Submission No 187

INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN PLANNING FRAMEWORK

Organisation: Greater Torquay Alliance (Inc)

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Greater Torquay Alliance
[redacted]
info@greatertorquayalliance.org
www.greatertorquayalliance.org

Greater Torquay Alliance Inc.

Incorporation No. A0103295G

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

By Email: planninginquiry@parliament.vic.gov.au

To Whom It May Concern,

INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN PLANNING FRAMEWORK

The Greater Torquay Alliance is a collective of ten Torquay based community groups advocating for planning that respects and reflects our community values.

We write regarding the above-mentioned Inquiry and would like to provide the following comments.

With regard to the 4 main areas of the Inquiry, we respond as follows;

1. The High Cost of Housing In The Context Of The Planning System

   The cost of "housing is not high". We would argue we have very efficient and cost-effective builders in Australia/Victoria. We would argue it's the land that is costly. Land developers sell for the "going rate" in an area, irrespective of development costs. For example, the cost to develop a lot was in the order of $150,000 about 2 years ago. This cost did not matter if it was in North Geelong, Armstrong Creek or Torquay, yet the sale price of land in Torquay has been much higher than the other areas – without reason. Developers are making extraordinary profits. Based on those figures, the Salt estate in Torquay has a profit in the order of $12.5M prior to land purchase cost. At the time of development, the land value was possibly in order of a few million dollars, significant profit. There is no impetus to reduce to create cost effective land sales. Land price increase does not reflect land availability. The developers simply "land bank" to create shortages whenever they want.

   We have been told by a manager of one of the largest builders in Victoria (who have a division as land developers), that if the government gives incentives to home owners such as the First Home Owner Scheme, the developers simply raise the land value to match that scheme increase.

   Affordable housing needs to be defined. Its relative to an area. Mandatory affordable housing will lead to poor housing outcomes. "Affordable" will often translate to 'cheap and nasty', particularly if left to developers forced to provide some portion of their development. It's an outcome that no community would want to see in their area. Better to provide incentives for investors to offer affordable housing – maybe better tax incentives. Concepts like 'tiny house' can be explored, but not at the cost to local

amenity. Allowing smaller site blocks have proved not to work as the cost of the smaller block has not proven to be ratioed less than larger sites. Smaller sites have just been used by developers to add more sites for sale to increase developer profits at the cost of local amenity – eg; less trees/canopy cover as there is less available space for trees to be planted on properties.

The price of land is a significant factor in the affordability of housing. Government should consider how to control the excessive profits of land developers. Pre covid, we saw significant development of housing estates in the Geelong region, but the increased land supply did not lower land prices. Competition did not dampen land prices, it created a boom that developers took advantage of by increasing land prices, even though other costs did not rise and even though they had already acquired the land. Land size is also not the answer. Smaller blocks just lead to poor amenity for communities and more profit for developers. Maybe the answer is to require developers to 'give' land over for social housing, that is then developed for that purpose by an independent body.

The cost of housing is a result of our financial system. With lack of controls, the system does not cater for social housing nor first home owners. An efficient system works best when there is a blend of government intervention and capitalism. If either aspect becomes too dominant then the system begins to fail. At present the pendulum has swung too far to the 'reduced government intervention' side and we need to create a better balance through government regulation/control.

2. <u>Environmental Sustainability and Vegetation Protection</u>

Within the planning framework, little seems to be done in this area except "lip service". There are lots of phrases in planning schemes that get ignored when creating development plans. The Spring Creek Valley on the west side of Torquay is a key example. There are lots of words about protecting the endangered Bellarine Yellow Gums, but the outcome would really just be the creation of a 'zoo' with trees becoming isolated as islands surrounded by development, rather than a habitat that can be sustained, much less expand and flourish.

The Karaaf Wetlands: Dieback of vegetation due to excessive freshwater stormwater runoff from housing estates. 22nd January 2022

The Victorian planning scheme should require a minimum percentage of protection of vegetation and biodiversity within all land subdivision. Vegetation, including trees of all ages and grasslands should not be blatantly culled/cleared or felled to make way for residential developments. The biodiversity within Victoria is being decimated to make way for large subdivisions, primarily constructed as hardstand paved areas. Subdivisions should be deigned in an integrated manner with the native vegetation and surrounding landscape, rather than large tracts of land being cleared progressively from one stage of the estate to the next.

