit – farmers in general cannot be given a mandate to determine what other farmers do with their land (they do, of course have the right to insist on non-interference with the peaceful use of their own property).

Improving the Administration of Planning Applications

Appraisal of planning applications should not be lengthy and time consuming. The law is clear over the matters that fall within the applications and the applications themselves are almost invariably made by qualified surveyors (indeed, except for single lot subdivisions only a surveyor is permitted to make an application). The issues should be ap-

proved automatically and without recourse to the political elements of councils.

There are some councils which have a good reputation for expeditious consideration and some which do not. The industry is familiar with the intrusiveness of different councils and there would be many operational staff within DSE with similar knowledge. Importantly, delays commonly occur because of councilor (and sometimes council official) intrusiveness regarding applications. There should be far greater automaticity in processing of development applications and less discretion at the local level in their assessment. A person's property and its use should not be subject to socialization which is the outcome of intensive oversight of its use.

It would be useful to assemble material on applications and the gestation times involved on a comparative basis in processing applications. This would facilitate the introduction of improved approval procedures and may allow the development of incentive systems to expedite approvals. Saving time offers the opportunity to make savings in land inventories - a one month such saving would be worth tens of millions of dollars to the community.

Measures could be readily developed to provide incentives (and penalties) to councils based on their performance in expediting outcomes.

Concluding Comments

Australia has perhaps the lowest level of urban development (0.3% of the land area) in the world. And although Victoria is the most densely populated of the states, its urban area occupies among the lowest proportion of any comparable world region and the urban area itself would certainly comprise under 2% of the land mass. Denying people the right to build homes on property they own is an example of egregious NIMBYism on the part of *arrivistes* seeking to deny others a break and often in the process expecting the increased scarcity of housing land in their own area to yield a windfall gain. Such actions are all the more inexcusable in a nation with the greatest abundance of land in the world.

Though requiring organisational skills (and, sadly, skills in working through labyrinthine bureaucratic structures), the process of building a house is not complex as evidenced by the tens of thousands built every year in Victoria.

The role for government should not be to police every person's actions on their own property. Rather it should be to ensure certain essential services are undertaken, services that in the main provide "collective goods". Thus, in a free society based on private ownership, the government cannot arrogate to itself or be dragooned into a role of property control. While nobody has exclusive control of her own property, since it necessarily infringes on that of

other people, the rights of "standing" for those who wish to object to a use or curtail the landowners preferred usage must be strictly limited.

It is, for example, perfectly reasonable for a property owner to require peaceful use of his land without the invasion of noxious smells from an adjoining or nearby property. It may be reasonable for the property owner to have rights to an unencumbered view. The common law has evolved a very sophisticated, and generally economically efficient, ability to cope with such interactions in the use of property. But it is not appropriate for a property owner some distance from another property owner's land to object to the nature of the dwelling on that land.

The wider that "standing" of people with an entitlement to object to a use of land that they themselves do not own, the more property falls under collective ownership. With increased infringements on the landowners' rights the land use itself is socialised - owned by the state as a bureaucratic collective - with all the shortcomings and inflexibilities of inefficient use this entails.

One outcome of that socialisation is already evident with the escalating developable land prices. Another outcome is the scarcity of shopping centres and the suppression of competitive forces in shopping developments that leads to very high profits by the political entrepreneurs who obtain approvals, profits earned from excessive prices on consumers which scarcity of competition allows.

These matters are assuming an increased prominence. Micro-economic reform has restored competition and property rights to its appropriate role within the political firmament but local government and planning issues have been immune. Rather astonishingly, the Government's response to the NCC review of Victoria's Planning and Environment Act recognised that "Zoning laws prevent land from being put to a more productive use that is valued more highly by the community" (p. 20) Insouciantly it went on to argue that zones had been made less restrictive. This in itself is debateable and seems to be confounded by the evidence of higher land costs. The very notion of the planning regulations is so alien to the deregulatory agenda that is National Competition Policy, however, that its ongoing existence cannot be compatible with anything other than major efforts to rescind the restrictions on competitive provision of land for housing and other uses that its landowners would wish for it.

Among the claims of zoning controls that are presently in place is that they ensure "land is used for its most productive purpose". There is an Orwellian touch about such statements which seem to rest on the premise that the all wise all seeing government official is superior to the market in making such assessments. Surely the history of the world since 1917 has demonstrated the falseness of such statements.

Recommendations

The restoration of low costs for the home building industry and in other urban costs and services requires measures such as:

- Relaxation of restraints on where homes may be built, even if this means growth in the urban sprawl so dreaded by the chattering classes. This might entail restricting area restraints only to areas of great natural beauty, for example, national parks and so on.
- Considerably curtailing requirements on builders to set aside land for public use.
- Restraining the demands that can be placed on developers for expenditures on infrastructure by redefining infrastructure to mean such essential features as water and sanitation, and local roads, and by recognizing that much of the expenditure for these services is already funded out of general State and local charges.
- Immediately remove restrictions on land outside of the growth boundary to allow house building on the scale and to the extent that the builder and developer can see a means of attracting customers. Allow shopping centres to be built without reference to perceptions of “need” and without insistence of installing transport and other services that the owner does not consider appropriate to meet the targeted consumers.
- Immediately remove restrictions on new building in rural areas.
- Instruct administrators in local authorities on how to expedite planning applications and introduce a system of performance based incentives to support this.

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