

**Submission
No 280**

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

Organisation: City of Kingston

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Parliamentary Inquiry into the Protections within the Victorian Planning Framework

City of Kingston – Submission

28 February 2022

Introduction

The City of Kingston welcomes the opportunity to submit to the Parliamentary Inquiry into the protections within the Victorian Planning Framework. This submission is made without prejudice and at an officer level, noting it is consistent with Council's adopted strategies or positions on the issues covered.

Response to Parliamentary Inquiry Terms of Reference

Council's response to the Terms of Reference is outlined below:

1. The high cost of housing including social and affordable housing provision

Kingston confronts the same challenges as many other Councils across the metropolitan region. Escalating housing costs relative to incomes are resulting in increased levels of rental stress, mortgage stress, displacement and homelessness. Support for the development of affordable housing options, including social and community housing, is embedded in the City of Kingston's *Council Plan 2021-2025*.

Council adopted its *Kingston Social and Affordable Housing Strategy (KSAHS)* in July 2020. The KSAHS highlights Council's role in affecting housing affordability in facilitating efficient housing markets. It calculates the unmet need for social and affordable housing to quantify this demand and arrives at a figure of 9.79%. The KSAHS explores options to increase contributions to affordable housing through regulation such as inclusionary zoning and value capture, facilitation and partnership, direct investment, and advocacy.

Council welcomed the appointment of the *Planning Mechanisms for Affordable Housing Ministerial Advisory Committee* in 2019 and recent changes to the *Planning and Environment Act 1987* to provide a stronger framework for Council to negotiate affordable housing outcomes via voluntary planning agreements. However, these changes offered limited direction in relation to the quantum of affordable housing to be provided. As a result, there has been little consistency in affordable housing outcomes under the current regime.

Most recently, Council expended significant resources engaging external consultants to advocate for affordable housing outcomes as part of the Golf Course Standing Advisory Committee Hearing, seeking social and affordable housing contribution in line with adopted policy. This amount was contested by the proponent, and the result has been significant uncertainty in both the eventual quantum and delivery mechanism of affordable housing on the land.

The above experiences reinforce the significance of the Minister for Planning's announcement on 18 February 2022 in relation to the implementation of mandatory social and affordable housing contribution (SAHC) effective July 2024. While the implementation of the SAHC may now be in doubt, its implementation would be welcomed by Council and is an outcome directly sought through Council's adopted Social and Affordable Housing Strategy. The certainty provided through this mechanism, once implemented, would largely address the issues outlined above which Council continues to experience as it seeks to negotiate voluntary affordable housing contributions with developers.

Noting Council's support for the implementation of a mandatory SAHC, further work and engagement with local government is required to determine the role Council's will play in its implementation and to ensure the establishment of strong working partnerships between local, State, Commonwealth, private and not for profit sectors.

Council also wishes to highlight the urgent need to significantly increase the range and scale of housing for people with disability. It is considered critical that the implementation of the SAHC expands the range and scale of diverse housing options for people with disability living in, or at risk of admission to, residential aged care, particularly younger people.

2. Environmental sustainability and vegetation protection

The Victorian Planning Provisions and ESD

Kingston City Council is an active member of the Council Alliance for a Sustainable Built Environment (CASBE) and the South East Councils Climate Change Alliance (SECCCA). Over time, Council has developed a strong and consistent body of strategic work relating to environmental sustainability and climate change.

Council declared a Climate and Ecological Emergency in January 2020. A Climate and Ecological Emergency Response Plan (CEERP) was adopted by Council in July 2021. Both the Declaration and the CEERP align with the latest scientific evidence and seek to achieve net zero greenhouse gas emissions in the community by 2030.

Council supports planned reforms to the VPP to comprehensively incorporate ESD considerations into planning decisions. In 2021, Council provided officer level comment to DELWP on Stage 1 of the *Environmentally sustainable development of buildings and subdivisions: A roadmap for Victoria's Planning System*.

