Reflections On The Provision Of Certainty In Melbourne Metropolitan Planning: 1921-Present

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For nearly a century, Melbourne, Victoria has embraced metropolitan planning, strategic planning conducted at the metropolitan-scale, as one of the main processes by which improvements to its prized built environment can be made. Relatedly, metropolitan planning may be used to provide assurances with respect to the development of property. This notion has been termed certainty. Certainty has today become a significant preoccupation within Melbourne metropolitan planning. For the past two decades, Melbourne's metropolitan planning documents have increasingly stressed the importance of its actions in providing certainty. Despite this preoccupation, very little is known about the provision of certainty or its origins, especially within a Melbourne context. Moreover, while several people have documented Melbourne's metropolitan planning history, none have done so with respect to this provision. This paper aims to address these gaps by exploring how the provision of certainty has developed over time in Melbourne metropolitan planning, from its beginnings in the 1920s to the present-day. It begins by explaining the notion of certainty and how it is provided. It finds that certainty with respect to development can only be provided through statutory planning controls. Next, it presents an abridged chronology of statutory planning controls in Victoria. This is divided into three sections based on the level at which these controls operated. These three sections are interspersed with analyses of Melbourne's eight metropolitan planning documents and their effect on these controls. It finishes with some critical reflections. Ultimately, this paper finds that certainty in Victoria has, for the most part, been provided at the local level. Briefly, it was provided at the Melbourne metropolitan level. It was only during this period that Melbourne's metropolitan planning documents were able to actually affect its provision. Despite rhetoric to the contrary, Melbourne's metropolitan plans in recent times do not and cannot provide certainty.

Keywords — certainty; metropolitan planning; statutory planning; Melbourne.

INTRODUCTION

Melbourne, Victoria consistently ranks amongst the world’s most liveable cities in many of the annual surveys into the living conditions of global cities (see TEIU, 2017; Mercer, 2017). While some of Melbourne’s prized liveability is attributed to its natural environment, much of it is due to the city’s built environment. The success of Melbourne’s built environment has not occurred through accident but rather through a deliberate process of planning. In Victoria, the planning system involves two key aspects: strategic planning, the formulation of documents — plans, policies and strategies — to guide future development; and statutory planning, the administration of development controls (Eccles and Bryant, 2011). For nearly a century, Melbourne has embraced metropolitan planning, strategic planning conducted
at the metropolitan-scale, as one of the main processes by which improvements to its built environment can be made (Townsend, 2012). The resultant metropolitan planning documents have traditionally been implemented into statutory planning controls.

Given its close ties to statutory planning, metropolitan planning may be used to provide assurances with respect to the development of property. This provision of certainty (Fingland, 2011) has today become a significant preoccupation within the Melbourne metropolitan planning sphere (see Vickridge et al., 2011; Hillier, 2013; PIA Victoria, Division, 2012; 2013). For the past two decades, metropolitan planning documents have increasingly stressed the importance of providing certainty (see DI, 2002; PDCD, 2008; DTPLI, 2014; DELWP, 2017). Moreover, planning ministers have justified their actions using the term (see Madden, 2008; Guy, 2012; 2013) and political parties have campaigned on the platform of increasing certainty in the planning system (see Victorian Liberal Nationals Coalition, 2010; Victorian Labor, 2014). In addition, certainty and its antonym, uncertainty, have also recently emerged as a significant preoccupation within planning literature. There have been calls from a group of planning academics for metropolitan plans to provide flexibility, in order to deal with the increasing economic, environmental and social uncertainties found in the world in which planning operates (see Baldacci et al., 2011; Wilkinson, 2011).

