Submission No 271

INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN PLANNING FRAMEWORK

Organisation: Scale it Down - protect Brunswick parks

Date Received: 3 March 2022

Submission to the

Inquiry into Protections within the Victorian Planning Framework

From: ***Scale it Down – Protect Brunswick Parks***

Contents

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Scale it Down – Protect Brunswick Parks

"*Scale it down - Protect Brunswick Parks*" (SID) is a group of residents that banded together in 2021 to protest applications to build two 9-storey towers at 429 Albert St and two 11-storey towers at 395 Albert St. These developments will be positioned in the middle of the Brunswick Central Parklands, with the proposed towers overshadowing, dividing and impacting on Clifton and Gilpin Parks. We do not object to some increased housing density in the area but feel developers Stockland and Mirvac have gone too far. Both proposals are currently under review at VCAT, awaiting a decision. Our recent experience at VCAT provides some insight into the current planning framework in Victoria, and how it could be improved.

This submission has been prepared by the following members of SID who also attended the two VCAT hearings: Kim Stevenson, Angela Borg, Dr Helena Bender, Rhonda Attwood, Susan Marshall, Rodney Spark, and Linda Bennett. This submission has been shared with the SID members but may not be representative of all SID's views.

Background to *Scale it Down: Protect Brunswick Parks*:

A request from landowners, in what is now the Albert Street Urban Renewal Precinct (ASURP), to rezone their properties from industrial 1 to mixed use, resulted in Moreland City Council (CC) developing Planning Amendment C161, which provided that a 6-storey mandatory height limit was most appropriate, and included a community consultation process. In 2017 the Moreland CC abandoned C161, due to disagreements with the planning panel, largely over mandatory versus discretionary height limits. In particular, the 'expert witness', commissioned by Mirvac, argued that an 8-storey discretionary height limit was appropriate for this park-side site, with which Moreland CC strongly disagreed. In response to Moreland CC abandoning C161, the developer requested the Planning Minister use his discretionary power to call it in. There was no consultation as part of the Planning Minister's call-in or decision to create Planning Amendment C172. The resulting DDO Schedule 26 allows for an 8-storey discretionary height limit, with an allowance for greater than 8-storeys should the design be deemed 'exemplary'. This outcome is far from what Moreland CC deemed acceptable after consultation with the community.

Moreover, in many key areas, DDO26 is ambiguous and does not include quantifiable setbacks or specific shadow controls. Other DDOs applied to the City of Moreland's major and neighbourhood activity centres are more prescriptive and precise, enabling more certainty in the planning process.

Inevitably, Stockland and Mirvac have taken advantage of the Minister's call in, and ambiguous wording to stretch their built form designs to the maximum limit (9 and 11 storeys) and have, in our opinion, over-developed their respective sites. As this is an urban renewal precinct, the height and visual bulk precedent will be set for further developments into the future, which will further impact on the amenity and quality of the surrounding parklands.

In response to learning of these proposed developments, approximately 450 residents contributed funds to engage a town planning advocate for each of the two VCAT hearings, which occurred over a month at the end of 2021. The Moreland CC also mounted their own cases against these proposed developments, with legal representatives.

For further background see:

- our group's website https://www.scaleitdown.org/ and

- a short film, created by a local resident who is a member of *Scale It Down,* that was presented as part of their submission to the two VCAT hearings: https://www.youtube.com/watch?v=F2BZ8BWRyw8

The *Scale it Down* group was formed to protect a particular parkland and precinct, but what we have learned has far broader implications for metropolitan Melbourne and Victoria.

TOR 2-Environmental sustainability and vegetation protection

Introduction

A 2013 State of Australian Cities report estimated that Melbourne had the highest annual average number of heat-related deaths (not including bushfires) with about 200 a year. This was expected to more than double by 2030[1]. **Heatwaves, exacerbated by urban heat island effects, are responsible for more deaths each year than any other type of disaster, including bushfires[2].** People (also plants and animals) are dying because of continued weakness in planning schemes to effectively support and implement the clearly developed policies for environmental sustainability.

The *Scale it Down* group stepped up to protect a particular parkland and precinct and encountered a planning scheme system that failed to provide effective support for that parkland in particular, and environmentally sustainability in general. We understand environmental sustainability as it relates to planning as follows:

> Sustainable urban planning aims to provide developmental strategies and practices that ensure liveable, self-sustaining communities over the long term, in response to concerns regarding climate change, urban heat island effects, clean air and water, renewable energy and land use. Strategies can encompass green building infrastructure, walkability and transportation options, greenways and open space, alternative energy sources (solar, wind) with the aim to shape urban areas into healthier, more efficient spaces[3].

Planning Victoria's Environmentally Sustainable Development of Buildings and Subdivisions -A roadmap for Victoria (2020) aspires to contribute positively to the local context, enhance the public realm, minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment, protect and enhance valued landmarks, views and vistas and encourage retention of existing vegetation and the planting of new vegetation.[4]

The roadmap also encompasses the importance of green infrastructure for biodiversity and mitigation of urban heat, as well as highlighting human health benefits of contact with nature. It recognises that "parks, gardens, trees, backyards, green roofs and walls and rain gardens help mitigate urban heat, enhance urban biodiversity values, improve stormwater, etc" [5].

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[1] Dowling, J. (2014) Melbourne city centre a death trap as heat-island effect takes its toll. The Age, 17 Jan. https://www.theage.com.au/national/victoria/melbourne-city-centre-a-death-trap-as-heatisland-effect-takes-its-toll-20140116-30xt8.html#:~:text=An%20urban%20heat%20island%20is,of%20the%20heat%2Disland%20effect

[2] Environment Victoria (n.d.) Victoria, heatwaves and climate change. https://environmentvictoria.org.au/our-campaigns/safe-climate/victoria-heatwaves-climate-change/?gclid=Cj0KCQiA3rKQBhCNARIsACUEW_Y_uaGSCTagGAtatb3mlClj3WcHc5V6WUnA9CLGWptfaXcRO32a7kAaAg9HEALw_wcB

[3] University of Texas Arlington (2018) What is sustainable urban planning? https://academicpartnerships.uta.edu/articles/public-administration/what-is-sustainable-urban-planning.aspx

[4] Department of Environment, Land, Water and Planning (2020) Environmentally sustainable development of buildings and subdivisions: a roadmap for Victoria's planning system. State of Victoria. https://www.planning.vic.gov.au/__data/assets/pdf_file/0025/491227/Environmentally-sustainable-development-of-buildings-and-subdivisions-A-roadmap-for-Victorias-Planning-System.pdf

[5] Department of Environment, Land, Water and Planning (2020) Environmentally sustainable development of buildings and subdivisions: a roadmap for Victoria's planning system. State of Victoria. https://www.planning.vic.gov.au/__data/assets/pdf_file/0025/491227/Environmentally-sustainable-development-of-buildings-and-subdivisions-A-roadmap-for-Victorias-Planning-System.pdf

However, in our experience at VCAT, with the Albert Street Urban Renewal Precinct (ASURP), the above aspirations are merely rhetoric that are difficult to implement due to the discretionary and ambiguous nature of planning scheme controls. Aside from apartment development 'landscaping' there is no specific urban heat policy or standards that address the underlying causes of this heating[6]. Actions, including developing effective policies and planning standards, to address the built form's contribution to the urban heat island effect are urgently needed to address this climate emergency. Strategies to mitigate these urban heat island effects such as selection of tree species and building materials, orientation choices, a greater proportion of permeable land to built form, and appropriate colour palette to minimise heat load should be implemented[7]. Landscaping, in this context, is not just aesthetic but serves a critical function that includes the retention of existing trees and careful placement of new canopy trees, thereby increasing urban forest to mitigate urban heat island effects.

Strong protections need to be written into planning schemes to ensure:

- Environmental impacts of new developments are understood and addressed
- Consistent Environmentally Sustainable Design (ESD) measures assessed and implemented with rigour in new developments to provide sustainability into the future
- Open space is protected for both human health and that of urban habitats to support, protect and maintain biodiversity
- Contribution to additional urban heat island effects is
    - prevented through better environmentally sustainable planning
    - mitigated through provision of greater tree canopy and implementation of urban forest strategies.

Environmental sustainability

Recommendation 2.1: Compulsory Environmental Impact Statements

Introduce a requirement for an advertised Environmental Impact Statement (EIS) to be completed on all planning applications. The EIS would be lodged with the responsible authority and include impacts on both subject site and the surrounding area. EIS would form part of the advertised application and be open for objections and submissions as in the normal application process.

NOTE: A nuanced approach could be developed for such a compulsory EIS to take into account small domestic developments under a certain size, density or budget.

Rationale:

The purpose of an EIS is to define existing environmental conditions and to identify potential adverse effects of the proposed development so that both short- and long-term measures to reduce negative impacts (including urban heat island impacts) can be implemented. The provision of an EIS will strengthen the requirements on decision-makers to focus on the environmental impacts of a proposed development. More rigour in the assessment of the environment both before and after

[6] Department of Environment, Land, Water and Planning (2020) Environmentally sustainable development of buildings and subdivisions: a roadmap for Victoria's planning system. State of Victoria. https://www.planning.vic.gov.au/__data/assets/pdf_file/0025/491227/Environmentally-sustainable-development-of-buildings-and-subdivisions-A-roadmap-for-Victorias-Planning-System.pdf

[7] Australian Broadcasting Corporation (2022) Hot in the city. Gardening Australia, 25 Feb, Series 33, Episode 02. https://www.abc.net.au/gardening/factsheets/hot-in-the-city/13770076

the development will result in better outcomes for ESD and potential benefits to surrounding environment and biodiversity, which has continued to decline.