Updates to the Planning Policy Framework (PPF) are a unique opportunity to alter planning controls to enhance development for the long-term benefit of the environment and community. However, the City of Kingston reiterates the need for the Roadmap (and the VPP) to clearly identify a target of net zero emissions.

Council welcomes further development and implementation of Stage 1 of the Roadmap. We also look forward to future collaboration with DELWP on development of Stage 2 of the Roadmap, which is expected to implement further changes to the Particular Provisions to elevate ESD targets.

This support for reform to the VPP notwithstanding, Council's adopted emissions target of net zero by 2030 is more ambitious than the target of 2050 embedded in the *Climate Change Act 2017*. One of the priority actions of Kingston's Climate and Ecological Emergency Response Plan is to *undertake a planning amendment that requires all new buildings that are subject to planning approval to achieve net zero emissions or be net zero emissions ready. This may be via CASBE or a Kingston specific amendment*.

Therefore, while we support the implementation of a strong baseline of Environmentally Sustainable Development (ESD) through the planning system, we support MAV's position that local communities must be given scope to continue to innovate to advance best practice in our own planning schemes.

We also support the MAV's recommendation that the committee consider a new report commissioned by the Victorian Greenhouse Alliances in partnership with the Council Alliance for a Sustainable Built Environment. The report looks at barriers and opportunities within the planning system to respond to climate change: [Climate change & planning in Victoria – November 2021](#)

Integrated water management

Council is also in the process of reviewing its Integrated Water Management Strategy and welcomes any changes to the VPP which strengthen or elevate water management considerations in planning decisions. Some changes appear to be proposed under the Stage 1 Roadmap.

Vegetation protection and tree canopy

Kingston's adopted CEERP Priority Area 5 contains the following objective:

“Draw down or sequester carbon from the atmosphere contains an action to scope, commission, finalise and implement Council’s Urban Forest Strategy aimed at significantly expanding vegetation and tree canopy cover across Kingston.

Specific objectives include:

- Protecting existing vegetation and canopy cover (private and public land)
- Expanding vegetation and canopy cover (private and public land)
- Strengthening biodiversity and habitat using appropriate native species, and restoring natural resource area ecosystems where possible
- Reducing urban heat island effects
- Contributing to draw down (the removal of carbon from the atmosphere)”

Since March 2021, work has been conducted to scope and commission Council’s Urban Forest Strategy and Council officers have scoped potential changes to statutory planning provisions which may be required to better protect and enhance vegetation in the Kingston context. Council supports any future changes to the VPP that would contribute to urban cooling, increased protection of existing canopy trees and an increase in new tree canopy provided this does not limit Council’s ability to introduce more ambitious targets and objectives through new Local Planning Policy in the future.

In its adopted submission to the *Draft Southern Metro Land Use Framework Plan* (Draft LUFP) in October 2021, Council expressed support for Direction 30 of the Draft LUFP to increase tree canopy across the Southern Metro Region to achieve 30% coverage by 2050. However, in this submission Council notes that additional protection for trees to be retained on development sites; an exploration of green infrastructure in contributing to urban cooling; and targeted strategies for greening and cooling commercial and industrial land should also form part of the LUFP. A copy of Council’s endorsed submission to the Draft LUFP is **Attachment 1** to this submission.

Urban Cooling

Council’s submission to the Draft LUFP reiterates its ambitions in relation to vegetation and urban cooling. It outlines support for Direction 29 in relation to urban cooling. Council adopted its *Urban Cooling Strategy* in 2020. Goal 2 of that strategy is to *incorporate urban heat mitigation principles and elements in planning and building decisions*. The addition of a separate Clause 13.01-3S - Urban heat mitigation - proposed under Stage 1 of the Roadmap would be welcomed as it will add to the legitimacy of work already undertaken by Council in this area and builds upon the draft Direction 29.

In relation to climate adaptation, Priority Area 6 of Council’s adopted CEERP contains a Priority Action to *develop and deliver a Climate Adaptation Plan*. This aligns with the objective of Clause 13.01-1S of the Planning Scheme to *minimise the impacts of natural hazards and adapt to the impacts of climate change through risk-based planning*.