Despite the recent interest, very little is actually known about certainty. Moreover, very little is known about the practice of providing it, especially within a Melbourne context. While some have documented Melbourne’s metropolitan planning history (see McLoughlin, 1992; Townsend, 2012), none have done so with respect to the provision of certainty. This paper aims to address these gaps by drawing on the methods of archival research and document analysis to explore first the provision of certainty and second how it has developed over time in Melbourne metropolitan planning, from its beginnings in the 1920s to the present-day. To do so, it begins by explaining the notion of certainty and how it is provided in Victoria. Next, it presents an abridged chronology of statutory planning controls in Victoria and their changing relationship to metropolitan planning. This is divided into three sections based on the level at which these controls operated. These sections are interspersed with analyses of Melbourne’s eight metropolitan planning documents and their effect on these controls. It finally concludes with some critical reflections about how the provision of certainty developed and its implications for current metropolitan planning.

CERTAINTY AND ITS PROVISION

Despite the recent interest, certainty remains an ill explored notion. In a planning context, it is largely accepted that the term certainty refers to certainty with respect to the development of property (Morris, 1979; Bunker and Searle, 2007; Fingland, 2011). However, there is no agreed definition of certainty in this context. Building on the work of these authors, with their own definitions, it defines certainty as assurances with respect to the development of property. These assurances relate to how a property can or cannot be used or developed. The big mystery remains, how are these assurances provided? Bunker and Searle (2007) contend that certainty is provided through urban growth and infrastructure goals found within metropolitan strategies. However, these goals are seldom more than wishes, as there is no guarantee that they will ever be achieved. As such, it is unreasonable to expect them to provide assurances with respect to the development of property. Moreover, they do little in the way of clarifying how a property can be used or developed. Instead, Fingland (2011) contends that certainty is provided through the planning system itself, although he does not posit what in the planning system actually provides it. Fortunately, this had been done more than three decades prior. Morris (1979), one of the first to identify and explore the notion of certainty, contends that statutory planning controls, which in Victoria are located within planning schemes, are the way in which the planning system provides assurances with respect to the development of property. This is because statutory planning controls generally control how all property, public or private, may be used and developed (Eccles and Bryant, 2011). It is important to note that these assurances are not ironclad and, thus, uncertainty is present. In Victoria, councils have discretion over particular aspects of planning permit applications, the Minister for Planning has the power to call-in applications and the Victorian Civil and Administrate Tribunal can overrule decisions based on strategic intent (Eccles and Bryant, 2011). However, this paper concurs that statutory planning controls remain the basis for which assurances can be made. As such, in order to explore how the provision of certainty has developed over time in Melbourne metropolitan planning, the paper next explores the historical development of statutory planning controls in Victoria and their relationship to Melbourne’s eight metropolitan planning documents.

THE LOCAL PROVISION OF CERTAINTY: 1921 – 1949

While planning ideas, both colonial and post-colonial, reached the state much earlier (see Proudfoot, 1999; Freestone, 1999; Garnaut, 1999), statutory planning controls are accepted to have begun in Victoria in December 1921 (Eccles and Bryant, 2011). For nearly a century, development had occurred without much regulation. However, a rapidly worsening urban condition led the state parliament to pass the Local Government Act 1921. This Act gave councils the voluntary power to introduce by-laws prescribing areas within their municipality as residential, thereby prohibiting non-residential uses and development. These rudimentary statutory planning controls provided the first assurances with respect to the development of property. As such, they marked the beginning of certainty in Victoria. Despite quickly being superseded, they remained in effect until April 1968.

Meanwhile, moves for a stronger, metropolitan-wide response to the urban condition were already underway. In July 1920, the Melbourne City Council passed a resolution to regulate urban development and hold a conference of metropolitan councils to discuss how such a feat should be achieved (MTPC, 1929). The Conference of Metropolitan Municipalities recommended the establishment of a planning commission. The state parliament approved this recommendation, passing the Metropolitan Town Planning Commission Act 1922. The Act gave power to establish the Metropolitan Town Planning Commission (MTPC) as an advisory body to make general plans to regulate urban development within the metropolitan region. In December 1929, the MTPC presented Melbourne’s first metropolitan document, Plan of General Development (MTPC, 1929), to the State Government. The 308-page document proposed to distribute future development evenly across the metropolitan area, making a number of recommendations to aid this development. While the majority of these related to transport and open space, it importantly recommended the introduction of planning legislation, based on extensive, new state-wide legislation, which gave councils the voluntary power to prepare and administer local planning schemes consistent with the document. Under these schemes, councils could prescribe the use and development of land within their municipality. Moreover, it empowered the establishment of a planning authority to oversee their preparation. In December 1930, a bill encompassing the recommended planning legislation was introduced to the state parliament but was allowed to lapse the next year (Freestone and Grubb, 1998). As such, Melbourne’s first metropolitan planning document never even had a chance to provide certainty. However, if its proposed legislation had been enacted, the document would not have provided certainty, as the resultant local planning schemes would have controlled development.