Recommendation 2.2: Rigour in ESD assessment

Introduce more rigour in the application of environmentally sustainable design (ESD) tools by:

- avoiding misrepresentative or ambiguous language, as well supporting shared understandings;
- mandating tools to ensure a consistent approach;
- completion of an external independent assessment, post-build, to ensure ESD outcomes, including addressing off-site impacts, have been achieved, and
- if the assessment fails, as a whole or in part, then rectifications and/or fines are implemented.

Rationale:

Currently, ESD tools used to assess measures are largely voluntary and self-assessed.

The two mandatory compliances (NatHERS and NABERS) have to do with energy rating, which only apply to building envelopes, and are predictions, not followed up by actual measurements once the development has been realised.

Other voluntary tools, when used together, do cover a comprehensive range of targets (e.g., BESS+STORM) but should be externally confirmed and be applied mandatorily, as they otherwise rely on honest reporting by developers who are responsible for entering data into online platforms.

The semantics of the BESS ratings are somewhat misleading as a BESS rating of 5 is expressed as 'best practice' when, in fact, it is merely meeting what is currently acceptable. The same is true for Green Star ratings. This leads to confusion when the planning scheme calls for 'best practice'.

When developers propose to use ESD measures there appears to be no way to ensure the promised targets are implemented. Disclaimers and caveats are built into applications, offering easy 'outs', irrespective of S173 contracts, which seem to be easily re-negotiated.

Furthermore, all ESD measures are focused on-site. Little or no consideration is given to ESD impacts of the new developments on the surrounding area. ESD must consider impacts beyond the boundary of the lot and include the real post-build impacts.

Open space and urban green space protection for human health

Recommendation 2.3: Minister for Planning and Public Spaces

That the Minister for Planning's portfolio and title be broadened to the 'Minister for Planning and Public Spaces' similar to NSW, to recognise the importance of the preservation of public spaces in planning decisions.

Rationale:

At present, no Minister is clearly responsible for public space. Planning decisions about these spaces have been inconsistent at best. For example, Minister Wynne ruled in favour of Birrarung Marr[8], refused to act for winter sun access at Princes Park[9], and accepted the review panels position on C161 that shadow impact on Clifton Park was negligible while giving no consideration to Gilpin Park, which is to the South of the ASURP precinct. By expanding the Minister's portfolio, a clear responsibility for supervision, expansion, and protection of urban public spaces for community and biodiversity benefits is established. By including 'planning' and 'public space' in the same portfolio, these two important responsibilities should be given equal consideration.

Recommendation 2.4: Open Space protection

Introduce planning scheme controls into the Victorian Planning Legislation to protect winter sunlight access to public parks, in all municipalities, at times of highest activity. In particular, we are recommending the inclusion of:

- 4 storey mandatory height limits for any development on the boundaries of a public park, and
- no increases to current public park shadow.

Rationale:

Winter sun

There is currently no broad planning policy addressing shadow impact to parks and key pedestrian networks.

Apart from a few areas where specific overlays apply, current planning scheme controls only apply a solar access requirement for neighbouring properties, usually referencing 9am-3pm shadowing of secluded private open space at the Spring Equinox (ResCode A14, B21).

This does not provide for the protection of public open spaces such as parks. Victorian planning legislation is required to set the policies and provisions for the use, development, **and** protection of land.

The *Scale it Down* community group took a survey of park users to determine when the Brunswick parks were most utilised using QR coded posters throughout the parks. The survey received almost 500 responses. As one would expect, the parks are visited the most in the late afternoon and evening (after school and work hours) rather than from 9am to 3pm. The visitor pattern applied throughout the year, including wintertime, when shadow is at its longest rather than only at the spring equinox typically referred to in planning schemes.

The pandemic has transformed our local parks into a place of refuge, an opportunity to slow down, reconnect with the outdoors and with our community. The work-from-home model has proven a

[8] Lucas, C. (2017) Planning Minister Richard Wynne wins fight for right to light in Birrarung Marr. The Age, 23 May. https://www.theage.com.au/national/victoria/planning-minister-richard-wynne-wins-fight-for-right-to-light-in-birrarung-marr-20170523-gwbahr.html

[9] Lucas, C. (2018) Sunlight fight: city council asks minister to stop park overshadowing. The Age, 1 June. https://www.theage.com.au/politics/victoria/sunlight-fight-city-council-asks-minister-to-stop-park-overshadowing-20180601-p4zixh.html#:~:text=The%20council%20has%20asked%20Planning,commissioned%20by%20the%20city%20council

success for many businesses and will certainly continue in some capacity, increasing the density of suburban Melbourne through the working week. This has added a new demand to the limited open spaces and, with the ever-increasing density of urban developments these parks will continue to be heavily utilised and enjoyed by the local community.

Melbourne City Council, through the submission of Am C415 (formerly C278), advocates for the importance of winter sunlight access to parkland.

In their advisory report to the council, Hodyl + Co acknowledges that "a key challenge was advocating for maximum sunlight access to parks while allowing for reasonable development intensification in an inner-city environment"[10]. They show that shadow protections can be achieved with specific and reasonable controls for buildings adjacent and nearby to parkland.

Smaller housing, less private open space and greater reliance on communal and public spaces is an emerging built form outcome from the existing planning schemes. This outcome should be considered in determining what extent of shadow impact is appropriate to communal open spaces now and for future generations. To preserve high quality open spaces, which Plan Melbourne talks about, sunlight protection should not be limited to heritage parks. The Sunlight to Park Protection Amendment should apply to all parks/open spaces in all municipalities.

Recommendation 2.5: Green space provision

That Planning Victoria and Councils implement 'green space' policy targets and performance measures that include:

- access to urban green space that meets or exceeds the WHO recommended 'minimum' of 9m^2 per person, and
- where infill sites are rezoned for residential housing, developers must provide sufficient green space within the development to meet or exceed the WHO minimum.

Rationale:

Prevent green space deficits

The Metropolitan Melbourne Open Space Strategy acknowledges that because of Plan Melbourne's policy for a "more-consolidated, sustainable city and 20-minute neighbourhoods" and "with more people living in higher-density housing with no private open space, our existing open space will see more people using it, more often and for longer."[11]

Planning Victoria defines and measures 'open space' as including paved spaces, such as in a town square, mall or plaza, or public land that may be provided for drainage or utility purposes, as well as restricted open space. For example, Planning Victoria's open space data collected from Moreland, our local Council, includes restricted spaces such as the Fawkner Memorial Park (crematorium/cemetery), the Northern Golf Course and rail reserves! Planning Victoria's 'open

[10] Hodyl & Co (n.d.) Central Melbourne sunlight report. https://www.hodyl.co/projects/sunlight-to-public-open-space

[11] Department of Environment, Land, Water and Planning (2021) Open space for everyone – open space strategy for metropolitan Melbourne 2021. State Government of Victoria. https://www.environment.vic.gov.au/__data/assets/pdf_file/0025/520594/Metro-Open-Space-Strategy-FA4-book-WEB.pdf

space' policy needs to be more explicit about the particular importance of planning priorities for accessible **green** open space.

It is important to not only provide more open space when possible, but to properly care for the space that we already have. Despite a great deal of rhetoric in multiple layers of planning scheme, Gilpin Park, one of the parks that will clearly be impacted by winter shadow from the proposed Mirvac development for the ASURP, is not afforded any protection in DDO26. (See Appendix: "Planning Flowchart – The Importance of the Protection of Open Space").

More Urban Green Space

Victorian Planning policy and legislation needs to prioritise the importance of expanding and protecting existing 'green space' in higher density urban environments i.e., 'green' not solely 'open'. This is critical to the future well-being of Melbourne residents and as such must be protected from current day Ministerial intervention.

It was the experience of meagre green space in the City of Moreland that was documented by Greener Spaces are Better Places[12] that mobilised *Scale It Down* to attend VCAT to fight to preserve the little green space remaining and prevent the proposed developments from encroaching and overshadowing. In 2021, the City of Moreland was ranked 21 out of 23 municipalities across Australia for green cover, placing it in the bottom quartile[17]. Tree canopy cover is only 11.1% (a 3.4% decrease since 2016), while hard surfaces make up 61.4%[17]. Brunswick Central Parklands service the 5 surrounding suburbs, as well as residents from outside Moreland, based on the *Scale It Down* survey of park visitors. Yet is land-locked, without access to local rivers or Port Phillip Bay to provide heat relief to local residents. These elements combine to make the City of Moreland highly susceptible to the urban heat island effect and the adverse impacts of climate change.

It is not valid to claim population increases which require greater intensification of urban development precludes the ability to provide the WHO minimum of urban green space of $9m^2$ (but ideally $50m^2$) per person[13]. Cities around the world such as Singapore, Chicago and Ljubljana, Slovenia, awarded the 2016 European Green Capital, have achieved this and more, despite their population sizes and urban histories. Ljubljana, as an example, has focused on restorative and conservation-leaning development, that is directed at regeneration and renewal of existing developed areas, along with the rehabilitation of degraded ones"[14].