The inclusion of additional references and strategies in the VPP relating to climate change and mitigation, proposed under Stage 1 of the Roadmap, are welcomed as giving additional strategic weight to any future document prepared by Council. Council notes the recent release the *Built Environment Climate Change Adaptation Action Plan 2022-2026* [.Built-Environment-Climate-Change-Adaptation-Action-Plan-2022-2026.pdf \(planning.vic.gov.au\)](https://www.planning.vic.gov.au/Built-Environment-Climate-Change-Adaptation-Action-Plan-2022-2026.pdf)

3. Delivering certainty and fairness in planning decisions for communities

Mandatory height limits and minimum apartment sizes

Council provided officer level comments to DELWP on the initial iteration of the Better Apartments Design Standards (BADs) and supports statutory measures which provide statutory planners and developers with clear guidance on appropriate apartment design. We note the current Parliamentary Inquiry into the Apartment Standards. The Inquiry has had a strong response from local government and many Councils have suggested amendments to the current provisions to achieve improved standards and amenity. Council looks forward to the eventual release of a report and recommendations stemming from the Inquiry. While the BADs have resulted in increased certainty and minimum expectations for apartment design, Council continues to receive applications for other housing typologies (for example, townhouses) which do not achieve the minimum standards established for apartments. Therefore, Council would support discussion of extending consideration of minimum standards for internal amenity – particularly those relating to minimum room sizes and room depths – to assessment of other dwelling types under Clause 55.

The ability of the Planning Scheme to allow for mandatory controls over height is an important element for the local community. However, setting a maximum height in isolation does not necessarily guarantee an appropriate housing outcome for a particular site. The maximum height needs to be considered in the context of the expectations for the site. To this end, reforms seeking to reduce or eliminate consideration of well drafted local housing and neighbourhood character policies must be avoided. A codified assessment may result in housing outcomes that ‘max out’ an allowable building footprint at the expense of preferred character outcomes or design innovation. Council’s concerns relating to proposed changes to ResCode are discussed in Section 5 of this submission.

Planning for major projects affecting local communities

The City of Kingston is about to experience significant change with the planned delivery of the Suburban Rail Loop (SRL).

Council looks forward to the improved transport options that the project will bring. However, Council does not believe that local government should be passive participants in these generational infrastructure projects rather an equal and key stakeholder. Council’s active involvement and strategic advocacy in major projects, particularly level crossing removals, has resulted in significant gains to the community.

On 27 September 2021, Council resolved (inter alia) the following principles in relation to the SRL.

- *Ensure that local councils to be seen as equal and key stakeholders throughout the project and integral to ensuring community voices are heard;*
 - *Ensure that consultation with the community and with local government on any reform proposals and major planning decisions must occur before reforms are considered or introduced;*
 - *Ensure that the community's voice remains central and acknowledges is critical for ensuring a transparent planning system that strengthens local neighbourhoods and economies;*
 - *Reinforce that a localised understanding of the community and its concerns are essential in informing planning decisions that can only be delivered by Councils, and*

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- *Protect the mechanism and rights of residents to voice their objection and concern to any developments in their local community.*

A copy of the minutes to this meeting is **Attachment 2** to this submission. While these principles were resolved in relation to the SRL project, they are applicable to the consideration of State Government planning decisions more broadly where they impact Kingston residents.

Legislative change that undermines planning powers of local councils

Council has previously expressed concerns in relation the introduction of the Suburban Rail Loop Act (the 'Act') which it considers removes planning powers from local councils as planning authorities thereby limiting Council's ability to represent their communities actively and effectively.

Council exists as planning authority, land-owner and advocate for our community. Council, therefore, is best placed to represent the interests of local communities and should be placed front and centre of strategic planning decisions.

