

**Submission  
No 45**

**INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN  
PLANNING FRAMEWORK**

**Name:** Dr Rosetta Manaszewicz

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The terms of reference for this inquiry are broad. In the interests of brevity I will focus on only two of the major categories under investigation – heritage and planning decision making by government and councils as enshrined in the Planning & Environment Act, 1987. There is of course overlap between these two categories.

## **HERITAGE**

Countless media statements and releases by the Planning Minister have placed the onus of heritage protection onto individual councils (see appendix 1). When buildings have been demolished the general response from government has been that councils have not done the required work to ensure that such properties are protected via a heritage overlay. Such statements of course beg the question as to why interim heritage status is repeatedly refused by the Minister and/or department, or delayed to such an extent that the developer can demolish with impunity.

Even when councils have done the required ground work, including expert, external heritage reviews and justification, and then submitted draft amendments for exhibition approval, these are not assured of being accepted. One recent example includes Glen Eira Council's proposal for 9 heritage precincts in Elsternwick (Amendment C204). The response from the Minister/DELWP was that only 7 precincts could be advertised – thereby ignoring countless properties that date back to the 1880's and are largely intact and preserved.

Most concerning was the DELWP letter to council, (endorsed by the Minister), outlining the rationale behind the refusal to allow advertising of all 9 precincts. The letter stated:

*"At this stage it is not considered appropriate to apply the Heritage Overlay more extensively in Elsternwick given that Council is yet to seek authorisation for a planning scheme amendment to implement the Elsternwick Structure Plan. Doing so could, by default, **lead to heritage controls becoming the primary driver for development outcomes within the Elsternwick Activity Centre.** (My emphases).*

The ensuing Planning Panel Report was explicit in its criticism of such logic. I append page 6 and 7 from the Panel's report which concludes that the exclusion of the 2 precincts:

1. Is counter to Planning Practice Notes 1, 58 and 60 and that
2. Development potential is not a valid criterion when considering heritage potential.
3. Development potential is NOT prioritised above any other criteria in the planning provisions
4. No valid justification has been provided for the exclusion of the 2 precincts
5. Contravenes Plan Melbourne where heritage is said to be 'fundamental' (Clause 4.4.3) to the state's cultural identity.

## **RECOMMENDATIONS:**

- No building be demolished without having acquired a planning permit first
- Requests for interim heritage controls ensure that no demolitions be permitted until a final decision is made. This decision to be handed down within 30 days.
- Ministerial and/or DWELP refusals to grant heritage status be published with full documentation as to the rationale behind such decisions. This could be accommodated via an online register of such applications.

## **PLANNING DECISION-MAKING**

### Role of Government/DELWP

There have been countless reviews of the Planning & Environment Act over the years. Recommendations have largely been ignored. Legislation that has been incorporated into the Act does little to ensure full transparency and accountability by decision makers. Recent changes such as Vic Smart and the Big Build have progressively reduced the allowable input by residents and have often resulted in developments that are contrary to council's planning schemes.

Furthermore, the introduction of the PTTN is another instance of government intervention without the necessary research and justification. We are told: *The PPTN, which is reflected [planning schemes](https://transport.vic.gov.au/about/planning/transport-strategies-and-plans/principal-public-transport-network) across Victoria, is designed to support integrated transport and land use planning by encouraging more diverse and dense development near high-quality public transport to help support public transport usage.* (<https://transport.vic.gov.au/about/planning/transport-strategies-and-plans/principal-public-transport-network>). In a municipality such as Glen Eira, with its 9 railway stations, this equates to large swathes of land mass being allocated for higher density. (attachment 3) No analyses has been published which would justify why certain roads which are lucky to have one bus every hour can qualify as providing 'high-quality public transport'. Nor has there been any analyses of the potential consequences on density, width of roads, current traffic movements, climate change, etc. Arbitrary decision making designed to encourage development must be based on sound analyses and justification. This has not been the case with so many government interventions.

### **RECOMMENDATIONS:**

- Before any major planning decisions are made by government, that it be mandated, that councils and the community are privy to all of the accompanying data and analyses, and that both sectors be given the opportunity to object if necessary, or provide public input.

### Role of councils

The Planning & Environment Act 1987 provides very little direction on how councils may arrive at their various decisions regarding development applications. Hence there is no consistency throughout the 90+ councils in the state. Some councils involve all their councillors in arriving at decisions via delegated Section 86 committees. Other councils such as Glen Eira have Delegated Committee meetings where no councillor is present and the rationale for each decision made by these officers is not published. Some councils require 5 objections in order to proceed to a full council meeting. Others have other stipulations that require 15 or 20 objections for this to occur. Nor is there adequate advertising of applications, with anecdotal evidence revealing that many abutting residents were not even informed as to the existence of the application.