"Over the past two decades, Ljubljana's transformation—via urban planning, landscape architectural provision and sustainability thinking—has significantly propelled it from its Socialist past toward a modern 'green,' compact city. This emphasis on UGS policy has focalised the city on restorative and conservation-leaning development. Urban development, in the context of sustaining city compactness, is directed primarily on regeneration and renewal of existing developed areas and the rehabilitation of degraded ones."[14]

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[12] Hurley, J., Amati, M., Deilami, K., Caffin, M. Stanford, H., Azizmohammad, S. (2020) Where will all the trees be? – an assessment of urban forest cover and management for Australian cities. Prepared for Hort Innovation by the Centre for Urban Research, RMIT University, Melbourne and Greener Spaces Better Places https://www.greenerspacesbetterplaces.com.au/wwattb/moreland-city-council/

[13] Russo, A. & Cirella, G. (2018) Modern compact cities: how much greenery do we need? International Journal of Environmental Research and Public Health, 15(10): 2180. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6209905/

[14] Hodyl & Co (2020) Central Melbourne sunlight report. https://www.hodyl.co/projects/sunlight-to-public-open-space

Sustainable planning in Victoria should aspire to and deliver similar. Victorian planning schemes must enshrine this goal and implement the measures required to achieve it. New developments must contribute more to the provision of additional urban green space. The current requirements, even in the updated AmVC174, only require a paltry provision of 2.5m^2 of communal open space for apartment dwellers (which is for private, not public use), and these minimum requirements do not scale up beyond 88 apartments. So, whether there are 89 apartments or 500 apartments the minimum requirement of 220m^2 open space for the whole site is the same. Furthermore, this space does not need to be outdoors, and it can be broken up across the development.

This part of the planning scheme needs significant improvement.

Vegetation protection (for habitat and biodiversity)

Recommendation 2.6: Formal recognition and protection of alternate habitats:

Include protections and controls in planning schemes that acknowledge the importance of 'stepping-stone' and refugia habitats, especially those being utilised by a species with threatened status (critically endangered, endangered, threatened, vulnerable).

Rationale:

Protect stepping-stone and refugia habitats

Protection of threatened species is not being triggered when the species is occurring outside of 'protected' landscapes - reserves, state, or national parks.

This may be due to a false assumption that all threatened species will occur in remnant habitat, rather than landscapes that have undergone rehabilitation or restoration works including replanting. Moreland Nature Plan refers to these landscapes as stepping-stone or refugia habitats[15].

Whilst the Metropolitan Melbourne Open Space Strategy calls for high-quality maintenance of existing parks and champions biodiversity, and our duty to protect it[4], it fails to elaborate the specifics of how this is implemented and who is responsible.

We agree with the emphasis in this strategy, that where natural habitat is absent, constructed habitat plays a key role in supporting biodiversity. For example, the Brunswick Central Parklands have been reclaimed and developed by Moreland Council over 30 years. The maturing of this "constructed habitat" now sees resident and migrating birds, especially evident in Gilpin Park, including a mating pair of returning Tawny Frogmouths.

The critically endangered Swift Parrot has been documented on eBird and the Atlas of Living Australia in Gilpin Park Brunswick on over 30 occasions since 2011. Yet, no action was taken by over-stretched conservation organisations or the State Environment office to protect this site from the impacts of the Albert Street Urban Renewal developments when DDO26 was written for this precinct.

[15] Moreland City Council (n.d.) Moreland nature plan: enhancing biodiversity and celebrating nature in our City. https://hdp-au-prod-app-more-conversations-files.s3.ap-southeast-2.amazonaws.com/9415/9721/3529/Moreland_Nature_Plan_FINAL.PDF

Because neither the park nor its trees are classified as 'remnant' or 'significant' in planning overlays they are not officially protected from the impacts of nearby development.

It is likely there are many open spaces in metropolitan areas that serve this purpose and should be explicitly and actively protected and developed in planning scheme documents.

Recommendation 2.7: Formal recognition and protection of trees for habitat and urban heat island effect mitigation

Expand the definition of trees worthy of protection in planning schemes to confirm their biological importance to ecosystems (habitat value) and their mitigating effect on urban heat island (UHI) impacts by:

- ensuring their protection in planning schemes, and
- defining explicit measures to be implemented for that protection, e.g., all new developments, regardless of size, should implement urban heating mitigation measures to reduce net heat load for the municipality.

Rationale:

Protect trees for habitat value

Planning schemes seem to only protect trees or habitat if they are deemed 'remnant' or 'significant'. A 2012 article explaining how trees are protected in Australia, asserts that there is nothing in the Victorian Planning Provisions that defines a significant tree. [16]

This is left to Councils, recognising that significance relates to the aesthetic and heritage value of the tree species native to the council area in question. 'Significant' has very specific meaning, and processes are required to justify inclusions on the list including, but not limited to, horticultural/genetic value, historical value, unique location or context, age, girth/canopy size, etc. all of which are important, but none of which values a tree because it is a tree.

Sydney's 2013 Urban Forest Strategy explained the value of a single tree: "over 12 months, one mature tree can absorb as much as 3400L of stormwater, filter 27kg of pollutants from the air and provide a cooling effect equivalent to running 10 air conditioners continuously."[17, 18]

The protection and maintenance of trees (and other vegetation) can be justified simply based on their biological importance with respect to ecosystem, habitat and biodiversity, not to mention contribution to urban heat island mitigation or human health. Such recognition should be reflected in the planning scheme, but currently it is not.

[16] Lensink, M. (2012) Tree protection laws in Australian states and territories. The 13th National Street Tree Symposium. https://treenet.org/wp-content/uploads/2017/06/Urban-Trees_Lensink.pdf
[17] City of Sydney. (2013) Urban forest strategy. https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/2020-07-migrated/files_u/urban-forest-strategy-adopted-feb-2013.pdf?download=true
[18] City of Sydney news (2020) Local ecology – how we root for trees. https://news.cityofsydney.nsw.gov.au/articles/how-we-root-for-trees

Recommendation 2.8: Deep soil provision-canopy trees for parkland interfaces and new developments

- Strengthen implementation of deep soil provision in new developments specifically for canopy tree plantings
- Strengthen requirement for deep soil provision adjacent to urban parkland, with sufficient required setbacks to permit multiple layers of tree plantings.

Rationale:

Moreland Planning Scheme has clear specifications for deep soil provision and the minimum tree provision based on a larger scale site area. Developers are instructed to maximise deep soil areas for the planting of canopy trees.

These provisions are designed "to promote climate responsive landscape design and water management in developments that support thermal comfort and reduces the urban heat island effect". (Clause 58 Standard D10)

Standard D10 does provide for alternatives of smaller trees in planter boxes if the development cannot provide the deep soil areas and trees specified.

Our experience at VCAT for the ASURP was that the two developers used this option as an 'out' clause, not necessarily because they were unable to provide the deep soil.

Despite a clear rationale in the planning scheme for why deep soil spaces should be provided, developers viewed deep soil requirements as flexible, negotiable add-ons, irrespective of the quite suitable site characteristics.

Developers may prefer to use planters, as it permits them to have larger carparking allocations below ground. However, the use of planters restricts the size of trees which can be grown, isolates the soil, often introduced from non-local sources, from the larger matrix of water and nutrient movements, which reduces the soil quality over time.

Healthy soil results in healthy vegetation. Healthy vegetation produces greater diversity.

Further to this point, and specifically for sites next to parkland, deep soil plantings must be required within the site with sufficient required setbacks to buildings to permit multiple layers of tree plantings to thrive, not just survive.

Stringent criteria for **not** providing the deep soil quantities stipulated in standard D10, must be clarified and enforced to prevent developers failing to support urban forest and UHIE policies. Otherwise heat stress will increase, unnecessary pressures will be applied to health systems, and existing biodiversity will be further degraded.

TOR 3 - delivering certainty and fairness in planning decisions for communities, including but not limited to —

(a) mandatory height limits and minimum apartment sizes;
(b) protecting Green Wedges and the urban growth boundary;
(c) community concerns about VCAT appeal processes;
(d) protecting third-party appeal rights;
(e) the role of Ministerial call-ins;

Introduction

We believe planning policy has skewed towards developers for some time, and it is now imperative that the pendulum swing back in favour of community and council. Community and council should have the ability to determine their own future landscape through improvements to planning schemes and systems.

We believe this can be addressed through:

- Improved clarity in planning scheme language and specifications
- Reinterpretation of the role of VCAT
- Equity and support for participants in VCAT processes
- Prevention of undue developer influence in planning
- Legislation to reinstate the responsibility of Councils and communities to determine their own planning outcomes for net community benefit

(a) Mandatory height limits

Recommendation 3.1: More prescriptive measures needed in LGA planning schemes

That the Minister for Planning implement mandatory height controls rather than discretionary height controls, at the height requested by municipal councils in planning scheme amendments.

Rationale:

We disagree with Hodyl & Co who argue that mandatory controls 'result in uniform and repetitive design responses and are the result of building designs that seek to maximise yield within the potential prescribed building envelope' (see figure 28)[19], so discretionary height controls are preferred.

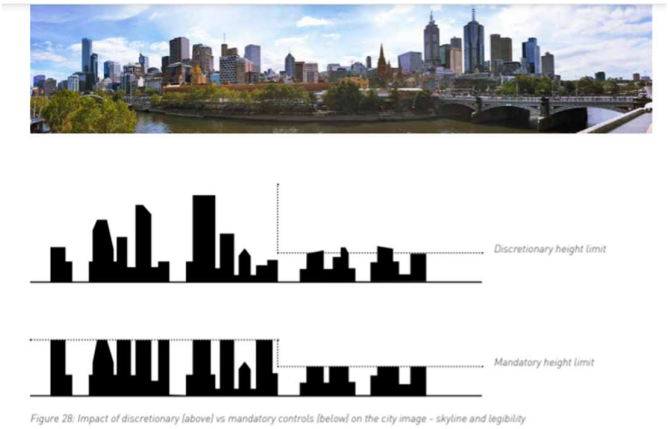

Figure 28: Impact of discretionary [above] vs mandatory controls [below] on the city image - skyline and legibility

[19] Hodyl & Co (2017) Fishermans Bend urban design strategy. https://www.fishermansbend.vic.gov.au/__data/assets/pdf_file/0021/31683/Urban-Design-Strategy-171017_web-res.pdf

Mandatory heights would protect areas from developers seeking higher and higher built forms, irrespective of context, with the aim of maximising yield. It would provide local residents and communities some clarity and certainty about how their neighbourhood will be shaped into the future. Mandatory heights are especially appropriate for sensitive contexts near parkland and heritage areas. Any anomaly of uniform or repetitive built form could be addressed with better urban design solutions and precinct planning. Besides, the current discretionary controls are producing cookie cutter developments throughout the inner suburbs (see figure 1), which undermines the claim that such controls will address the concern of uniformity or repetitiveness.

