Submission No 130

INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN PLANNING FRAMEWORK

Name: Ross and Lyn Campbell

Date Received: 31 January 2022

Submission to Inquiry into the Protections Within the Victorian Planning

Ross & Lyn Campbell
[redacted]

Submission:
In the past few years we have unfortunately become involved in a number of planning issues with our local Council, with VCAT and with the Planning Minister taking VCAT Hearings out of VCAT and ruling on them himself. We have seen some strengths in the process, but also some flaws and what we consider some unfairness. Having had these experiences as a resident we believe we can add some valuable insights from the resident's perspective. Our submission is presented below in order of the terms of reference listed for the enquiry.

(1) The high cost of housing:

(b) access for first home buyers;

First home buyers are being forced into purchasing homes at prices that will become unaffordable as interest rates will inevitably rise. Governments must do something to **increase the supply** of affordable housing to first home buyers rather than continue to offer first home buyer grants. These grants only push up the price of new homes by providing them with more money to bid with.

(d) population policy, state and local;

Population policy is one way to increase the supply of housing. The current flight of Victorians to other states will assist this by freeing up existing homes in Victoria, but this will be short lived.
Increases in population has long been seen as an easy way to provide growth to an economy by providing demand for all types of products. The problem we are experiencing now with a policy of population increase is that our infrastructure is not running ahead of that growth and the result is a falling standard of living.

- Estates are being built without schools, libraries, pools and parks.
- Residents are having to drive to commonly used facilities rather than walk.
- Our inner suburban roads are clogged as population densities are increased.
- Our inner suburban storm water systems are overflowing due to increased runoff due to reduction in green space.
- Noise pollution from neighbours is an increasing problem with increased density in the inner suburbs.
- Trains and trams were not coping with the commuter volumes in the inner suburbs prior to Covid and will not cope again when the pandemic issues are over.

Melbourne is no longer one of the greatest and most liveable cities in the world due to our declining standard of living driven by uneven population increases and reducing public amenities.
Population density increases need to be spread more evenly across Melbourne rather than selected suburbs impacted by clumps of high rise apartments around railway stations and along arterial roads. Elsternwick railway station is a perfect example, pre covid the station at peak times was at capacity with people sometimes unable to board trains and platform overcrowded. The public wonder at why there are such huge differences between planning laws in neighbouring councils.
Compare the Municipality of Glen Eira with Bayside for example and we see apartment towers of 12 storeys allowed around Elsternwick Station and a row of 8 storey buildings running up Glen Huntly Rd, but cross the Nepean Highway into Bayside and there is nothing allowed over 4 storeys. The heritage and liveability of Bayside is allowed to be maintained while Elsternwick becomes severely congested and liveability falls.
Look at the number of applications waiting to be approved in Glen Eira compared to neighbouring suburbs and you will see that because of the conflict between Council and the State Government on development limits and the accepting nature of the Planning Department at Glen Eira, there are five times the number of planning applications in process for Glen Eira. We must have more consistency across municipalities when it comes to planning. Do something to standardise the planning laws across the municipalities and even out the population across Melbourne. This will assist with the current failing infrastructure.
The other obvious thing to do is encourage people to move out of Melbourne into regional areas. To do this:

- Build the infrastructure in the country towns.
- Provide sustainable and cheap power supplies for those towns.
- Encourage industry to move there to provide jobs.
- Fix the country roads that are currently in terrible (dangerous) condition.
- Open new land for development and make it attractive to live there.

(f) mandatory affordable housing in new housing developments;

This is a must. All developments of multiple developments must be made to include at least 10% of affordable housing within their development.
We must move away from large blocks of cheap housing which are inevitably filled with struggling members of society and poorer immigrants. This makes it too difficult for them to integrate with locals and become valuable members of our society.
A fee should be payable to State Government and allocated to public housing for not providing an affordable home for the last fraction of apartments; eg where 19 apartments are built and one is affordable a fee of 1% of the sale value of the last 9 apartments is paid.