The regulations governing online application registers need to be updated and enforced. In Glen Eira, it is impossible to locate all decisions that pertain to one site, given that the register does not

incorporate all decisions into the one entry. Nor are residents able to decipher whether the decision has been made under delegation, by councillors, or by VCAT. Given the availability of technology, it should be a relatively easy matter to include all such information in the one entry, as well as an online version of the permit and the associated plans.

#### Land Use Planning/Structure Plans/Residential Zones

Recent Government changes have gradually whittled away at the earlier version of the 'new' residential zones by removing the 2 dwelling limits in NRZ zones, and providing councils with the option of removing the mandatory garden requirement from GRZ zones. In addition, recent changes to the various Planning Practice Notes that basically rule out the option for mandatory height limits in structure planning, further erodes the potential for councils to plan satisfactorily according to their individual circumstances. All of these changes promote development at the expense of open space, satisfactory permeability requirements, site coverage, to name just a few. Nor do they take into consideration the impacts on density, urban heat island effect, tree canopy loss, etc all of which are given specific focus in Plan Melbourne. But until such considerations are enforced via mandatory provisions in the VPPs, Plan Melbourne will remain nothing more than a set of motherhood statements that only give lip service to these requirements.

#### Incorporated Plans

Glen Eira has had a long history with major developments adjudicated according to adopted incorporated plans. The Caulfield Village incorporated plan of 2014, stated that the development would feature 1100 dwellings. Over time, this has now burgeoned to an anticipated 2300 dwellings with development applications for the earmarked individual precincts repeatedly pushing the boundaries. Under the rubrics of legislation, no third party objection rights are available, and the phrasing of 'generally in accordance' with the incorporated plan, limits council's decision making capacity to very little. It therefore becomes essential that all aspects of an incorporated plan be open to regular review and amendment by councils with direct community input.

#### **RECOMMENDATIONS:**

- Mandatory height limits be permitted
- Mandatory apartment sizes be permitted
- The winter solstice be accorded planning evaluation in all applications
- Open space, permeability, landscaping, site coverage, become mandatory requirements in all schedules to each zone – including RGZ, MUZ, and C1Z
- Third party objection rights be mandatory for all ACZ, CDZ, PDZ development applications
- Regulations updated on the requirements for all online planning registers
- Consistency across council planning delegations

## **APPENDIX 1**

"This is a timely reminder to councils that they have a duty to their communities to make sure they have their local heritage identified and protected so it doesn't need saving at the last minute," Mr Wynne said. (<https://www.theage.com.au/national/victoria/esme-johnston-house-granted-permanent-heritage-protection-20201029-p569vg.html>)

"If the council considered these houses to be of local significance, they had the means to protect them and the demolition permits should never have been issued," he said. (<https://www.theage.com.au/national/victoria/national-trust-slams-bayside-council-s-deplorable-action-heritage-sites-20200513-p54sf2.html>)

"We've stepped in to protect this historic property where the council has failed to - our heritage is our history and councils should protect it." (<https://www.theage.com.au/national/victoria/historic-hawthorn-house-saved-from-demolition-after-planning-minister-steps-in-20190514-p51ncn.html>)

ELSTERNWICK - A spokeswoman for Mr Wynne said the council was responsible for ensuring its local planning schemes were up to date to protect sites with local heritage significance. She said the council had made no request to the planning minister to stop demolition of the Seymour Road property.

But she acknowledged that Heritage Victoria and the Heritage Council had received an application from another party to stop the demolition.

Both refused the application for an interim protection order because there was no prima facie case on the evidence provided for the building to be deemed of state-level heritage significance. (<https://www.theage.com.au/politics/victoria/step-in-to-save-historic-elsternwick-home-opposition-tells-minister-20190801-p52cud.html>)

"If the council was serious about protecting this house, it would not have issued a demolition permit to knock it down last year," Mr Wynne said in a statement. ...."The council has had ample opportunity to request state intervention but instead has sat on its hands until bulldozers are out the front. "Councils are responsible for local heritage and once again I urge them to protect it." (<https://www.abc.net.au/news/2019-08-31/hawthorn-boroondara-heritage-rules-home-demolished-apartments/11467410>)

*"This is a timely reminder to councils that they have a duty to their communities to make sure they have their local heritage identified and protected so it doesn't need saving at the last minute."* (<https://www.premier.vic.gov.au/heritage-protection-esme-johnston-house>)

*Councils are responsible for local heritage and they need to ensure they put in place the necessary protections to give certainty to their communities and to their landowners."* (<https://www.premier.vic.gov.au/protecting-geelong-local-heritage>)

## **APPENDIX 2**

Glen Eira Planning Scheme Amendment C204glen | Panel Report | 10 December 2021

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### **2.4 Submissions**

Council submitted the Amendment is supported by and implements directions and policies which have been summarised in Chapter 2.1 and Appendix A of this report.