Figure 1: Moreland developments subject to discretionary controls

Furthermore, figure 28 above shows that provision of discretionary controls encourages **exceeding** of preferred heights, despite the planning scheme stating 'up to (preferred height)'.

(c) Community concerns about VCAT appeal processes

Recommendation 3.2: Support for local government area (LGA) policies and decisions with resident input

Give effect to the planning decisions and policies of local government and retain the rights of residents to determine the best planning outcomes for their municipality.

Rationale:

VCAT hearing appeal processes

We believe the Stockland and Mirvac cases we attended should not have been contested at VCAT and are emblematic of the problems inherent in the planning system.

Most appeals should not be heard at all. As Council policies accord with State-level strategic planning documents, there should be no need to appeal to VCAT. Development should accord with council requirements, and council decisions should be challenged only where they are illegal, unjust, or inconsistent with council's own planning policies. The saving in time, cost and angst would be enormous.

More supportive VCAT processes

Recommendation 3.3: Support for community objectors

Community objectors/respondents should have access to advocates for a nominal fee to present their submissions, similar to legal aid, if a matter was to go to VCAT.

Recommendation 3.4: Instructional videos for VCAT

Provide a series of instructional videos on the VCAT website, to assist in preparing for VCAT, including but not limited to, how to complete a VCAT application form, how to prepare and present submissions, how to prepare cross-examination of expert witnesses, and how to prepare a right of reply.

Rationale:

Preparing for VCAT hearing

Preparing to attend VCAT is a long, arduous, and intimidating process for community objectors.

1. Community objectors are immediately overwhelmed and intimidated when they try to read and understand all the information and terminology on the VCAT website, and as they try to work out how to submit a statement of grounds, which can only be done online using a clunky and cumbersome form.
2. There is an unstated expectation that objectors will then read and understand a myriad of planning scheme documents and the Planning Act to prepare a submission to the hearing that would not be dismissed out of hand as irrelevant. Yet planning lawyers spend years gaining familiarity with these documents.
3. There is a further expectation that objectors will read and understand all the submissions of other parties, including expert witness reports, to be able to develop relevant cross-examination questions, right of reply, and ultimately contribute to condition requests should the permit be granted – a vertiginous learning curve.

The size of this task is mostly unknown before one commences, but certainly acts as a deterrent for many resident objectors. It also contributes to the unfairness of the appeals process. Given the challenges, this process would be completely inaccessible for community members with language difficulties or those lacking IT skills. This discrimination against participation represents an inbuilt disadvantage for those lacking technical knowledge and expertise.

The Compulsory Conferences that preceded our VCAT hearings seemed, to our group at least, as a box-ticking exercise and not a genuine attempt at compromise. Indeed, it was an opportunity for the mediator to exert more pressure on the residents to yield to the developer.

Recommendation 3.5: Encourage compliance for original applications

Developers must adhere to their initial plans and be compelled to lodge compliant plans at the outset. If they change their plans substantial financial penalties should be applied.

Rationale:

It appears to be standard practice for developers to submit amended plans for the Compulsory Conference. This guarantees that speculative developers will lodge ambit claims with councils. To address obvious opposition and non-compliances, plans are modified at the last minute, and developers are 'seen to be' addressing council and objectors' concerns. By only accepting plans that had been modified sufficiently to avoid going to hearing, it would require developers to lodge compliant plans in the first place and ensure that the original plans would be presented to VCAT. The likely outcome would be quicker, fairer, and more efficient processes for taxpayers and ratepayers. It would also provide more certainty for all parties in the planning process and should produce better planning outcomes.

Improve fairness of VCAT hearings

Recommendation 3.6: Online platform for VCAT hearings

That VCAT hearings continue to be held on Zoom, or other online platform, as it provides a number of advantages for attendees. Provision of onsite attendance to assist those that would find this platform difficult must be also offered.

Recommendation 3.7: Provision of VCAT recordings

Make recordings of VCAT hearings available free of charge to the parties of the hearing, otherwise, parties should be allowed to record the hearing, especially when hearings are held on the Zoom platform that automatically records, i.e., no staff or special services need to be hired.

Rationale:

Attending VCAT hearing: developer's court not people's court

As a statutory body, VCAT purports to be accessible to the people but it is administered as a quasi-court of law.

Residents are at a disadvantage throughout. They often come without training or experience in planning. The process is adversarial, with high-powered solicitors and QC's who are supported by a team of legal assistants, and in our case, 6-7 expert witnesses. The sheer volume of information, legal documents, architectural plans and 'Tribunal Books' is utterly daunting and overwhelming to process and interpret, especially as further documents continued to be added to the list during the hearing. In short, it is an intimidating and stressful experience.

The hearing embodies many protocols, procedures, conventions, and language of a court of law, and allows for none of the court supports, that seek to redress this imbalance.

The VCAT process also disadvantages residents relative to developers because of the time commitment and costs involved. In addition, it discriminates against those who are unable to attend due to work and other commitments. Respondents representing themselves must juggle their jobs and family commitments to attend the hearing from 10am-4pm (often 5pm) each day, which in our back-to-back cases for the two ASURP proposals, comprised 17 days over four weeks. For instance, in our VCAT hearings, respondents who were not present to hear Expert Witness testimonies, were unable to participate in cross-examination of these witnesses. Free access to recordings would overcome this hurdle.

However, providing VCAT hearings by Zoom offered some advantages over attending in person. As with the work-from-home model employed due to the COVID-19 pandemic, online platforms provide flexibility, improved ability to hear and provide shared view of documents. Other benefits include the ability to closely follow what happens during the hearing, as well as eliminating the commute into the city. That said, there needs to be support provided for those who would have difficulty with the technology, which might entail on-site assistance during the hearing using equipment provided at VCAT, should the Zoom approach be continued into the future.

Recommendation 3.8: Impartial expert witnesses called by VCAT

That VCAT should exercise its capacity to call expert witnesses to assess the pros and cons of each proposal. No other party should call expert witnesses.

Rationale:

Respondents/objectors often feel compelled to engage expert advocates to improve their chances of being 'heard', so must raise significant funds to pay them. Whilst our group raised $40,000 for the

two cases and managed to employ one planning expert for each, this would be an impossible hurdle for many, and again demonstrates a severe disadvantage to community objectors. This also creates a further burden on respondents of fundraising and maintaining communications with supporters.

In addition to direct fund raising, respondents also funded the VCAT appeals process indirectly, through their resident's rates to the Moreland City Council, who engaged solicitors and expert witnesses to fight the two cases. This is not only a tremendous waste of financial resources; it is also a waste of individuals' time and effort. But ultimately, it is hoped that improvements to the planning schemes will result in fewer cases appearing at VCAT.

As well as these inherent inequities, it also became clear to us that a number of expert witnesses act as "paid advocates" rather than independent and impartial specialists in their field. For example, the expert architect who answered questions on behalf of the developer at one of the VCAT hearings, responded to a question from an objector resident about overshadowing of the proposed development on to adjacent parkland from 2pm onwards with the advice "you should time your walks at 1:30 to avoid this shadow."

VCAT has the capacity to provide independent and impartial expert witnesses, and these are the only experts that should be providing evidence. If VCAT were to implement this practice, it would level the playing field in terms of access to expert information, and remove the inequities created by differences in financial resources of the parties. It would also prevent the practice of developers engaging 'advocates', which was *Scale It Down's* recent experience at VCAT.

Recommendation 3.9: Expert witnesses from diverse fields

VCAT members, when exercising their capacity to call expert witnesses, should include witnesses with a diverse range of expertise including academics, social planners, environmentalists, and psychologists to balance the Panel's expertise and to assess the conflicting objectives of planning schemes against net community benefit.

Rationale:

VCAT member profile and expert witness selection

VCAT members are mandated to "balance conflicting objectives in favour of net community benefit"[20] for present and future citizens. Members are predominantly drawn from legal and planning industry backgrounds, which would seem to provide a bias that favours development. The lack of representation from other professions means that evaluating the net community benefit is not open to the knowledge and expertise of academics, including social planners, environmentalists, psychologists and others who can provide a wider view of what does benefit a community socially, historically and environmentally.

To achieve decisions based on genuine net community benefit, whilst retaining the planning expertise of VCAT members, witnesses called by VCAT should include professionals with the expertise suggested above. Genuine consideration of these viewpoints in planning decisions would assist in arriving at the best planning outcomes by considering not only strategic planning policy, but the broader needs of the community and environment.

[20] 501 Mulgrave Pty Ltd v Monash CC [2021] VCAT 1245 (29 October 2021) http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2021/1245.html?context=1;query=gaschk;mask_path=au/cases/vic/VCAT

Recommendation 3.10: Limit use of advocates

If parties are to call experts, then each VCAT party should be limited to the same number of experts at a VCAT hearing.

Rationale:

Any expert or witness provided by other parties must be considered an advocate whether engaged by developers, responsible authorities, or objectors. The numbers of advocates employed by parties, if any, should be limited and equal in number and based on the lowest number afforded by a party. If the responsible authority provides 0 or 1, so too should the applicant.

In our two hearings, the QC representing both developers had also been the President of VCAT for many years. We claim that these informal networks provide powerful possibilities for real or perceived conflicts of interest. The non-level playing field, having inexpert community objectors face off against a QC who was a former President of VCAT is clearly inequitable.

