

**Submission  
No 171**

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

**Organisation:** Whitehorse City Council

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Monday 31 January 2022

Record no. 22/33781

The Secretary  
Legislative Council of Environment and Planning Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002

Submitted online

Dear Sir / Madam,

### **Inquiry into the Protections within the Victorian Planning Framework**

We thank you for the opportunity to make a submission to the Environment and Planning Committee (the Committee) regarding the Inquiry into the Protections within the Victorian Planning Framework (the Inquiry). We note that this submission has been prepared by Council officers and does not represent an adopted position of the Councillors.

This submission highlights our key concerns under the various items the Committee is to examine. Given the time of year and officer constraints, we have submitted a concise summary of key matters. Council officers would be happy to discuss this submission and elaborate on the points below if required.

Our submissions is set out under a series of sub-headings that generally align with the various matters being examined by the Committee as set out in the Terms of Reference.

#### **The High Cost of Housing**

Housing affordability has been an ongoing issue in Victoria, and particularly in Melbourne for some time. The provision of and access to affordable and social housing requires State Government direction and leadership. It is very challenging for local councils to prescribe an affordable housing component in any new development in the absence of a State-wide approach. Furthermore, expectations for the delivery of affordable housing should be consistent across Melbourne to provide certainty to developers and avoid long drawn out negotiations on an affordable housing component.

State Government direction and resourcing is also required to manage the views and concerns of the community so that there is community support and acceptance for the provision of affordable housing within established communities.

A series of thresholds and criteria are required to determine the appropriate location of affordable and social housing. It is essential that these forms of housing are located in well-serviced areas close to public transport and activity centres. Other matters such as operational costs of housing and owners corporation fees need to be factored in to any affordable housing direction to ensure a holistic approach that considers the impacts on the end user.

## **Environmental Sustainability and Vegetation Protection**

The Planning Framework provides an opportunity to introduce stringent environmentally sustainable design (ESD) requirements and standards. Improving the sustainability of the built environment is fundamental to our efforts to mitigate and reduce the impacts of climate change as well as to create more liveable environments. To date, the introduction of ESD standard in planning schemes has largely been the responsibility of local councils, which considering the scale of the issue it is attempting to mitigate, is inadequate and an unreasonable impost on councils.

As with affordable housing, ESD requirements in planning schemes need State Government leadership. While we understand that DELWP is progressing the ESD Roadmap, this has been delayed and early consultation material from this project indicates that the new State standards may not meet many councils adopted positions and targets for ESD requirements. In this case, councils will still need to pursue their own planning scheme amendments to elevate the ESD requirements.

Trees and vegetation are integral to the character of Whitehorse and are highly valued by the community. While Council has been successful in implementing a municipal wide Significant Landscape Overlay (SLO) for its residential areas, we are still faced with many challenges in the effort to preserve and enhance the treed character of the municipality. These challenges include:

- The fines specified by State Government for illegal tree removal are considered to be too low, and are not enough of a deterrent in many instances;
- Monitoring and assessment of vegetation and responding to reports of illegal tree removal is resource intensive and can be lengthy process depending on the extent of illegal removal;
- Managing community expectations in the protection of canopy trees has been very challenging in Whitehorse with a number of community groups regularly advocating for more stringent controls and monitoring by Council;
- Maintaining and enhancing vegetation cover in an effort to enhance urban cooling and greening to mitigate the impacts of climate change in the absence of robust State policy support.

## **Delivering Certainty and Fairness in Planning Decisions for Communities**

In Council's experience, introducing mandatory height or setback controls for residential development is very difficult. While we acknowledge that the Neighbourhood Residential Zone and General Residential Zone include default mandatory height controls, they cannot be varied to a lower height. In Whitehorse this

has resulted in some residential areas having a higher maximum height applied than was recommended by *Council's Housing Strategy and Neighbourhood Character Review 2014*.

Council has found that the introduction of mandatory height controls to other residential areas via Design and Development Overlay is very difficult, with DELWP in some instances requiring the removal of mandatory controls as a condition of authorisation for an amendment. Council is of the view that any concerns over proposed mandatory controls are best debated and tested at an independent Panel hearing.

### **Public Participation in Decision Making**

Engagement is now enshrined in the Local Government Act, and has been embodied in the Planning & Environment Act for the last 35 years. Recent planning reforms which not only reduce the ability for community engagement but are approved without community or local government feedback undermine the integrity of the planning system.

Ensuring that the community's voice is heard is critical for ensuring that the planning system is transparent in its decision making. It is essential that local governments and communities are engaged and consulted with regarding legislative (and non-legislative) planning reform.

Third party notice and appeal rights are a fundamental to the Victorian Planning System but they appear to be gradually diminishing as planning reforms continue to reduce opportunities for community involvement. This is of significant concern to Council as community engagement and opportunities for involvement in planning matters has been an integral component of our decision making and planning process.