Victoria was finally able to secure stronger statutory planning controls in the late-1930s; However, they came from an unlikely source. In July 1936, the State Government established the Slum Investigation Committee, which later became the Housing Investigation and Slum Abolition Board (HISAB). HISAB presented recommendations to improve inner-city slums and housing (HISAB, 1937). The following year, the state parliament passed the Slum Reclamation and Housing Act 1938, which incorporated many of these recommendations. This Act gave councils the voluntary power to prepare and administer local zoning schemes. Under these schemes, councils could use zones to prescribe the use and development of land within their municipality. Moreover, it also empowered the establishment of the Housing Commission of Victoria to oversee their preparation. These statutory planning controls were more encompassing than the council by-laws, prescribing for the use and development of land beyond just residential. As such, they provided a greater degree of certainty. These controls remained in place for six years, until they were replaced with the introduction of proper planning legislation.

In the early-1940s, at the height of the Second World War, the Commonwealth Government became increasingly concerned about the poorly regulated development of Australia’s capital cities (McLoughlin, 1992). Consequently, it threatened to withhold vital housing funding for states without planning legislation. In response, the state parliament...
approved the Town and Country Planning Act 1944, which repealed the Slum Reclamation and Housing Act 1938. This principal Act was similar to the legislation proposed in 1930. It gave councils voluntary powers to prepare and administer, either solely or jointly with another council, local planning schemes. Under these schemes, councils could use various ordinances stipulated in government regulations to prescribe the use and development of land within their municipality. Importantly, it introduced Interim Development Orders (IDO) as a stopgap control put in place until a scheme was approved or amended. Moreover, the Act also empowered the establishment of the Town and Country Planning Board (TCPB) to oversee the preparation of the schemes and IDOs. These statutory planning controls were far more encompassing than the local zoning schemes. As such, they provided an even greater degree of certainty. As will be shown in the next section, these controls continued to remain in place but were increasingly marginalised by metropolitan controls.

To these ends, between 1921 and 1949, assurances with respect to the development of property were provided only at the local level, first through council by-laws, then through local zoning schemes and later through local planning schemes. The only major attempt to introduce comprehensive planning controls was the Metropolitan Development Act 1933, which was the first attempt at metropolitan planning in Melbourne. However, its blanket application of controls, as set out in its third schedule, was not carried through in practice. Melbourne's first metropolitan plan emerged from the recommendations of the Melbourne Metropolitan Planning Board (MMPB) in 1953. The MMBW, across the state, was an independent public utility board, the power to prepare and administer planning schemes. Unfortunately, it did not adequately address the relationship between the metropolitan planning scheme and local planning schemes (Logan, 1981). The Act required the Board only to ‘consult’ with councils in the preparation of its own scheme.

The MMBW released Melbourne's second metropolitan planning document, Melbourne Metropolitan Planning Scheme 1954 (MMBW, 1953; 1954), in two volumes. The collectively 363-page document proposed to distribute development to the east and southeast, making a number of recommendations to aid this development. These recommendations were translated in the new Metropolitan Planning Scheme (MPS). Importantly, initial attempts were made to clarify the relationship between the MPSS and local planning schemes. According to the authors of the document (MMBW, 1953: 17), the MPSS was to be “considered as a framework into which the planning schemes of the local municipalities should fit”. This, however, meant the duplication of planning controls. Owners needed to obtain planning permission from the MPSS to develop their property, which had to be done in accordance with the MPSS, and from the council if a local planning scheme also affected their property (Logan, 1981). The MPSS was statutorily exhibited to the public between July and October 1954, and an IDO was put in place to stop development inconsistent with the scheme in February 1955 (TCPB, 1955). Following its exhibition, the MPSS was formally submitted to the State Government for approval in late-1958. However, it languished for nearly ten years until it was finally gazetted in April 1968. Between 1955 and 1968, it was through both the MPSS IDO and local planning schemes that assurances with respect to the development of property were made. Because of its direct implementation through statutory planning controls, Melbourne’s second metropolitan planning document can be said to have provided development certainty.