The inequality of the VCAT system for both Councils and community objectors is borne out by the outcomes. According to a 2015 RMIT analysis of permit applications appealed at VCAT, it was found that big housing developments nearly always win. Permits were granted by VCAT in 73% of Council-refused developments, and when a Council supported the developments, VCAT confirmed the granted permits in 85% of cases.[21]

Adjust role of VCAT

Recommendation 3.11: VCAT as adjudicator instead of default planning body

VCAT's role should be to adjudicate on whether a Council has made a proper decision in line with regulations.

Recommendation 3.12: Reduce appeals to VCAT on the grounds of 'Failure to Determine"

Councils should be given adequate time to conduct proper evaluation of major developments. 60 days is insufficient.

Recommendation 3.13: Parent and offspring planning controls should be consistent and compatible

'Parent' planning schemes should not undermine or negate the 'offspring' controls, instead the legislation should be made consistent and compatible.

Rationale:

Currently VCAT acts as a default planning body. In the future, its role should be to adjudicate on whether or not a Council has made a proper decision in line with regulations, so that the authority for planning decisions is returned to Councils, as the elected representatives of the citizens on which the decisions will mainly impact. VCAT's authority in upholding the applicants appeal should be to instruct Council to reassess the application. VCAT should not be a higher planning body that can approve developments rejected by Council. It should also not be used by developers as a means to override local planning systems:

A 2009 submission by Boroondara Residents' Action Group (BRAG)[22] to a VCAT President's review presented a compelling argument for the inappropriate role of VCAT as a default planning authority

[21] Dowling, J. (2015) Developers odds-on to win at planning tribunal. The Age, 21 March. https://www.theage.com.au/national/victoria/developers-oddson-to-win-at-planning-tribunal-20150320-1m3mrb.html

[22] BRAG submission to VCAT Review (2009) http://www.marvellousmelbourne.org.au/drupal1/?q=node/1232

and shows that not much has changed in this aspect of the VCAT appeals landscape. Key points in support of their argument which still apply are:

> There should be separation between the planning process and the appeal process. If VCAT is the appeal body it should not be making planning decisions or issuing permits.
>
> Currently VCAT acts as a de-facto planning authority which over-rides council decisions properly arrived at. It is unelected and unaccountable making it just another layer of decision making without appeal.
>
> If councils properly provide prescriptive guidelines for development in their area, democratically arrived at through a consultative process and based upon the State's planning objectives, then we say the only role for VCAT should be to adjudicate on whether or not the council has made a proper decision in line with regulations.
>
> We firmly believe that VCAT should not be overturning properly informed and properly arrived at council decisions.
>
> If VCAT finds the council or local authority has erred, then it should refer the matter back for immediate rectification rather than hearing the matter again as if it was a new application.
>
> However, in view of the increasing intervention by Government on planning matters for political purposes, we believe it will be necessary for the appeal body to also adjudicate upon the fairness or justice of the matter under consideration.[23]

Our recent experience at VCAT demonstrated how VCAT is acting as a default planning body. The QC representing the two developers presented 'legal' submissions to the Tribunal members. In the Mirvac hearing this prompted a Senior Tribunal Member to question whether the QC was "seeking a reconstitution of the Tribunal". The QC acquiesced to the member's extensive planning knowledge and experience, and said that, in fact, the submission was merely to "put parties on notice to think about it."

What we were meant to be 'thinking about' was this:

- In Clause 43.02-2 (31/7/2018 VC148), under 'Building and Works:'

  "A permit may be granted to construct a building or construct or carry out works which are **not in accordance with any requirements in a schedule to this overlay**, unless the schedule specifies otherwise." (Our emphasis).

This statement is literally a get-out-clause/legal loophole that left respondents wondering whether there was any purpose to the DDO schedule 26.

As the 'parent' planning clause takes precedence over the bespoke, and subservient, DDO schedule 26, VCAT members could grant a permit whether or not the application meets the requirements in DDO26, because this schedule does not specify otherwise. Unless it specifies 'must comply' the whole schedule is viewed as discretionary. The order would be upheld in a legal court. This would be the case whether the VCAT decision favours the developer or the objectors, but as the statistics show, VCAT decisions rarely favour the objectors[24].

[23] BRAG Submission to VCAT Review (2009)
http://www.marvellousmelbourne.org.au/drupal1/?q=node/1232
[24] Dowling, J. (2015) Developers odds-on to win at planning tribunal. The Age, 21 March.
https://www.theage.com.au/national/victoria/developers-oddson-to-win-at-planning-tribunal-20150320-1m3mrb.html

This makes the VCAT Tribunal the default planning body, allows developers to circumvent planning scheme controls at will, and underpins why developers favour the largely developer sympathetic VCAT hearings.

No matter the size of a development, applicants can appeal to VCAT if Councils fail to make a decision within 60 days, which is classified as: "Failure to Determine". This means that Councils and resident objectors, under time pressure, have an inadequate amount of time for notification and for preparation of objections. That applicants can take Councils to VCAT before the Council has developed a considered position, reinforces that VCAT can hear issues as the original decision-maker, rather than the LGA.

(d) protecting third-party appeal rights

Support notification requirements and third-party appeal rights

Recommendation 3.14: Improved notification for major developments needed

That notifications of proposed major developments be widespread, involve all residents of the municipality and should include letter-drops and visible public notices, with illustrations of the proposed designs as well as social media notices.

Recommendation 3.15: Retain third-party appeal rights

Third-party appeal rights must be retained on all but the most straightforward and minor applications.

Rationale:

It seems that Victoria is in a unique position where residents, as a consequence of the 1987 Planning Act, are usually required to be notified about developments that may cause them material detriment. How widely that notification occurs and in what form rests with the Council, although we note that some types of applications are exempt from notice, and third-party review, but are generally of a modest or straightforward nature.

It is our view that the notification process regarding AmC161/C172 as well as both Stockland and Mirvac planning applications was woefully insufficient considering the impact of these planning controls and developments. Not only will they impact on adjacent properties, but also on the wider community that uses the surrounding parklands.

The legal requirements for notifications are not specific or comprehensive enough to ensure that residents who may be potentially and adversely affected are even aware of proposed developments. This is of particular concern with large developments that will impact many residents. Developers exploit this unfair advantage and benefit from time restrictions that do not allow residents to prepare timely objections. Community consultation is, in many cases, ineffective if not tokenistic.

In our case, two 9-storey apartments to be built on the edge of scarce parkland, in a primarily single rise neighbourhood, initially received ten objections. When residents were informed of these proposals by a handful of park users, 1,400 objections were received in several weeks. This indicates the degree of community dissatisfaction with these proposed developments and how communities are excluded from genuine participation in the planning process.

In his article "Third Party Participation in the Planning Permit Process" Justice Stuart Morris (then President of VCAT) stated his strong support of third-party appeal rights:

- "The existence of third-party appeal rights tends to improve the quality of governance."
- "Third-party rights often lead to better planning decisions."
- "The existence of third-party appeal rights discourages corrupt behaviour between developers and local government."
- "There will always be a temptation to whittle back third party rights as complaints about delay – sometimes legitimate – reach the ears of the Parliament". [25]

And it was Morris' view that any reforms should address the planning permit process as a whole and contribute to the responsible exercise of third-party rights, rather than remove them altogether.

AmC190

A planning scheme recently being considered/trialled in Moreland CC contemplates the removal of community rights to be heard and/or councillors' responsibility to review.

As foreshadowed by the article quoted above, the complaint that addressing community concerns via third-party appeals prolongs planning timelines, but results in little change, is unfortunate, but this 'fast-tracking' measure is not the solution.

Amendment C190, removes not only the ability to object to an application, but even the requirement for notification of the application to neighbours and community.

VicSmart is a fast-tracking measure intended to accelerate straightforward applications such as minor subdivision, tree removal and lopping. It exempts notice and appeal by third parties. AmC190 essentially applies the VicSmart approach to the situation where there are two-dwellings per lot, provided they meet the numerical standards in the ResCode. This is not what VicSmart was developed for and meeting numerical standards in the ResCode does not guarantee a development meets design objectives or other less quantitative requirements.

Measures like this further disempower resident's ability to have any say about the neighbourhood character of their street and suburb.

Somewhat related to encouraging community involvement via notification and third party appeal, a study focussing on the use of referenda across selected European communities, examined the effectiveness of community involvement in municipal decision-making. It concluded that when involvement in decision making was effective, "it enhances the local inhabitants' feeling of affinity with each other as well as their interest in and commitment to issues that concern their own municipality."[26] This speaks to the wider goal of achieving net community benefit and improving the quality of governance.

[25] Morris, S. (2005) Third-party participation in the planning permit process. VCAT. http://www.austlii.edu.au/au/journals/VicJSchol/2005/5.pdf

[26] Sutela, M. (2001) Comparative aspects of local direct democracy: the municipal referendum in Finland, Sweden, Germany and Switzerland. European Public Law, 7: 651-670. https://www.semanticscholar.org/paper/Comparative-Aspects-of-Local-Direct-Democracy%3A-The-Sutela/ef4be8430ea04ab5a4454af16eef41f10b454a0f

(e) the role of Ministerial call-ins

Minister power and disproportionate influence of developers

Recommendation 3.16: Criteria for Ministerial call-ins to be re-assessed

Narrow the interpretation of criteria for Ministerial call-ins to decisions that cut across several LGA's, for larger infrastructure projects, or if there is a suggestion of illegal or improper conduct.

Recommendation 3.17: Ban donations by developers to political parties

Ban donations to political parties by developers, as Queensland and NSW have done.

Recommendation 3.18: Inequitable access to Minister should be prevented

Prevent developers from having direct access to the Minister to remove influence on planning decisions. Planning decisions should be based on LGA and community input as mentioned in Plan Melbourne Policies 5.1.1 and 5.1.2.