The use of VCAT as arbiter must remain. The recent digitisation of VCAT's systems has been a huge improvement for the appeal process. The use of online hearings has also increased the ability for community members to attend hearings that may otherwise have been inaccessible. Equally online hearings have provided certainty and time savings for councils and developers alike. Removing third party appeal rights from certain application types or shifting approvals into a State 'significant development' stream will not provide the level of certainty or scrutiny required for transparent decision making with appropriate opportunities for community involvement and engagement.

### **Protecting Heritage in Victoria**

In considering opportunities to improve the protection of heritage places in the municipality and Victoria more broadly, Council's Heritage Advisor has provided the following comments.

- It would be desirable if there was a clear process or set of guidelines outlining the process for assessing the thresholds of places of local significance for inclusion in the Heritage Overlay (HO). Planning Practice Note 1 outlines the criteria, but provides no "standardised" approach for assessment of places of

potential local significance. It is noted that there is a document prepared by Heritage Victoria for places of potential State Significance, but not for local.

- We recommend introducing a requirement for VCAT cases involving a heritage place, to include a member with heritage experience. While this doesn't necessarily have to be a heritage professional, they should at least a planning member with extensive experience in the area of heritage. A dedicated heritage tribunal is not considered necessary, as there are often other planning matters involved, particularly in larger projects. However, a mechanism that ensures that all the work involved in applying heritage protection to a place, along with community expectation, is not "wasted" or cast aside without due regard is needed.
- As Whitehorse and several other councils have demonstrated, there is a significant benefit to the community, particularly for residential property owners with limited resources, to have access to a heritage advisory service. This should be encouraged across all municipalities with heritage overlays and heritage advisors should be available for pre-application meetings and other general heritage related enquiries.
- Some serious attention should be paid, not only to penalties for illegal demolition, but also to "demolition by neglect". The latter is a serious aspect of effective heritage protection and needs to be addressed to ensure the ongoing preservation of heritage places.
- Given the perceived impact of the imposition of heritage controls on residential property owners in particular, there should be a continuing discussion on ways in which some financial assistance or offset can be provided. If solely left to councils to manage (i.e. through rate reductions or significant grants programs) a conflict may arise where the financial 'downside' versus councils' responsibility to identify and protect their heritage will result in less enthusiasm for the latter. Given that the responsibility to identify and protect local heritage on behalf of the community is delegated to local government by the State Government, it is incumbent on the State Government to take some form of leadership on this front. At the Federal Government level, changes the tax system that help to support local heritage protection could be considered.

## **Ensuring Residential Zones are Delivering the Type of Housing Communities Want**

The reformed residential zones enable a better alignment between defined housing categories of change and zoning controls.

However it is frustrating for Council and often a great source of discontent for the community when Council decisions on permit applications are overturned by VCAT despite extensive strategic work completed by Council as part of the Whitehorse Housing Strategy and Neighbourhood Character Review.

### **Other Matters**

The development contributions framework requires significant reform and streamlining to enable easier application of the Development Contributions Plan Overlay in

established municipalities, or to facilitate the implementation of an Infrastructure Contributions Plan Overlay (ICPO) in strategic development areas (such as Metropolitan Activity Centres) and over established neighbourhoods.

The earlier reform work by DELWP introduced the ICPO to make it easier to collect development contributions in Melbourne's growth areas. The ability to apply the ICPO to other areas such as strategic development areas was also promised however, this is still yet to eventuate.

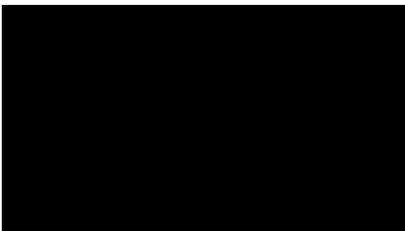
Within the past two years the Victorian Government has implemented a number of changes to the Planning Framework, including numerous planning scheme amendments that were expedited through a fast track process by the Minister for Planning. Council is concerned that these incremental changes are gradually eroding its influence and power, and ability to adequately represent the views of the community which they serve. As part of the reforms, the State government has also driven a translation of local planning policies in all Victorian planning schemes into the thematically structured Planning Policy Framework. The approach by DELWP in this space has been inconsistent, under-resourced (particularly for councils to effective input) and many councils have felt powerless in the diminution of local policies, some of which took years to prepare and approve.

At a Council Meeting on 22 November 2021, Council passed a procedural motion relating to State Government changes to planning scheme amendments. This motion referenced the Planning Reform Program 2020-2024 and strongly voiced concerns regarding the lack of consultation with the community and local government, which is contrary to a core part of decision making processes for planning matters. The motion also expressed concern about loss of Council's role as responsible authority and planning authority through these State government changes.

## **Conclusion**

Again, we thank you for the opportunity to provide this submission to the Committee. If you wish to discuss any of the above matters in further detail, please contact [REDACTED] [REDACTED] Coordinator Strategic Planning [REDACTED].

Yours sincerely



**Manager  
City Planning and Development**