Victoria’s principal planning legislation underwent some changes during the late-1950s and 1960s. The state parliament passed the Town and Country Planning Act 1958, which repealed the 1944 Act. Three years later, parliament passed the Town and Country Planning (Amendment) Act 1968. This amendment to the principal Act substantially restructured planning in Victoria by creating a three-tier system: state, regional and local. In terms of the state tier, the Act established the State Planning Council (SPC) to prepare Statements of Planning Policy, strategic planning policies that needed to be considered in the preparation of planning schemes and planning permit applications. A total of nine such statements were prepared (Eccles and Bryant, 2011). In terms of the regional tier, the Act enabled the creation of regional planning authorities, similar to the MMBW, across the state. These authorities were tasked with creating regional planning schemes, similar to the MPSS. Importantly, these regional authorities, including the MMBW, were given the power to delegate the administration of these schemes to councils. In terms of the local tier, the Act continued the existing powers of councils to prepare and administer local planning schemes for those areas not covered by regional planning schemes. For those that were covered, councils had to request regional authorities to amend their regional schemes. If these requests were not obliged, councils could prepare local schemes as amendments to the regional schemes. It was intended that all existing local schemes would eventually be incorporated, and revoked, into the regional planning schemes until only regional scheme existed (TCPB, 1968).

Somewhat comically, just as they gazetted the original MPSS, the State Government instructed the MMBW to prepare a third metropolitan planning document for Melbourne. In November 1971, the MMBW released Planning Policies for the Melbourne Metropolitan Region (MMBW, 1971). The 113-page document radically proposed to distribute future development along eight radial growth corridors and preserve as green wedges the land between them, making a number of recommendations to aid this development. These recommendations were translated into two amendments to the MPSS. These amendments were statutorily exhibited to the public between December 1971 and July 1972. The MMBW officially responded to objections in February 1974 (MMBW, 1974) and submitted to the State Government, which had recently established a separate planning department, for approval. The amendment was eventually gazetted. A similar outcome occurred six years later with Melbourne’s fourth metropolitan planning document. The MMBW released the document, Metropolitan Strategy (MMBW, 1980; 1981) in two parts. The collectively 194-page document proposed to distribute future development in the same pattern as its predecessor, but with an increased emphasis on urban consolidation within the city’s established residential suburbs and activity centres. These recommendations were primarily translated into an amendment to the MPSS. The amendment to the MPSS was statutorily exhibited to the public in April 1981 and finally gazetted in September 1983. Because of their direct implementation through statutory planning controls, Melbourne’s third and fourth metropolitan planning documents can be said to have affected the provision of development certainty.

Further attempts were made in the late-1970s to clarify and redefine the statutory planning roles and responsibilities of councils. The state parliament passed the Town and Country Planning (General Amendment) Act 1979. This Act attempted to address the issue of dual statutory planning controls by giving metropolitan councils voluntary powers to prepare and administer local development schemes, which were to be municipal versions of the MPSS. Owners needed to obtain planning permission only from the councils administering the local development schemes. Moreover, it was intended that local development schemes would eventually replace local planning schemes (MMBW, 1981). This never happened and only one local development scheme was ever gazetted before the controls were repealed in 1987 (Eccles and Bryant, 2011). As such, certainty remained primarily at the metropolitan level. This metropolitan provision of certainty was strengthened in July 1985, as the state parliament passed the Town and Country Planning (Transfer of Functions) Act 1985. This Act transferred planning powers from the MMBW to the planning department, which had already absorbed the TCPB. As such, metropolitan planning became an activity of the government (McLoughlin, 1992). The State Government, through its planning department, would go on to release metropolitan planning documents for Melbourne. Importantly, the Act also abolished all local planning schemes, local development schemes and IDOs in operation within the metropolitan region. In return, metropolitan councils were delegated the power to amend the MPSS and decide on general planning permit applications in their municipalities. As will be shown in the next section, these powers lasted only two years.