Rationale:

More scheming than planning

The Minister for Planning has too much power, and developers have undue access and influence on them. As the same developers make substantial donations to political parties [27], there is a real or perceived conflict of interest for government to be overly influenced by them[28]. Councils who have intimate knowledge of their local area, are overruled by Ministerial call-ins and developers who are not elected and motivated by profit, are given preferential treatment at the expense of ratepayers. There is minimal recourse to appeal these decisions and this presents as unfair, leading to disenfranchisement of residents.

We believe that shrewd developers, know how to fast-track their developments and bypass Councils and democratic processes to expedite the approval of their proposals.

Recommendation 3.19: Diversify profile of planning panel members and advisory committees

That planning panels and advisory committees be required to include a more diverse range of members such as academics, social planners, environmentalists and psychologists to balance the planning panel's expertise and to assess the conflicting objectives of planning schemes against net community benefit. Expert witnesses called by the planning panels and advisory committees must be independent and impartial; not hired by one of the developers who has an interest in the outcome, as was the case for C161.

Rationale:

Planning and advisory panels to the Planning Minister

Planning decisions should be based on Council and community input as stipulated in Plan Melbourne 2017-2050:

[27] Australian Electoral Commission. (2022) Client Details Mirvac Group - Transparency Website. https://transparency.aec.gov.au/AnnualClientEntity/EntityDetail?clientFileId=14178

[28] Turner, R. (2021) Property developers are among the biggest political donors in Australia, but should they allowed to be? ABC News, 1 March. https://www.abc.net.au/news/2021-03-01/wa-property-developers-are-among-largest-political-donors/13198886

- "Local government is best placed to understand and apply local solutions" (Policy 5.1.1), [and]
- "Where centres are well established or communities are seeking to protect the unique character of their centres (such as protecting heritage buildings or access to public land or open space to achieve community benefit), they should be assisted in determining the desired built form outcomes (Policy 5.1.2)" [29]

However, there are times when planning matters are presented before Planning Panels, including the consideration of amendments to planning schemes and Ministerial call-ins. These panels must operate on the principles of independence, impartiality, transparency and diversity.

Planning panel members are drawn predominantly from the planning industry, provide an inherent bias towards decisions which facilitate rather than regulate development.

As in VCAT hearings, presentations by 'expert witnesses' funded by developers cannot be seen to be anything but advocates.

To achieve impartiality and balance, and to achieve decisions that genuinely consider the community, policy makers and planning panel members must include professionals from more diverse backgrounds, including academic, social planning, health and environmental areas, etc.

As with expert witnesses in VCAT hearings, impartiality and independence must be preserved by prohibiting those with vested interests, such as developers, to engage the witnesses, and equivalent support must be provided for proponents and opponents of the matter under consideration.

[29]Turner, R. (2021) Property developers are among the biggest political donors in Australia, but should they allowed to be? ABC News, 1 March.
https://planmelbourne.vic.gov.au/__data/assets/pdf_file/0008/377117/Plan_Melbourne_2017_Outcome_5_PDF.pdf

TOR 5-ensuring residential zones are delivering the type of housing that communities want

Introduction

Scale it Down supports the ideas behind nominating residential zones:

- To maintain sensitive areas at low rise/low intensity and increase height and intensity in activity centres that are better served by services and transport;
- to assign a hierarchy of development across activity centres with graduated intensity and height commensurate with the nature of the centre.

These underlying principles are logical and appropriate, and would work if not for discretionary controls and Ministerial call-ins, which override rules, ignore context, and allow building well beyond preferred heights. Unfortunately, the use of discretionary controls and Ministerial call-ins is commonplace and blatantly demonstrates the prevailing planning system attitude that *'The code is more what you'd call 'guidelines' than actual rules" (Captain Barbossa, Pirates of the Caribbean).*

The Planning system must:

- Give effect to Council policies, not merely consider them;
- Support the approval of buildings being the function of local councils;
- Enable and give effect to mandatory planning standards set by Councils;
- Express planning scheme controls quantitatively and with clarity;
- Assess public transport options accurately, based on frequency and capacity of service; and
- Support/assist local communities to determine the desired built form outcomes in their area

Recognise and respect Council decisions

Recommendation 5.1: Council is responsible for building approval

That the approval of building permits be returned to being the function of local Councils, not VCAT.

Recommendation 5.2: Council able to set mandatory controls

That the Planning Minister implement mandatory planning standards such as height limits, lot sizes, minimum apartment sizes and site coverage by buildings, rather than discretionary controls, where mandatory controls are sought, at the nominated quantum as requested by municipal councils in planning scheme amendments.

Rationale:

Ministerial interference in the establishment of residential zones in Moreland has led to inappropriate and undesirable housing outcomes. This interference which ignores carefully considered Council decisions contributes needlessly to the number of applications being referred to VCAT. Our experience with the proposed developments for the Albert Street Urban Renewal Precinct (ASURP) demonstrates the failure of the planning system to provide satisfactory housing outcomes.

Amendment process which established residential zones in Moreland

- In Moreland, Amendment C153, gazetted by the Minister for Planning in April 2015 introduced new residential zones for all residential land in the LGA.
- However, the final version of the Residential zones gazetted by the Minister differed from the Amendment resolved by Moreland CC at its Dec 2014 meeting after public notice and community consultation. Note that the original amendment was already responding to predictions of increased population growth pressure suggested by Plan Melbourne 2030, and the recent additions of new residential zones by State Government.
    - Moreland wanted two NRZ zones tailored to northern and southern areas of the LGA, the Minister called for only one. The Planning Minister also removed specific density limits for 3 or more dwellings on a lot, replacing them with a maximum of 4 dwellings on a lot *regardless of size.* In addition, The Minister removed proposed increased requirements for secluded private open space.
    - In the GRZ zone, the council approved a mandatory height limit of 8m (2 storeys) but this was replaced by the Planning Minister with a higher preferred height (9m) and was made discretionary.
    - For RGZ in Activity Centres, Moreland CC wanted two schedules and the Minister again replaced it with one and changed the mandatory height controls again to discretionary controls, and the higher height proposed for RGZ1. In addition, the front setback of 3m was removed.
    - At the same time the Municipal Strategic Statement set out the hierarchical nature of housing in the different types of Activity Centres, with intensity intended to decrease from Major- to Neighbourhood- to Local- centres.

Ministerial interference de-railed the results of community and council consultation processes to impose higher densities and greater building heights than what the council and community wanted.

Amendment process which established mixed use zone and discretionary height limit in Albert Street Urban Renewal Precinct

The alteration of community-accepted Moreland AmC161 into consultation-exempt AmC172 imposed by Planning Minister, Richard Wynne, described in the Introduction section to this submission, provides another example where the wishes of community and council have been ignored and over-ruled.

- Briefly, Moreland AmC172 re-zoned the Albert Street Urban Renewal Precinct to a Mixed-Use zone. The attached DDO26, allowed for the precinct, completely outside of *any* Activity Centre, to have a higher built form than the limits nominated for **major** activity centres in the Moreland Municipal Strategic Statement. The discretionary eight-storey height for the Albert Street Urban Renewal Precinct resulted from another interference (call-in) by the Planning Minister.
- The shemozzle that is AmC172, shows how the carefully considered activity centre hierarchy was hijacked by developer-influenced Planning Minister actions and contravenes the strategic work the Moreland Activity Centre Framework sets out.
- Such actions impose undesirable housing outcomes onto communities and LGAs, build mistrust in the planning system and demonstrate how these key stakeholders are being ignored.

When Stockland and Mirvac submitted applications, both proposals exceeded even the 8-storey preferred height. This is not what the community wants.

All of the changes made by the Planning Minister, in these illustrative cases, pushed for more density, more height and less certainty for the community regarding the changes being imposed upon their neighbourhoods.

Recommendation 5.3: Urban structure plan for precinct areas

That infill sites with multiple properties, especially when located in established areas, be treated as an entire precinct, requiring a detailed Urban Structure Plan be completed before any buildings are constructed.

Rationale:

Facilitate precinct approach to planning

When infill sites become available in established areas it is an important function of urban planning to facilitate their development in a holistic manner. Without clear guidelines in the form of an 'Urban Structure Plan', which considers the entire precinct, and careful management by the planning body, individual property owners and developers compete to be 'first past the post' to get the most profit at the expense of cohesiveness and enhanced neighbourhood context. A precinct approach would lessen the opportunistic land speculation that this piecemeal approach encourages.

The Arden Structure Plan by the City of Melbourne takes a precinct approach that values open space and consequently has ensured that access to winter sun for local green spaces is embedded in the planning schemes. It states:

- "Ensure that open spaces in the precinct, […], have controls against overshadowing.", and
- "the core of Arden Central around the new neighbourhood park and Capital City Open Space will be of lower rise to ensure sufficient sunlight to these spaces and provide a human scale and layering of development." (page 41: Arden Structure Plan[30]).

In the hearings we attended, due to the absence of a precinct approach, it was up to the Council, the respondent/objectors, adjoining property owners and their legal counsel to argue the adverse external and internal amenity impacts that the proposed development would have for the neighbouring subject sites. A well-conceived Urban Structure Plan would ensure more equitable development and net community benefit by incorporating measures that anticipate and address potential conflicts, provide clarity, and pre-empt many of the potential conflicts that end up as VCAT disputes.

Recommendation 5.4: Accurate assessment of transport capacity

The planning system must require that public and sustainable transport options of an established area be assessed on the basis of service frequency and capacity prior to it being targeted for more intensive development.