3. Delivering Certainty and Fairness In Planning Decisions For Communities.

VCAT is considered by a vast proportion of the community as a "joke". The decisions are based solely on "planning provisions" and community amenity and character is never considered in real terms. Surf Coast Shire Council officers have openly stated that "the character of a street will change". Of course, it will when inappropriate ill-fitting developments are permitted. Planning schemes have lots of words about amenity and character, but no real measures for decision makers. Most planning provisions are "guidelines" and effectively can be ignored or pushed when there are no measurable requirements.

When considering developments, representation at VCAT is not feasible for most individuals and community groups. The developers are permitted to bring multiple QC's or the like at significant cost with significant expertise in representation. Yet the individual or community groups have no means of paying for that sort of representation. There is an adage in legal circles that 'only a fool represents themselves', yet community groups and individuals are forced to represent themselves. They are then treated as 'second class' in proceedings. They are asked if they want to provide their presentation and then leave. This presumably is so the legal reps can get on with the process without interference of the public.

The cost of expert witnesses is outside the resources of community groups or individuals. Developers often provide multiple expert witnesses. Without proper representation, these witnesses cannot be properly questioned or their work interrogated. If the community cannot afford an expert, they cannot effectively refute claims and then those claims go untested. VCAT should employ the experts themselves, not the parties to the process. This would mean more independence in the experts. VCAT could require developers to contribute to the cost, but not actually employ the experts.

VCAT members are also not really impartial. They are mostly drawn from planners and the like. There is no community representation on the Tribunal. The members are appointed not voted into position. This is a special area of law that directly affect the communities where developments are proposed. In other areas of Law, the judiciary are not influenced by their "other life". Eg, magistrates are paid by the government and if they have a second job/profession, it is not dependent on individuals or businesses who would be representing in their court. In planning VCAT, Tribunal members seem to also have other work that is within the planning sphere and so dependent on (mostly) developers. In other words, they are making decisions on potential clients. Although they do not have 'direct' conflict of interests, they often have 'indirect' conflicts of interest. Similarly, this is also true for expert witnesses. (And let's not pretend that expert witnesses are independent).

The composition of Panels Victoria, VCAT and Great Ocean Road Regional Standing Committee (GORRSAC) members appear to be mostly planners, architects and engineers, with rare mentions of environmental qualifications. An example of a questionable outcome can be seen in GORRSAC's decision on the Winki Pop viewing platform at Bells Beach. The GORRSAC recommendation didn't rule out the platform even though the party that initiated it (the World Surf League) said they no longer wanted it. The decision acknowledged the platform was not needed but then recommended that further consultation could take place.

4. Protecting Heritage In Victoria.

   This is an important matter. Fines for breaches of legislated requirements are lacking. The developers simply 'do the math' and decide to go ahead anyway. The "don't ask permission, ask forgiveness" is prevalent. As is the lack of heritage controls. Europe provides a better example of how to maintain heritage values. If we don't save these important assets, then there will be no heritage for the future. (like climate change, we need to address this now to save the future). For developers, the fines for any breaches of requirements should be based on potential profits, as exampled by the Corkman Pub demolition, the fine should have been the estimated profit for their proposed development – or forfeit of the land. If a developer is faced with zero profit or a loss, they will not breach requirements. Requirements need to be much stronger than just "keep the facade". The whole of building needs to be considered. Developers or landowners who allow their property to become derelict should be required to repair of forfeit their property.

   Funds should be allocated within Council budgets to employ a heritage officer with knowledge relevant to that particular Local Government Area. There needs to be openness and transparency from Government and councils when dealing with heritage matters. This means involving and collaborating with local communities and local heritage knowledge. There needs to be increased respect for heritage overlays and statements of significance along with better recognition of the importance of heritage overlays on vegetation. As an example, in Torquay this would include Moonah trees which are so fragile. They are easily damaged when trying to build around them, and subsequent to token attempts to build around them, they require removal. Sadly, so little of Torquay has ever been considered having heritage value that there had not been much call for implementation of any overlay and Surf Coast Shire Council have not been good at liaising with local heritage knowledge.

   Fines for breaches or Heritage provisions need to be much more significant.

We would also like to make the following comments on planning in Victoria;

- Developers should not be permitted to lodge additional applications that substantially change a proposal once approved. For example, getting a building of 3 stories approved, then applying for 4 stories. Eg. 42 The Esplanade, Torquay VCAT case in 2021. In this case, the original development approval should be cancelled, and the developer would then run the risk of not having any approval and either needing to start entirely again, with all the documents required to be revisited and renewed from scratch with different experts required so the developer cannot simply regurgitate the old development. A minimum timeline should also be required before a new proposal can be submitted by the same developer. If the land has an approval, and the developer proposed a significant change (like adding another storey), then the original permit would lapse and if the second proposal failed, then it would be (as an example) two years from the second decision before a new proposal can be lodged.