Council noted that DELWP authorisation conditions resulted in the Amendment including considerably less properties than what was originally proposed. Among other conditions, it referred to one in the original letter of authorisation:

At this stage it is not considered appropriate to apply the Heritage Overlay more extensively in Elsternwick given that council has yet to seek authorisation for a planning scheme amendment to implement the Elsternwick Structure Plan. Doing so could, by default, lead to heritage controls becoming the primary driver for development outcomes within the Elsternwick Activity Centre. Wider application of the Heritage Overlay in Elsternwick needs to be considered in the context of implementation of the Elsternwick Structure Plan. Council may consider seeking further heritage controls in conjunction with a future request for authorisation to prepare and exhibit permanent controls to implement the Structure Plan.

Glen Eira Historical Society supported the Amendment because it considered the research, presentation, citations and Statements of Significance to be of an excellent quality.

No submitter considered the Amendment should not progress because it was not strategically justified.

### **2.5 Discussion**

Section 4(1)(d) of the PE Act which seeks to conserve buildings, areas and places of interest and balance the present and future interests of all Victorians is reflected through planning policies in the Victoria Planning Provisions, Glen Eira Planning Scheme and Plan Melbourne. These policies direct Council to identify, protect, enhance and promote local heritage. The Amendment is supported by and implements these policies directions.

Council's heritage gap study, the Glen Eira Heritage Review of the Elsternwick Structure Plan Area 2019, identified places and precincts with local heritage significance. The Amendment is based on a sound heritage study which applied a methodology consistent with Planning Practice Note 1.

The Amendment does not include all recommendations of the Heritage Study, resulting in consequential consequences outlined in Chapter 5.4. The Panel is curious why the authorisation condition excluded properties subject to the Elsternwick Structure Plan area until the Elsternwick Structure Plan process. This is inconsistent with:

- DELWP's Planning Practice Note 1 criteria for assessing heritage significance and applying the Heritage Overlay
- Planning Practice Notes 58 and 60 which envisage heritage in an activity centre – applying the Heritage Overlay ahead of the structure planning would enable a more informed and transparent process
- long held views by Planning Panels and councils that urban consolidation and development opportunities are not relevant when considering whether the Heritage Overlay should be applied
- outcomes in Melbourne's Central City and activity centres where significant development and ongoing structure planning have occurred on land with the Heritage Overlay.

The Heritage Overlay specifies permit triggers to enable Council to assess the impact of future development. Unlike the Design and Development Overlay, it does not include restrictive building

heights, setbacks and other built form restrictions. It is unclear how applying the Heritage Overlay ahead of structure planning could result in *“heritage controls becoming the primary driver for development outcomes within the Elsternwick Activity Centre”*.

The PE Act and Planning Scheme seek to balance conflicting objectives in favour of net community benefit and require an assessment of the Amendment’s social and economic effects on community. Other than bushfire provisions, the Victoria Planning Provisions do not prioritise certain policy objectives over another. Applying the Heritage Overlay to the Elsternwick Activity Centre would have ensured that identified heritage is considered within the suite of existing provisions and policy relevant to the centre.

Like the Bushfire Management and Flood Overlays, the Heritage Overlay is recommended for properties that have been comprehensively researched through a multi-phase forensic methodology. The Heritage Overlay:

- should not be ‘traded-off’ during the planning scheme amendment stage against other policy objectives
- should be applied if it is supported through comprehensive research and evidence and found to achieve local heritage significance.

Competing policy objectives may be more relevant during the permit application process when a development proposal can be assessed against the full suite of policy objectives, including heritage.

The Amendment was exhibited without the Elsternwick South and Elsternwick North precincts, therefore for procedural reasons, they cannot be considered through the Amendment. This has not affected the integrity of Council’s approach and process for the properties remaining in the Amendment.

## 2.6 Conclusions

For the reasons set out in the following chapters, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

**APPENDIX 3**

## Principal Public Transport Network Area Maps

### Glen Eira Planning Scheme