To these ends, between 1949 and 1987, assurances with respect to the development of property were increasingly provided at the metropolitan level, as the MPSS gradually surpassed local planning schemes in terms of importance. Local development schemes would have challenged some of its power but they were never fully embraced. The three metropolitan planning documents created during the period were all able to directly affect this provision, through amendments to the MPSS.
The Victorian planning system began to take its recognisable present form from the late-1800s. The state parliament passed the Planning and Environment Act 1987, which repealed the Town and Country Planning Act 1961 and restructured the current system (Eccles and Bryant, 2011). This principal Act completely abolished the previous regional tier, resulting in a two-tiered system: state and local. In terms of the state tier, the State Government is now responsible for preparing strategic plans and policies, which are to be considered in the preparation of planning schemes and planning permit applications. In terms of the local tier, councils are now required to prepare and administer local planning schemes prescribing the use and development of land within their municipality. Between 1987 and 1996, these local planning schemes were divided into three distinct sections: a state section for matters of state significance; a regional section for matters of regional significance; and a local section that contained ordinances and maps specific to each municipality (Eccles and Bryant, 2011). Interestingly, the contents of the defunct MMPS were merged into the regional and local sections of the local planning schemes, ensuring a continuation of its legacy until such times as councils decided to amend it (Buxton, et al., 2003).

That same year, the Cain State Government released Melbourne’s fifth metropolitan planning document, Shaping Melbourne’s Future (MPE, 1987). It was the first such document created by the State Government, not an independent body. The 57-page document did not propose to alter the distribution of future urban development. Importantly, the document could not prescribe planning controls to achieve its desired outcomes, as there was no longer an MMPS into which the document could be translated. Rather, it relied primarily on councils interpreting the document into their local planning schemes. A similar situation occurred eight years later. In December 1995, the Kennett State Government released a sixth metropolitan planning document for Melbourne, Living Suburbs (DPD, 1995). The 72-page document proposed to distribute future development in much the same way as its predecessors. Importantly, it too relied on a range of actions to achieve its vision. Most notably, it proposed councils interpret the document into their “sub-metropolitan strategies” (DPD, 1995: 70) and prescribe these into their local planning schemes, where assurances with respect to the development of property were again found. As such, Melbourne’s fifth and sixth metropolitan planning documents did not provide development certainty.

One year after the release of Living Suburbs (DPD, 1995), the state parliament passed the Planning and Environment (Planning Schemes) Act 1996. This Act amended the principal Act to reform the structure of planning schemes by standardising them into the present-day form. To achieve this standardisation, the legislation inserted into the Act the Victoria Planning Provisions (VPPs). The VPPs are a source document, separate to the Act, which specify the exact form and contents for all local planning schemes. The Act requires that all Victorian councils prepare a local planning scheme for their municipality in line with this VPPs source document. The new schemes are quite similar to their predecessors. They comprise: a state section, known as the State Planning Policy Framework (SPPF), which includes the State Government’s strategic planning policies relating to issues of state, including metropolitan, significance; and a local section, which include local planning policies, zones, overlays, various other provisions and maps specific to each municipality (Eccles and Bryant, 2011; Buxton et al., 2016). At the time of their introduction, the VPPs included a suite of 25 zones, 22 overlays, 31 particular provisions, 31 general provisions and 29 incorporated documents, all complete with their own schedules, which could be used in the preparation of the new schemes (Macellani, 1996). Councils can apply only the provisions specified in the VPPs to their local planning schemes. It is also important to note that these provisions, in particular zoning, are primarily discretionary in nature (Buxton et al., 2003). “Many zones allow a large number of uses and developments to be considered and contain a small number of prohibited uses” (Buxton et al., 2003: 8). The way in which discretion affects the provision of certainty is unfortunately beyond the scope of this paper.