[30] Depart of Transport (2021) Arden Structure Plan. Victoria Planning Authority, State of Victoria. https://vpa-web.s3.amazonaws.com/wp-content/uploads/2021/09/Arden-Precinct-Structure-Plan-August-2021-1-of-2.pdf

Rationale:

Housing near sustainable transport

The principle underlying the concept of a 20-minute neighbourhood, which aims to give people the ability to meet most of their daily needs within a 20-minute return walk from home, with access to safe cycling and local transport options, is also logical and appropriate.

In practice, however, to identify areas with desirable local transport options, developers, their expert witnesses and even some council staff point to Principle Public Transport Network (PPTN) maps. This practice is at best, naïve, and more likely mischievous, or misleading. Anybody who uses public transport knows the PPTN maps do not tell the whole story. All transport routes are not created equal with their service frequency and capacity varying immensely.

To identify optimal sites for public transport support, service frequency and capacity must be considered.

In the case of the ASURP, the Upfield trainline and bike tracks were repeatedly used as justification for more intense development. Yet, the Upfield line requires track duplication north of Gowrie station to support more frequent train service, and that upgrade is not happening in the foreseeable future.

The Upfield bike track, similarly, is also not earmarked for upgrade, despite safety issues for both cyclists and pedestrians who use it.

Recommendation 5.5: Value and implement learnings from community consultation

That the State Government cease and desist from further steps that erode the say of local residents in planning matters and review existing rules with a view to re-instating opportunities for residents to be heard.

Rationale:

Community consultation to determine housing that communities want

Through online feedback forums at council level, and state-run community consultation about 'Density Done Well', planning agencies do gain an understanding of what communities want for housing. Examples of learnings are shown below.

Conversations Moreland

In 'Conversations Moreland: Imagine Moreland (Neighbourhoods)'[31] residents were invited to respond to "What does your future neighbourhood look and feel like?" Two responses are shown below:

- We've already accepted more than our fair share of population growth over the last 8 years, and our suburbs are now congested, crowded and reduced in liveability and quality as a result.
  We have been unwilling participants in a scientific experiment called Plan Melbourne 2017-2050 for almost 4 years. The results are in: Plan Melbourne 2017 is anti-heritage, anti-neighbourhood character, anti-livability, anti-biodiversity and anti-sustainable. **Marion Leigh**, Posted on 5th Mar 2021

[31] City of Moreland. (2021.) Imagine Moreland: neighbourhoods.
https://conversations.moreland.vic.gov.au/imagine-moreland/neighbourhoods

- I imagine a community benefiting from architectural developments that promote community living, where the council has stopped supporting high rise development by developers that are only chasing the dollar leaving us with slum like structures that nobody wants to live in and no business wants to be in. An innovative brave council that stops these developments that become [eyesore] wastelands. A council that promotes the renovation and restoration of its heritage buildings. These are the venues the community wants to patronise. **Ulli**, Posted on 3rd Mar 2021

These comments are supported by demographic data for Brunswick, which shows "More than three times as many high-density dwellings (+1337) as medium density dwellings (+333) were added from 2011-2016, whilst separate house dwellings decreased substantially (-358)" (Informed Decisions 2021[32]) indicating increased congestion, crowding, and reduced liveability.

Community consultation: density done well

Victoria's Infrastructure Strategy 2021-2051 states:

> Inadequate prioritisation and planning of places for more intense development can lead to local disputes, especially in relation to medium and high-density development. From 2011 to 2017, more than half of projects with six or more dwellings were referred to VCAT[33].

In a community consultation process, which informed Victoria's Infrastructure Strategy 2021-2051 report, quality urban design was nominated by community members in 2020 as having the highest importance (27%) for density done well.

51% of respondents said that "responding to the context especially in relation to the height of existing buildings" was the issue of greatest concern for quality urban design.

The *Scale It Down: Protect Brunswick Parks* data aligns with this evidence, given that we had 1,400 users of the Brunswick Central Parklands sign a petition objecting to the inappropriate scale of the proposed developments at 395 and 429 Albert St.

Recommendation 5.6: Give effect to Council planning policies

That a clause be inserted into Section 84B of the Planning and Environment Act requiring VCAT to give effect to the planning policies of local Councils.

Rationale:

State government, VCAT and LGA implementation of strategic policy documents

There is an inherent contradiction between the governance powers and responsibilities of councils required by the Local Government Act 2020 Section 9 (and others) and the increasing tendency to

[32] Informed Decisions community demographic resources. (n.d.) City of Moreland community profile – Brunswick. https://profile.id.com.au/moreland/dwellings?BMID=10&WebID=100
[33] Infrastructure Victoria (2021) Victoria's infrastructure strategy 2021-2051. https://www.infrastructurevictoria.com.au/wp-content/uploads/2021/08/1.-Victorias-infrastructure-strategy-2021-2051-Vol-1.pdf

override these powers and responsibilities under the Planning and Environment Act 1987. No wonder the community and many councils are frustrated, confused and angry.

LGAs, like Moreland, create strategic policy documents that are intended to support and guide various outcomes including heritage, urban greening, sustainable transport and medium density housing, and are usually developed with opportunities for community input.

State Govt/VCAT have many competing, and sometimes conflicting, needs to consider. This is sometimes understandable as State Govt/VCAT must consider a bigger picture. But this must be based on real, not perceived pressures, and this should never result in the removal of a community's rights to be heard and/or councillors', not council officers', responsibility to review planning applications.

Currently, once an application goes to VCAT for review, tribunal members need only 'consider' local policy documents, rather than ensure that the local policy documents which LGA officers spend considerable time developing are implemented[34].

Feedback from community consultation suggests that State government and VCAT decisions (and sometimes even those of LGAs themselves!) are failing to follow carefully constructed policy documents and are not delivering the types of housing that communities want.

Prescriptive language and quantitative controls for clarity

Recommendation 5.7: Quantitative controls to clarify development outcomes

That housing density and built form controls be specified in design and development overlays (DDO) and schedules in quantitative form.

Rationale:

Language: qualitative, subjective, ambiguous versus quantitative and clear

Our experience at VCAT hearings highlighted that ambiguous language and subjective planning scheme control statements cause undue misunderstandings and confusion for the community, council, and developer.

It also meant much of the VCAT hearing was taken up with discussing concepts such as: 'higher', 'visually recessive', 'medium-density' and 'continuous wall of built form' by expert witnesses, solicitors and QC, the Council, and community objectors. These semantic discussions would be unnecessary if language in the planning scheme was clearer and more precise.

The planning scheme glossary does not provide definitions for 'density', much less a shared understanding for the meaning of the more contextual 'low-', 'medium-' or 'high-density'. This permits developers to assert that their development complies no matter what density or built form controls are called for in the DDO.

Due to the contextual nature of terms like 'medium-density' and 'mid-rise' built form, quantitative measures, possibly expressed as a range, should be used to clarify the requirement.

[34]Moreland Planning Scheme: Clause 43.02-6 31/07/2018 VC148 "Decision guidelines" https://planning-schemes.app.planning.vic.gov.au/Moreland/ordinance/4234952

Specifying these parameters in each DDO schedule permits the context to be considered, and the LGAs, who are most knowledgeable about the context, to negotiate with residents and impacted parties about these parameters.

By specifying housing density in a quantitative form, and the specific built form typology being sought in each DDO, the LGAs, developers and residents would be clear on the objectives and expectations.

Given that built form height is the greatest concern amongst objectors that attend VCAT, having the density and built form typology specified should also improve clarity and reduce the need to attend VCAT.

Specificity serves a further purpose. It will be much easier to assess and monitor whether particular housing forms, which are in high, but unmet, demand, such as the 'missing middle'-type housing, (Grattan Institute 2018) have been achieved within LGAs and State level timelines.

Recommendation 5.8: Stronger regulatory frameworks

That a more robust regulatory framework be enforced, with fewer discretionary controls, to reduce the number of applications being escalated to VCAT, and to provide residents and LGAs with more certainty in the planning process. DDOs need to be consistent and written in clear, precise and quantitative terms.

Rationale:

As local community residents, we need, and are entitled to know, some measurable certainties: how tall, how big, how much setback, how much shadow and where the goal posts stand.

It is no wonder that this ambiguity engenders a broad distrust of developers, VCAT, and even Councils, both officers and councillors, who write and approve these planning documents.

In our submissions to VCAT we made it clear that Brunswick accepts greater densification, particularly for Major Activity Centres, but doesn't want 8-12 storey apartment blocks beside their parkland and outside of activity centres. Three- or even four-storey townhouses in the Albert Street Urban Renewal Precinct (the missing middle) would be welcomed and would still provide housing for an increasing population.

Conclusion

The current state of the planning system does **not:**

- deliver the type of housing that the community expects or wants;
- provide certainty, fairness and consistency in the planning process;
- protect the quality and biodiversity of local, green spaces; or
- respect and acknowledge the role of local councils and their communities.

Appendix A: planning flowchart – the importance of the protection of open space

According to Plan Melbourne: 2017-2050, which sets the strategic vision for Victoria, the planning scheme should:

- Deliver local parks and green neighbourhoods in collaboration with communities
- Develop a network of accessible, high-quality, local open spaces, and
- Support community gardens and productive streetscapes (page 12 Outcome 5)

All of which contributes to creating "a city of inclusive, vibrant and healthy neighbourhoods."

The overarching Moreland Planning Scheme in **Clause 15.01-1L 14/01/2021 C200** (page 112) under its Urban design Clause in Moreland spells out:

[The] Design and site development [is] to not **unreasonably overshadow public open space**."

The Moreland Open Space Strategy states at**:**

Item 6: [That] **new multi-unit housing** [and] **redevelopment projects [should] avoid overshadowing of parkland** […] (page 34).

The **DDO26** designated for this Albert Street Urban Renewal Precinct specifically mentions that the development is to "optimise solar access to public places."

