



Transport Integration Act 2010

A good statute neutered

Bill Unkles

The current debate over the merits of the Westgate Tunnel Project raises some real concerns about transport planning in Victoria. The Brumby government had the Transport Integration Act 2010 (TIA) enacted, finally providing a cohesive legislative framework for planning of transport projects across Victoria. This legislation recognised the need for a comprehensive and integrated approach to transport planning, emphasising the interrelationships between public and private transport systems for moving both people and goods. When enacted, it appeared that the role of public transport in servicing the needs of a complex, large post-industrial city was to be given due recognition. There was hope that we had put the days of ad-hoc development of large transport projects behind us.

Part 2 Division 2 of the TIA established the following transport system objectives: Social and economic inclusion, Economic prosperity, Environmental sustainability, and Integration of transport and land use. The government's embracing of these goals and the TIA stood in stark contrast to its earlier decision to build the Peninsula Freeway. This uneconomic freeway served an outer suburban area not designated for growth, while the growth areas received little transport infrastructure investment. This ad-hoc investment was made in response to the Global Financial Crisis, by a government seeking a 'shovel ready' project.

The TIA objectives require transport agencies to act in a manner "consistent with the vision statement and the transport system objectives." (See Sections 66, 79AD, 86, 119, 131, 137 and 172 Transport Integration Act (Vic) 2010). These statements apply to Public Transport Agencies, VicRoads and the Transport Safety agencies among others. The TIA in s63 explicitly states (1) *The Department must prepare and periodically revise a transport plan for the Minister.*

However, there is nothing in the TIA to compel transport agencies to either adhere to or at least consider the transport plan when providing major projects. A constructive case for adherence can be made thus: If agencies act consistently with the vision statement and objectives of the TIA, and the transport plan reflects these objectives, any of these agencies' projects would be consistent with both the Transport Plan and the TIA's objectives. While this case reflects good governance, it may not attract a court's approval.

Yet the current WestGate Tunnel Project, the East Link project of the previous administration, and some components of the Level Crossing Removals Project illustrate a disdain for the objectives of the TIA. Those with an interest in public policy and governance may wonder why successive governments have not adhered to the transport plan when implementing city shaping projects such as East West Link and the Westgate Tunnel Project.

A simple answer?

The simple answer is *there is no transport plan*, nor any requirement to adhere to one. The TIA as enacted in 2010 specified in s63 (1) *'The Department must prepare and periodically revise the Victorian Transport Plan for the Minister'*, while subsection (5) stated *'The Victorian Transport Plan published by the Government in 2008 is deemed to have been prepared under this section.'* Thus, there was a clear and unequivocal statement determining the existence of a

Victorian Transport Plan and a commitment to periodically update said plan.

Not long after being elected, the Baillieu administration had the *Transport Legislation Amendment (Public Transport Development Authority) Act 2011 (PTDA)* enacted. The PTDA was to all intents and purposes a machinery of government instrument enabling the merging of the Transport Ticketing Agency and Metlink into the new agency, and that appropriate legislation reflected this change. The timing, structure and content of this amendment suggest it was largely initiated under the previous Labor administration.

A supreme irony?

The PTDA amended the TIA, sensibly ensuring the Public Transport Development Authority's objects and appropriate powers were recognised and enshrined in TIA. This would seem to have consolidated the role and function of public transport in transport planning. Yet in a supreme irony, this amendment, designed to improve the prospects of effective planning, integration and delivery of public transport projects, contained one section that substantially reduced the statutory requirement for integrated transport planning. The PTDA S8 amended s63 of the TIA to remove any reference to the Victorian Transport Plan and removed the deeming provision in s63 (5) that established the Victorian Transport Plan 2008 as the Victorian Transport Plan.

The amendment also revised some of the requirements of the transport plan. The original legislation stated within s63 *"The Victorian Transport Plan must – (a) be prepared and revised having regard to the vision statement, transport system objectives and decision making principles; (b) include explicit links to the vision statement and transport system objectives.* This was revised and split into two subsections: (2)(a) *set the planning framework within which transport bodies are to operate;* and (d) *be prepared having regard to the vision statement, transport system objectives and decision making principles;*

These amendments are the crux of the matter: by changing the reference to transport system objectives to transport bodies, the legislation only applied to those transport bodies specifically nominated in TIA. Hence, neither the Western Distributor Authority, a group within the Department of Economic Development, Jobs, Transport and Resources nominated as the implementation authority of the Westgate Tunnel Project nor Transurban the project builder and operator are subject to the TIA.

A further weakening of the original intent is provided by the now subsection 63 (2) (d), which states: *The transport plan should "be prepared having regard to the vision statement, transport system objectives and decision making principles'.* This revision substantially weakens the transport plan requirements, from explicitly linking to the TIA vision and objectives to merely having regard.