(2) Environmental sustainability and vegetation protection;

Too often, single dwelling homes are being purchased by developers and replaced by small apartment blocks or duplexes. More often than not, the original home's garden including existing trees disappear and the block is built on from fence to fence with no vegetation. This is not an environmentally sustainable form of development.
There should be a levy placed on all developments where a set minimum of open green space per person is not provided. This levy should be paid to the local Council and spent on purchasing land for green open space in the suburbs where the development is built.
Large trees should be protected subject to independent arborist reports. Notification to local council must be made of removal of any large trees and local residents must be consulted before trees are removed. There has been a recent removal of large trees from the Caulfield Racetrack Reserve without the prior notification to residents providing them with a chance to object. The permission to remove the trees was allegedly given by the planning Minister on Christmas Eve and the trees removed in mid-January without providing an opportunity to objectors. One of these trees was an important WW1 memorial grown from the Lone Pine at Gallipoli. On January 27th Heritage Council of Victoria intervened and there is now an Interim Protection Order while the Heritage is assessed but sadly too late to save some of the trees.
This type of approval being given without review of objections is unacceptable and penalties should be applied. Processes must be put in place to stop this occurring again.
Where removal of large trees is allowed, the trees should be valued and an equivalent value paid to Council to have those trees replaced in green space in the same suburb.

(3) Delivering certainty and fairness in planning decisions for communities:

(a) mandatory height limits and minimum apartment sizes;

Mandatory height limits must be set in all suburbs and there should be consistency between suburbs so not to create congestion in some areas. Most importantly, height limits must be set in units of metric measurement. We have objected to two major developments where the applicants would only talk of height in terms of storeys. It suited their arguments to talk in storeys rather than meters and it was misleading. How high is a storey? It's about as high as a piece of string is long.

- The first was a supermarket development with 12 storeys of apartments on top. The applicant spent the whole hearing talking about a 12 storey development when it was actually 2 storeys of supermarket with a 12 storey tower on top. What really mattered was how high the building was from ground level. That height measured in meters is the accurate measure of height used to decide on loss of amenity through Mass and height.
- The second was a museum and office building with four storeys of museum and four of offices. Again the height not referred to by the applicant in meters but as an 8 storey building. Being a museum and offices the storeys are higher than usual. This "8 storey" building at 43

meters was almost twice as tall as the 8 storey, 23 meter apartment building it will be built in front of.

Please remove the reference to “storeys” as a unit of measurement regarding height from planning laws. We must start using metric measurements.

(a) (i) Setback provisions to be enforced for fairness and certainty;

In Glen Eira, there is a temporary Design and Development Overlay (DDO) endorsed by the Planning Minister. It provides a table and diagram of the setback requirements for various areas in the Elsternwick Major Activity Centre. The areas are well defined and some quite small. Great detail has gone into the definition to come up with these setback requirements and they are written into law in the DDO. Despite this being the case they provide no certainty to residents who are supposedly protected by them and certainly no fairness when they can be completely ignored.

For example, the rear boundary of our home and 3 other homes border a specific development site listed in the DDO table. There is a Sensitive Interface which runs the full length of the rear of the site. The DDO states that “Buildings and works including lift overruns should:

- Achieve the setback requirements described below; and
- Be setback no less than the setbacks in Table 2
- The DDO table defines Where the site abuts a sensitive interface , side and rear setbacks are to be “6 metres to a height of two storeys (9 metres)”, then “A further 5m at the third storey”, then “A further 3m at the fourth storey”, then “All subsequent levels set back 20 m from the property boundary.

When this went to VCAT, these definitions were taken as discretionary due to the word “should” at the beginning of the definition. The Member had an issue with one home being given zero setback at ground level and only 5 meters from the third to the fourteenth storey, but no issue with zero setbacks from the boundary on the other 4 homes. There was even great argument presented by the applicant that the setback should be from the house rather from the boundary on our property based on a tennis court abutting the boundary not being heritage listed. The house next door to mine was deemed as acceptable to have concrete walls constructed on 2 sides well above its eves and less than 2 meters from the house and blocking all light from bedrooms and study areas. When such discretion is allowed over a specifically described site the outcome cannot be called fair and the rules prescribed must provide more certainty.

Where the word “should” is used, there must be some definition of the level of discretion to be applied and the reasons for applying that discretion. This will provide certainty and reduce the argument at VCAT.