Despite all of the above statutory protections, almost half of the open space in Gilpin Park is potentially going to be overshadowed in Winter (see figure 24 below), and this is the outcome of just one development, there will be further developments in this precinct.

Figure 24. Overshadowing Impacts - Winter 9am (proposed development)

3D Modelling Overshadowing Impact image of Gilpin Park provided by Chris Staring from the Moreland City Council presented as evidence at VCAT Hearing (P943/2021) 395 – 411 Albert Street, Brunswick depicting Build to Rent Apartments 11 storeys or 38 metres in height by developer Mirvac.

Appendix B: summary of the 35 recommendations presented in this submission

TOR 2-Environmental sustainability and vegetation protection

Environmental sustainability

Recommendation 2.1: Compulsory Environmental Impact Statements

Introduce a requirement for an advertised Environmental Impact Statement (EIS) to be completed on all planning applications. The EIS would be lodged with the responsible authority and include impacts on both subject site and the surrounding area. EIS would form part of the advertised application and be open for objections and submissions as in the normal application process.

NOTE: A nuanced approach could be developed for such a compulsory EIS to take into account small domestic developments under a certain size, density or budget.

Recommendation 2.2: Rigour in ESD assessment

Introduce more rigour in the application of environmentally sustainable design (ESD) tools to assess sustainable measures proposed and realised

- Support shared understandings by avoiding misrepresentative or ambiguous language
- Mandate tools to ensure consistent approach
- Ensure an external independent assessment, post-build, of ESD outcomes and off-site impacts with rectifications &/or fines if not met

Open space and urban green space protection for human health

Recommendation 2.3: Minister for Planning and Public Spaces

That the Minister for Planning's portfolio and title be broadened to the 'Minister for Planning and Public Spaces' similar to NSW, to recognise the importance of the preservation of public spaces in planning decisions.

Recommendation 2.4: Open Space protection

Introduce planning scheme controls into the Victorian Planning Legislation to protect winter sunlight access to public parks, in all municipalities, at times of highest activity. In particular, we are recommending the inclusion of:

- 4 storey mandatory height limits for any development on the boundaries of a public park, and
- no increases to current public park shadow.

Recommendation 2.5: Green space provision

That Planning Victoria and Councils implement 'green space' policy targets and performance measures that include:

- access to urban green space that meets or exceeds the WHO recommended 'minimum' of 9m^2 per person, and
- where infill sites are rezoned for residential housing, developers must provide sufficient green space within the development to meet or exceed the WHO minimum.

Vegetation protection (for habitat and biodiversity)

Recommendation 2.6: Formal recognition and protection of alternate habitats:

Include protections and controls in planning schemes that acknowledge the importance of 'stepping-stone' and refugia habitats, especially those being utilised by a species with threatened status (critically endangered, endangered, threatened, vulnerable).

Recommendation 2.7: Formal recognition and protection of trees for habitat and urban heat island effect mitigation:

Expand the definition of trees worthy of protection in planning schemes to confirm their biological importance to ecosystems (habitat value) and their mitigating effect on urban heat island (UHI) impacts by:

- ensuring their protection in planning schemes, and
- defining explicit measures to be implemented for that protection, e.g., all new developments, regardless of size, should implement urban heating mitigation measures to reduce net heat load for the municipality.

Recommendation 2.8: Deep soil provision-canopy trees for parkland interfaces and new developments

- Strengthen implementation of deep soil provision in new developments specifically for canopy tree plantings
- Strengthen requirement for deep soil provision adjacent to urban parkland, with sufficient required setbacks to permit multiple layers of tree plantings.

TOR 3 - delivering certainty and fairness in planning decisions for communities, including but not limited to —

(a) Mandatory height limits

Recommendation 3.1: More prescriptive measures needed in LGA planning schemes

That the Minister for Planning implement mandatory height controls rather than discretionary height controls, at the height requested by municipal councils in planning scheme amendments.

(c) Community concerns about VCAT appeal processes

Recommendation 3.2: Support for local government area (LGA) policies and decisions with resident input

Give effect to the planning decisions and policies of local government, and retain the rights of residents to determine the best planning outcomes for their municipality.

More supportive VCAT processes

Recommendation 3.3: Support for community objectors

Community objectors/respondents should have access to advocates for a nominal fee to present their submissions, similar to legal aid, if a matter was to go to VCAT.

Recommendation 3.4: Instructional videos for VCAT

Provide a series of instructional videos on the VCAT website, to assist in preparing for VCAT, including but not limited to, how to complete a VCAT application form, how to prepare and present

submissions, how to prepare cross-examination of expert witnesses, and how to prepare a right of reply.

Recommendation 3.5: Encourage compliance for original applications

Developers must adhere to their initial plans and be compelled to lodge compliant plans at the outset. If they change their plans substantial financial penalties should be applied.

Improve fairness of VCAT hearings

Recommendation 3.6: Online platform for VCAT hearings

That VCAT hearings continue to be held on Zoom, or other online platform, as it provides a number of advantages for attendees. Provision of onsite attendance to assist those that would find this platform difficult must be also offered.

Recommendation 3.7: Provision of VCAT recordings

Make recordings of VCAT hearings available free of charge to the parties of the hearing, otherwise, parties should be allowed to record the hearing, especially when hearings are held on the Zoom platform that automatically records, i.e., no staff or special services need to be hired.

Recommendation 3.8: Impartial expert witnesses called by VCAT

That VCAT should exercise its capacity to call expert witnesses to assess the pros and cons of each proposal. No other party should call expert witnesses.

Recommendation 3.9: Expert witnesses from diverse fields

VCAT members, when exercising their capacity to call expert witnesses, should include witnesses with a diverse range of expertise including academics, social planners, environmentalists, and psychologists to balance the Panel's expertise and to assess the conflicting objectives of planning schemes against net community benefit.

Recommendation 3.10: Limit use of advocates

If parties are to call experts, then each VCAT party should be limited to the same number of experts at a VCAT hearing.

Adjust role of VCAT

Recommendation 3.11: VCAT as adjudicator instead of default planning body

VCAT's role should be to adjudicate on whether a Council has made a proper decision in line with regulations.

Recommendation 3.12: Reduce appeals to VCAT on the grounds of 'Failure to Determine"

Councils should be given adequate time to conduct proper evaluation of major developments. 60 days is insufficient.

Recommendation 3.13: Parent and offspring planning controls should be consistent and compatible

'Parent' planning schemes should not undermine or negate the 'offspring' controls, instead the legislation should be made consistent and compatible.

(d) protecting third-party appeal rights

Support notification requirements and third-party appeal rights

Recommendation 3.14: Improved notification for major developments needed

That notifications of proposed major developments be widespread, involve all residents of the municipality and should include letter-drops and visible public notices, with illustrations of the proposed designs as well as social media notices.

Recommendation 3.15: Retain third-party appeal rights

Third-party appeal rights must be retained on all but the most straightforward and minor applications.

(e) the role of Ministerial call-ins

Minister power and disproportionate influence of developers

Recommendation 3.16: Criteria for Ministerial call-ins to be re-assessed

Narrow the interpretation of criteria for Ministerial call-ins to decisions that cut across several LGA's, for larger infrastructure projects, or if there is a suggestion of illegal or improper conduct.

Recommendation 3.17: Ban donations by developers to political parties

Ban donations to political parties by developers, as Queensland and NSW have done.

Recommendation 3.18: Inequitable access to Minister should be prevented

Prevent developers from having direct access to the Minister to remove influence on planning decisions. Planning decisions should be based on LGA and community input as mentioned in Plan Melbourne Policies 5.1.1 and 5.1.2.

Recommendation 3.19: Diversify profile of planning panel members and advisory committees

That planning panels and advisory committees be required to include a more diverse range of members such as academics, social planners, environmentalists and psychologists to balance the planning panel's expertise and to assess the conflicting objectives of planning schemes against net community benefit. Expert witnesses called by the planning panels and advisory committees must be independent and impartial; not hired by one of the developers who has an interest in the outcome, as was the case for C161.

TOR 5-ensuring residential zones are delivering the type of housing that communities want

Recognise and respect Council decisions

Recommendation 5.1: Council is responsible for building approval

That the approval of building permits be returned to being the function of local Councils, not VCAT.

Recommendation 5.2: Council able to set mandatory controls

That the Planning Minister implement mandatory planning standards such as height limits, lot sizes, minimum apartment sizes and site coverage by buildings, rather than discretionary controls, where mandatory controls are sought, at the nominated quantum as requested by municipal councils in planning scheme amendments.

Recommendation 5.3: Urban structure plan for precinct areas

That infill sites with multiple properties, especially when located in established areas, be treated as an entire precinct, requiring a detailed Urban Structure Plan be completed before any buildings are constructed.

Recommendation 5.4: Accurate assessment of transport capacity

The planning system must require that public and sustainable transport options of an established area be assessed on the basis of service frequency and capacity prior to it being targeted for more intensive development.

Recommendation 5.5: Value and implement learnings from community consultation

That the State Government cease and desist from further steps that erode the say of local residents in planning matters and review existing rules with a view to re-instating opportunities for residents to be heard.

Recommendation 5.6: Give effect to Council planning policies

That a clause be inserted into Section 84B of the Planning and Environment Act requiring VCAT to give effect to the planning policies of local Councils.

Prescriptive language and quantitative controls for clarity

Recommendation 5.7: Quantitative controls to clarify development outcomes

That housing density and built form controls be specified in design and development overlays (DDO) and schedules in quantitative form.

Recommendation 5.8: Stronger regulatory frameworks

That a more robust regulatory framework be enforced, with fewer discretionary controls, to reduce the number of applications being escalated to VCAT, and to provide residents and LGAs with more certainty in the planning process. DDOs need to be consistent and written in clear, precise and quantitative terms.