The Victorian Transport Plan 2008 only lives on in the Victorian Planning Provisions, where cl18.01-2 states *'Planning provisions must consider as relevant: The Victorian Transport Plan (Department of Transport, 2008)...*'. This apparent regulatory oversight does little to redress the problem of ad-hoc transport planning.

The current legislative framework has enabled a bipartisan commitment to makeshift transport planning in Melbourne and the rest of the State. There is nothing to stop the Transport Minister declaring *Plan Melbourne 2017-50* or any other plan that merely mentions transport as a transport plan, other than the indirect, inadequate and unwieldy tool of the ballot box. ●

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CORRECTION – The second last paragraph of Bill Unkles article about VCAT on page 16 of the February 2018 edition of *Planning News* should read:

VCAT plays an important part of the Victorian Planning system helping to ensure its transparency, consistency and accessibility. It considers a low share of planning decisions and mostly affirms Council decisions. Hence it does **not** appear to be the dominant influence of popular myth. Frequently VCAT decisions to set aside the initial decision considered plans that were amended to ameliorate the Responsible Authorities' initial concerns, so VCAT apparently provides an independent means of resolving planning issues. – *Eds.*

“What Matthew Guy did at Fishermans Bend stinks”

The headline in *The Age* by Planning Minister Richard Wynne accompanies the Government announcement of a Fishermans Bend planning freeze which casts doubts on more than \$4.5 billion worth of high-rise apartment projects at the controversial precinct. The Minister is notifying the developers of 26 major projects that their permit applications are being “called in” and put on hold until new planning controls are established later this year. *The Age* understands that the government is facing a potential legal backlash from the developers, who are taking advice on mounting a collective court challenge to the multibillion-dollar decision.

The freeze affects the future of nearly 14,000 proposed dwellings, retail, hospitality and office spaces, as well as a childcare centre and school in a development site the size of the CBD.

The Labor government is characterising the radical move as a necessary response to the “mess” left by former Liberal planning minister, now Opposition Leader, Matthew Guy. The development rush in Fishermans Bend was kicked off in 2012 when then Minister Guy rezoned 250 hectares of the industrial precinct encompassing parts of Port Melbourne,

South Melbourne and Docklands. The change, which drove up land values by 300 per cent according to some estimates, sparked a slew of speculative land deals and high-rise apartment tower developments without height restrictions.

The Age has previously revealed that the rezoning was done before the Liberal government had acquired privately owned land it had earmarked on its planning documents as infrastructure works, parks or community services against advice from its own department.

Opposition planning spokesman David Davis said that the Andrews government was playing “shifty games” during an election year. “It is incompetent of the Andrews Labor government to do nothing for over three wasted years and then put this long-standing project on hold during an unprecedented population boom,” he said. The “call in” does not apply to applications for developments lodged with the City of Melbourne or City of Port Phillip of less than 12,000 square metres. The smallest project now on hold is 31,000 square metres. ●

<https://tinyurl.com/ybtknkvh>

Women in planning?

The April edition of Planning News will feature a number of articles related to women in planning. The following item, by Peter Martin in The Age in 2015, makes some interesting observations. How does the planning, design and development industry fare?

“Why are there so few female chief executives? Why are so many CEOs named Peter? Not only are women rare at the top of big Australian companies, but men named Peter run more such companies than do women. The shocking finding after decades of talk about breaking the glass ceiling comes from a count of the 200 biggest public companies that constitute the ASX200 index. The idea for the survey isn't original. It comes from the US economist Justin Wolfers who wrote in the *New York Times* that fewer large American companies were run by women than by men named John.

It's unfortunate, not just for women who might want to run organisations, but also for the organisations themselves. That's because there's good evidence that organisations run by women are better run. Really. The most compelling evidence is brand new. It's from a 15-year study of Luxembourg banks. The researchers compared the representation of women in the senior management of the 264 banks with their quarter-

by-quarter financial performance reported to the regulator. They found a 10 per cent increase in the proportion of women in the senior management ranks of a bank lifted its financial performance by more than 3 per cent per annum.

So how do we get more women to the top? A team led by Dr Danielle Merrett, of the University of Sydney, has come up with the simplest of easy fixes: when selecting candidates for a job (any job) make sure the shortlist contains an equal number of men and women. Its experiments suggest that doing no more than that can lift the proportion of women chosen to 60 per cent. It opens up the possibility of a new type of quota – not one that insists on a certain proportion of women being appointed, but merely one that insists on there enough women available so that choosing a woman doesn't look unusual.

What if that's all it takes? What if instead of being chosen from a panel with names like Peter, Michael, Andrew and David the next head of BHP is chosen from a panel where half have names are like Peta, Michelle, Andrea and Davinia. What if it could lift BHP's performance?” ●

<https://tinyurl.com/y9p3rc92>

Thanks to Peter Martin and *The Age* for helping us prepare for the International Womens Day Breakfast on 15 March.