Definitions and lack of discretionary guidance are inadequate in the planning laws. We have been seeking an explanation of the “sensitive interface” for some time but nobody including the Planning Minister has been able to define it. The closest we got to a definition was from a Council Planning Office saying “Its more to do with built form”. By looking at the DDO setback rulings we thought it would be significant in the setback allowance provided, but unexpectedly and in the residents view unfairly counted for nothing as zero setbacks were acceptable to VCAT.

(c) community concerns about VCAT appeal processes;

VCAT is supposed to be a fair process and in my experience presenting to VCAT we found the presiding Member made sure that we were given fair opportunity to speak and our views were taken into account in the final decision. My wife and I were presenting as individual residents in an 18 day hearing with 2 sitting Members, the Applicants QC and assisting legal team, the Responsible Authority's QC and Legal team, a Resident's Group Barrister, another Solicitor and others. We were a little overawed, but given a fair hearing (and came out on the winning result)

That said, I did come out with the view that the whole process has flaws and inefficiencies:

- The lack of available technology was very surprising
    - I had to book a projector so I could display photos and diagrams.
    - I had to provide my own laptop and balance it precariously on the edge of a desk partition while I presented so that the electrical and video cords reached my computer.
    - I had to request to sit in the witness box to present as this was the only place with a microphone which I needed to be heard, not having a trained voice like the experienced lawyers.

  Perhaps smaller rooms are better set up, but the large room we were in was difficult.

- I feel that the individual and groups of residents are severely disadvantaged at hearings where they are arguing with large developers.
    - These developers seem to have unlimited resources to argue their case and if they lose, they are allowed to come back with slightly adjusted plans and have another go at getting approval. They seem to be able to come back an unlimited amount of times until they get what they want rather than be told precisely what laws they must comply with.
    - One method of attack in our case was delay by the applicant. This should be controlled by the member and by the allocation of time at the planning conference. For residents to hire a Barrister and/or expert witness is expensive and cannot often be afforded. Delays by the applicant extend that cost and potentially remove the individual objector from the ability to effectively present their case. After achieving the desired result at one hearing they will often not have sufficient funds to present again at a subsequent hearing. The playing field needs some levelling. At subsequent hearings for development at the same site, where the new plans have again been rejected by Council, the applicant should be made to cover the costs of Council and other objectors. This may reduce the number of cases at VCAT by encouraging developers to negotiate further with Council and other affected parties.
    - Presentation by Expert Witnesses is a major flaw. In my view these witnesses are anything but independent. They have been hired as contractors by one of the parties to the hearing and their reports are written in a way to favour the party they are working

for. They are briefed on the questions they are asked and the responses they are to give to their employer and to their employers opposition in the hearing. In the two cases I have been involved in, I have encountered the same Heritage Expert Witness argue for opposite views, one for and one against excessive height on development sites in the same street behind a strip of historic shops. The view presented on one of these was not the view of the witness, but the view of their employer.

- Access to Expert Witnesses is an issue we encountered when we argued against a development by a large company. We could not find an Urban Planning Expert in the Melbourne metropolitan region that was not conflicted by an association with the applicant or having been contacted by the applicant about the case. We located one living in a regional centre and on commencement of her witness statement the applicant's QC immediately attempted to throw her off by querying her level of expertise and experience. Large and powerful opponents can gain an advantage over their smaller objectors with the current system of Expert Witness Statements being heard. Developers and particularly large developers have very deep pockets and compromise many of the better, well known or respected Expert Witnesses so they cannot help groups opposing these developments. Expert Witnesses also know where the big money is, ie large developers, so they are hardly independent witnesses. This is completely unfair.

Sitting Members don't need to hear the swayed view of Expert Witnesses from both sides of the argument. VCAT should have a panel of Experts that they can select from for a hearing and these Experts will provide a consistent expert view of developments. Experts should be leaders in their field and their appointment should be free of political interference. They should of course be independent from competing parties and be able to be cross examined on their views by both parties This would create a far fairer and efficient view of areas where expertise is required.

(d) protecting third party appeal rights;

(e) the role of Ministerial call-ins;

The ministerial call in we were involved in denied us of individual representation at the independent body VCAT. The call-in was judged by a large body of the community to be an unfair process and the expectation was that the development would go ahead without alteration, and that was the outcome other than some very minor alterations.

