



COMMENTARY

Parallel Planning Universes How Citizen Rights are Denied

Michael Buxton PIA (Life Fellow)

The Victorian government is adopting an alternative land use planning system in parallel to the conventional statutory framework. This is radical change proceeding largely by stealth to benefit two classes of applicants – the multi-faceted development industry and the Victorian government or its agencies. The government is engaging in big city rebuilding so extensive that it is significant on an international scale. An alternative planning system is being designed to build it.

Secrecy is the government rule. In March 2022, the Premier accused the property sector of rejecting an agreement to give developers “massive windfall profits” through faster approval rules in return for accepting a social housing levy. What was the alleged arrangement? No strategic planning statement tells us what the government intends about the type and scale of development or the methods used to impose change. Some commentators have concluded that the government has no grand plan and instead is proceeding incrementally in an opportunistic manner. However, it is more likely that incremental change is part of the attempt to delude the public. The scale and type of development is so extensive that making it clear at the outset would lead to citizen outrage. Incremental change is less noticeable. The total extent of change will only be realised when individual steps have accumulated, too late to prevent. Citizens then can only bemoan the results.

In the absence of a statement of a grand vision for Melbourne, we are forced to rely on disconnected hints about government intentions. The Bracks 2002 government strategic plan, *Melbourne 2030*, was based on a series of research reports, all made public, and contained detailed supporting policy documents. But *Plan Melbourne*, the 2017 plan, fits well Paul Mees’s description of the Kennett government’s metropolitan plan as a promotional document. No attempt is made to justify an attempt to build a multi-functional city – the plan does not mention the term. Instead, it proposes major development in the CBD, inner city precincts, and activity centres of any size along with urban consolidation throughout the suburbs. This is a list of opportunity locations without any vision or justification, not a strategy.

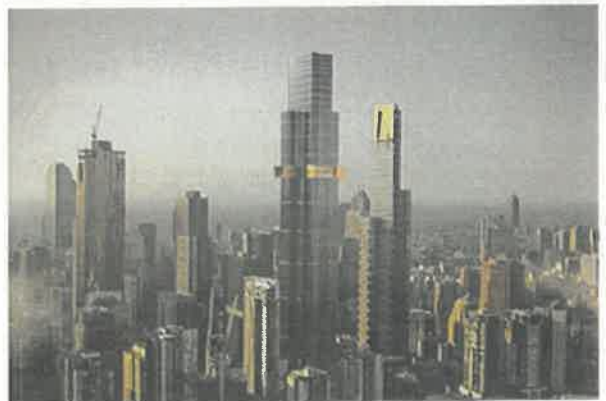
However, the plan does reveal the scale of the government’s intentions. No metropolitan area will be exempt from development, nothing must be allowed to impede the goal of unquestioned growth. Allowing developers to continue low-density sprawl on the urban fringe has reoriented government attention to the established city to meet population targets. High and medium-rise residential development will increasingly become the norm yet neither term is mentioned. Making this clear would arouse dissent and a promotional document is designed to avoid controversy.

Neither is *Plan Melbourne* an integrated land use-transport plan. The government was forced to add the construction of the Suburban Rail Loop (SRL) later as an addendum. The SRL documentation claims this project fitted neatly within the overall redevelopment vision for Melbourne even though its adoption was opportunistic and not part of any master plan. The documentation provides further hints about the government’s intentions. The Environment Effects Statement



(EES) material recognises that the SRL is “the critical first step to transforming Melbourne’s shape and growth trajectory” by changing “the way people live, work and travel” through “enhanced development” of activity centres. In this way, the SRL will change the metropolitan structure from a monocentric to a polycentric model in order to help accommodate future population growth. Yet neither the EES or the advisory committee reviewing the EES identified or assessed the SRL land use impacts, falling in line with the government’s intentions to avoid such scrutiny. This means that the project was approved while the public and local government were denied any information about the type and scale of the massive redevelopment it will generate.

Perhaps the most revealing statement of government intentions is provided in the six metropolitan land use plans forming the *Melbourne Future Planning Framework*. These plans reveal the massive scale of planned metropolitan redevelopment to meet population targets, focused on activity centres and redevelopment sites, residential areas within 800 metres of activity centres, intensification corridors and elsewhere. But again, little detail on the type of development is provided, concealing the inevitable emphasis on high-rise and other extensive apartment construction.