Since these changes to planning system, two more metropolitan planning documents have been released and updated. While they did not propose to alter the distribution of future urban development, they tried to make use of statutory planning controls to achieve their other goals. In October 2002, the Bracks State Government released Melbourne’s seventh metropolitan planning document, Melbourne 2036 (DPDC, 2002). The 192-page document proposed to distribute future urban development in the growth corridors and the city’s established residential suburbs and activity centres. Interestingly, it proposed an urban growth boundary to limit urban sprawl and promote urban consolidation. The document was updated in 2008 as Melbourne @ 5 Million (DPCD, 2008). Four years later, in May 2014, the Napthine State Government released Melbourne’s eighth metropolitan planning document, Plan Melbourne (DTPPL, 2014). The 205-page document again similarly did not depart significantly from its predecessor. Three years later, rather than create a new metropolitan planning document, the incumbent Andrews State Government simply ‘refreshed’ the previous Government’s document, as Plan Melbourne, 2017 – 2050 (DELWP, 2017). A range of measures was provided to implement both the documents and their updates. Importantly, they both made use of statutory planning controls, proposing to amend the SPPF section of all local planning schemes to mention the key directions of the documents, in an effort to guide planning decisions at the local level. However, ultimately, local planning schemes remain the responsibility of councils. As such, Melbourne’s seventh and eighth metropolitan documents have not been able to provide certainty.

To these ends, since 1987, assurances with respect to the development of property have returned to the local level. Certainty is again provided through local planning schemes. The metropolitan plans created since then have had differing effects on this provision. Between 1987 and 1995, the State Government had little control over the contents of local planning schemes. As such, the two metropolitan planning documents created during this period could not make use of statutory planning controls and thus did not provide certainty. Since 1996 and the standardisation of local planning schemes, the State Government has had more control. As such, the two metropolitan planning documents created and updated during this current period have at least made use of statutory planning controls. However, the controls used, mainly the SPPF in the local planning schemes, were intended to guide the preparation of these schemes and planning permit applications. They simply do not have the same statutory effect as other provisions, such as zones and overlays. Thus, these documents also did not provide much in the way of development certainty.

Critical Reflections

Melbourne metropolitan planning has had a dynamic relationship with the provision of certainty. This paper has shown that in Victoria, the provision of certainty, assurances with respect to the development of property, has changed over time. Between 1921 and 1949, certainty was provided at the local level, first through council by-laws, then through local zonings schemes and later through local planning schemes. Between 1949 and 1987, certainty was increasingly provided at the metropolitan level, as local planning schemes relinquished power to the MMPS. Since 1987, the provision of certainty has returned to the local level, through local planning schemes. In 1996, changes were made to allow a greater involvement in local planning schemes by the State Government, by specifying the form and contents of these schemes through the VPPs. However, local planning schemes still ultimately remain the responsibility of councils.

In terms of Melbourne metropolitan planning, only three documents have ever truly provided assurances with respect to the development of property: the 1954, 1971 and 1980-1 documents. This is because only these documents have been able to directly influence statutory planning controls, specifically the MMPS. Even if the legislation recommended in the 1929 document had been enacted, it still would not have provided certainty, as it proposed the creation of local planning schemes. Councils, not the metropolitan document, would have ultimately determined these schemes. Since 1987, metropolitan planning documents have similarly not been able to provide certainty, despite rhetoric to the contrary. While the more recent metropolitan plans have been able to make changes to these schemes, they have only been able to do so in ways that are intended to guide schemes. Local planning schemes, no matter how their form and contents are influenced, ultimately remain up to the discretion of councils.

This paper has only explained how the provision of certainty has developed historically and the influence Melbourne metropolitan planning has had on it. The more pressing question remains, why has the provision of certainty developed in such a way? These changes are the result of complex power relations between politicians, planners and various outside interests. To these ends, this paper calls for a more in-depth analysis of Melbourne metropolitan planning.
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