We were convinced that lobbying had been done by the developer to keep the hearing out of VCAT and have it progressed without objection. We were unable to lobby the Minister to keep the matter at the VCAT hearing as we do not have the access to the Minister that large developers and influential lobby groups have.

There was a round table discussion and the matter was reviewed by a panel and advice given to the minister who approved the development. When Ministerial Call-Ins occur I believe the public perception is that the development will go ahead and objectors are given little opportunity to present. It is viewed as an unfair process that favours developers and those with strong political lobbying abilities. Residents have no ability to lobby the planning minister at all. He just does not respond to emails. Keep it fair and keep it in VCAT.
10:51 AMhe project we were involved in was called in dubiously under the guise of being a shovel ready proposal needed to be commenced to keep the economy going and get it out of the Covid induced decline. This is no excuse for not going through the fair process at VCAT and having all resident's views heard, especially as Victoria has so many projects on the go now and don't have the labour or material resources to complete them in a reasonable time or at a reasonable cost.

(4) Protecting heritage in Victoria:

(a) the adequacy of current criteria and processes for heritage protection;

Heritage is integral to our cultural wellbeing. It is important to Australians and our way of life. Planners are failing to appreciate how heritage contributes to social cohesion and to vibrant prosperous and healthy communities. The value of heritage lies in creating a sense of place and connectedness. Heritage fails to be seen and understood for the true beneficial community force that it can be, especially through tourism and employment. Governments and Planning bodies must be more proactive than reactive to heritage protection and it would help if they ceased viewing heritage as an obstacle to development, rather than as the benefit it can be.

Protection of our heritage must be given higher priority in planning. Protections are inadequate. Too often we are seeing heritage properties demolished and replaced with multi-storey developments by property developers making a quick dollar. This is destroying our suburbs and our heritage. People buy into suburbs with heritage overlays to experience that quality of living; the suburbs become expensive so a target for developers who knock down the heritage homes on large blocks. Every one demolished reduces the heritage value of the area until it is gone and the overlay is removed. Areas of heritage are becoming less and less. Here is not only the tangible loss of heritage, but also the intangible costs as the identity of place becomes diluted and less well-defined. Our sense of personal and local identity are diminished along with the destruction of our heritage environment.

Restrictions must be placed on demolition of homes in areas of heritage overlays to retain some pockets of heritage in Melbourne.
Stop approving large apartment towers adjacent to heritage buildings in our suburbs. The view of these older buildings is being dominated by these towers. What is happening is that one taller building is approved which can be seen over the top and then it is less damaging to the view

to have another built beside that. When the third one goes up the heritage view is gone so anything is allowed. There seems to be no ruling around the cumulative effect of tall developments around heritage areas.

(c) separating heritage protection from the planning administration;

This would be an improvement, but only where the issue relates to the demolition or partial demolition of a heritage property rather than the impact on heritage properties that exist in close proximity to a new development.

(d) establishing a heritage tribunal to hear heritage appeals;

The heritage tribunal should be part of the VCAT process with heritage experts selected from a panel appearing as expert witnesses in hearings that involve heritage issues. I discussed this in 3(c) above.
The recommendation of the Heritage Witness must be provided as a report to the VCAT Member and given great weight in the final decision of the VCAT hearing and made available to the parties.
An additional tribunal to hear heritage appeals before or after the VCAT Hearing would be unnecessary bureaucracy.

(e) the appointment of independent local and state heritage advisers;

See my discussion and view on independent witnesses for heritage in 3 (c) above. These advisers could act as the independent advisors. There is no need for a panel of independent witnesses and local and state heritage advisers but there is a need for one set.

(f) the role of Councils in heritage protection;

All levels of Government need to be involved in protection of heritage and local Government is at the ground level and best able to identify the local areas and structures requiring protection. All local Government Planning Departments must have a heritage expert within their department if we are to be serious about our heritage and they must be listened to, not ignored by the planning departments and developers.

(g) penalties for illegal demolitions and tree removals;

It seems common that developers quickly remove trees and buildings in their way without obtaining permits. Define the penalties and make them severe enough that it’s not worth their while demolishing them without asking first. Strictly apply penalties.

Ross & Lyn Campbell