How will the government deliver such radical change? Again, *Plan Melbourne* provided a clue. Policy 2.4.1 undertook to “support streamlined approval processes in defined locations” through a “codified approval process”. This was sufficiently vague not to overly alarm, and the main means of implementation, the Smart Planning Program, initially proposed less contentious planning system changes.

However, after being re-elected in 2018, the government quickly showed that it meant business about the two key elements of planning system transformation – radical city-wide redevelopment; and the exclusion of residents and local government from the creation and conduct of a parallel system of approvals. Resident groups were excluded from the Smart Planning process and decisions about every other element of the alternative new system. SRL legislation removes the normal process under the Planning and Environment Act for the preparation and approval of planning scheme amendments by transferring all planning power to the Suburban Rail Loop Authority and the minister for the use and development of land over a 1.6 km radius around rail stations. The minister can exercise equivalent power to that existing under Section 20(4) of the Planning and Environment Act to exclude the rights of notification and consultation with third parties. The same ministerial power has been extended over a range of state and other projects under eight ministerial state-wide amendments which exclude third-party rights. All these elements provide an unprecedented level of autocratic state control over land use decisions.

The government has now adopted all the language of deregulation. It sought advice on developing a 'fast track' system from the Red Tape Commissioner. This led to predictable outcomes and to further government development of a deregulation agenda in secret. The result is what the supporters of the Leading Practice Model for Development Assessment prepared by the Development Assessment Forum in 2005 always intended for Victoria – the adoption of 'deemed to comply' provisions under a code assessment model.

VicSmart deregulation was the first attempt at such radical change by removing the need for permits for a range of uses and developments. The new Performance Assessment Module (PAM) outlined in *Improving the operation of ResCode* shifts the planning system to code assessment for medium-density development. The documentation incorrectly states that translating ResCode measures to PAM measures will not change existing third-party notice and review rights. The requirement that a permit must be issued if an application is 'deemed to comply' effectively removes third-party rights – indeed this is the purpose of the PAM system. Documentation justifies this new system by the need for more certainty and mandatory measures. However, there is a vast difference between section 3 prohibitions in planning schemes or mandatory measures such as overlay height controls, and 'as of right' section 1 provisions designed to enable development without the need for permits. Again, the government seeks to hide its true intention to deregulate.

This change is even more significant given Labor's liberalisation of the Coalition's former residential zones. In particular, Labor permitted multi-unit development in the Neighbourhood Residential Zone, largely removing the clear distinction between the development intensities intended for zones. This was an essential step in opening up development over vast areas of Melbourne and removing resident rights of objection under the code assessment system.

Another powerful step toward the establishment of a separate, parallel planning system is the formation of the Priority Projects Standing Advisory Committee. This is a particularly egregious step by the government. It was justified spuriously by the alleged need for "a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy". But building approvals for 2021 rose to record levels despite a falling population, with sustained



high building approval levels for all dwelling types across metropolitan areas. A similar process established by the Brumby Labor government after the Global Financial Crisis led to some notorious results. The terms of reference are extraordinarily broad, providing the minister with exceptional power to refer projects to the committee "to determine if they will deliver acceptable planning outcomes", among other criteria. Many developers now regard this process as a desirable way to avoid the conventional process involving local government, third parties and review.

This alternative system has been reinforced by the planning minister intervening to exhibit amendments when a local council has abandoned or refused to consider a proposal, override the refusal of an application by the Victorian Civil and Administrative Tribunal, or override heritage protections under the Heritage Act. Ministerial intervention now constitutes extensive interference in legitimate local matters. Unless stopped for all but minor matters or issues of legitimate state significance, this trend threatens to drastically undermine the operation of the planning system as a process offering the same levels of fairness and justice to all Victorians.

Labor has pioneered a new model of planning governance by combining autocratic state intervention with an ideology of deregulation to advantage the development industry and disempower local government and the citizenry. In doing so, it has rejected every planning principle it said it stood for in its years of opposition to the Kennett and Baillieu-Napthine Coalition governments. Labor's connections to the powerful development industry, and its commitment to land use deregulation, are deep. The result is an unprecedented attack on the principles underlying democratic governance. ●

Michael Buxton is Emeritus Professor of Environment and Planning, RMIT University.



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T: +61 3 9791 7373
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