- More time is needed for councils to assess a proposal. The trigger for going to VCAT without a council decision is too short. It's being used by developers to go straight to VCAT and bypass council. The time of 'starting the clock' on a proposal should be based on council meetings, (where the matter is voted on), not on when the proposal is lodged. The intent would be to give officers at least 2 full cycles of council meetings to get information prepared. E.g; currently if the time is 60 days, and a developer lodges a proposal 2-3 days before a council meeting, and meetings are monthly, then the officers have only approx. 30 days to prepare a report before next meeting, yet if the developer lodges 2-3 days after a meeting, then officers have nearly 60 days. This can and would be manipulated by developers. The timeline should be based on meeting cycles. The trigger should be, say, 60 days then presented to the next available meeting. A day after that meeting date should be the trigger. There could be a maximum of 90 days.

- Various provisions within the Planning Scheme contradict each other, leaving it up to a VCAT member, who will invariably be an ex-planner, to decide whether to err on environment/community or developers & so called 'progress'. An example of this is a 'group accommodation' development at 130 Bells Road, Bells Beach (VCAT case in 2016) where provisions for zoning, tourism, amenity/viewshed and environment were in conflict with each other.

- Where the provisions contradict each other there needs to be a hierarchy set, where environment and community come first and detrimental impacts of development, business, economy and tourism are put last.

- Coastal & regional planning appears to be tarred with an urban approach. The existing State Planning Scheme does not respond to regional matters of importance – Social, Environment, Economic, Cultural, Climate Change, Duty of Care. This is a significant issue, where the urbanised approach in metropolitan areas is applied within coastal, hinterland and rural areas. The unique attributes so highly valued across coastal areas needs to be considered first and foremost when making planning decisions. It is vital that decisions on planning outcomes outside of cities and large regional towns need to be clearly different within smaller unique locations. Our coastal towns and regional locations should be independently assessed based on the distinct characteristics, (Social, Environment, Economic, Cultural, Climate Change, Duty of Care), of the area in question.

- There are too many grey and discretionary areas created in the Planning Provisions with words like 'should' rather than words like 'must' or 'shall'. The community & developers alike will all benefit from greater certainty.

- The zones available for planning schemes are probably sufficient, however, the implementation is poor. As an example, The Surf Coast Shire has not used 'neighbourhood zones' in the Torquay township, even though the community has been asking for this since implementation of these new zones. The State government needs to better review planning schemes and ensure effective implementation.

Torquay is in the process of being loved to death. Many who have lived here for decades say that the seaside character of what was once a small coastal village has already been lost, forcing them to move away. For more than a decade our population has increased by about 1,000 people every year and our growth rate is approximately 3 times greater than that of Melbourne's. We are pleased to see the implementation of the Marine and Coastal Policy 2020 and the Marine and Coastal Act 2018 that take into account all coastal land up to 5 kilometres inland from the high tide mark, however, for far too long, planning in Torquay has appeared to be about facilitating growth, at the expense of social and environmental values. There have been many impacts as a result of this, these are just a few;

- The Karaaf Wetlands, (a Ramsar nominated and internationally renowned wetland) on the east side of Torquay: Excessive (and polluted) freshwater stormwater runoff from the Torquay North housing estates constructed over the last 2 decades, causing the salinity of the wetlands to decrease markedly resulting in significant dieback of indigenous species and loss of habitat.
- Spring Creek: Ongoing development in the Spring Creek catchment, (on the west side of Torquay), is gradually leading to a degradation of water quality, trampling of vegetation and build ups of microplastics in Spring Creek. A less than ideal hierarchy of values, (environment and community being at the bottom of the scale), have meant that the communities of Torquay and Jan Juc have had to fight for over 15 years to save the Spring Creek valley and it's Bellarine Yellow Gums from being turned into a 2,500 home urban development.
- Grasstree Park: Even with the imminent Surf Coast Distinctive Area & Landscape providing anticipated legislated town boundaries, Grass Tree Park on the west side of Torquay, will inevitably become an isolated pocket of significant species, left to fend for itself, due to the development that will occur around it within the new town boundaries,

- Mobs of kangaroos: Once able to move around freely are now being progressively squeezed into smaller areas by residential and industrial developments, gradually being killed off on our roads by collisions with vehicles

Thank you for the opportunity to provide our input on this.

Yours Sincerely,

The Committee
Greater Torquay Alliance
info@greatertorquayalliance.org
www.greatertorquayalliance.org
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