The appointment of Ministerial Advisory Committees to consider planning matters affecting local communities

Council notes the increasingly frequent use of Ministerial Advisory Committees to consider significant planning matters. Careful consideration is required to assess the circumstances in which a Standing Advisory Committee process is preferred over a more traditional Planning Scheme Amendment process, particularly when this process is likely to result in a planning permit being granted which will affect local communities.

Council has allocated substantial resources to its participation in Advisory Committee Hearings or processes affecting Kingston residents. These include the:

- Golf Course Standing Advisory Committee tasked with making recommendations on a residential development of the Kingswood Golf Course in Dingley Village.
- Government Land Standing Advisory Committee which resulted in the application of a DPO and associated provisions to enable residential development of the former Highett Gasworks.
- The Melbourne Airport Environs Safeguarding Standing Advisory Committee (relevant to potential future controls on land surrounding Moorabbin Airport).
- The Suburban Rail Loop East Inquiry and Advisory Committee appointed to advise on the EES and draft Planning Scheme Amendment for the SRL project area affecting Highett, Cheltenham, Clayton South, Clarinda and Heatherton.

Local government, in contrast to an Advisory Committee, regularly engages in consultation with and has a highly developed understanding of its community. It is extremely challenging for a State Government agency or Committee to replicate or offer a meaningful substitute for this knowledge. There is a risk that a Ministerial Committee can 'sideline' local government from planning processes when it is local government that is best placed to genuinely engage with its community.

Council hopes therefore that future Standing Advisory Committees could be appointed in a manner which treats local government as a partner in decision making and leverages the understanding of local communities, to enhance public trust in the decision-making process.

Support for a strong Urban Growth Boundary

The City of Kingston is a proud steward of the Kingston Green Wedge (KGW) and has participated in consultation on previous State Government discussion papers, including *Planning for Melbourne's Green Wedges and Agricultural Land* and *Protecting Melbourne's Strategic Agricultural Land Report*. Kingston is committed to the continuing enhancement and protection of the KGW. A defined and absolute urban boundary is fundamental to the protection of Green Wedge areas.

Enhanced protection for the Green Wedge and strengthened regulation of non-agricultural uses in the Green Wedge Zone (GWZ)

In previous submissions Council has objected, in the strongest terms, to any change to policy which would introduce or increase support for locating waste and recovery infrastructure in the Green Wedge. The KGW has, for many years, been transitioning out waste and resource recovery as the Chain of Parks project is realised. Waste and resource recovery is not a suitable outcome for the Kingston Green Wedge. This position was reinforced by the Minister's approval of Planning Scheme Amendment C143, which prohibited the continuation and establishment of these uses within the northern part of the KGW, now included in the GWAZ. A copy of Council's submission to *Planning for Melbourne's Green Wedges and Agricultural Land Consultation Paper* is **Attachment 3** to this submission and further expands on Council's position.

Council recently completed consultation on its draft *Kingston Green Wedge Management Plan 2021* (KGWMP 2021). The draft KGWMP 2021 makes several recommendations that require changes to the Kingston Planning Scheme.

Council anticipates the release of the State Government Department of Environment Land Water and Planning's findings on the *Planning for Melbourne's Green Wedges and Agricultural Land Consultation Paper* due shortly, which will also guide future strategic planning for the KGW. As part of this, Council would support any measures that strengthen Green Wedge policy and reduce ambiguity and uncertainty in planning decisions in the Green Wedge.

Council agrees with the identified strategies supporting Clause 19 of the VPP, Plan Melbourne and Direction 19 of the Draft Southern Metro LUPF in relation to the protection and strengthening the network of open spaces, particularly the Chain of Parks – Sandbelt.

Council reiterates its opposition to the proposed location of the SRL Southern Stabling facility on land earmarked for public open space as part of the Chain of Parks. This site has been earmarked (through a well-established public acquisition overlay) for open space as part of the Chain of Parks plan for some time and would contribute to an important and much needed network of open space for the region. State and regional plans must make it clear that the entire allocation of land for the Chain of Parks covered via well-established PAO's will be delivered.

Council notes the recent release of the report and associated recommendations from the recent Parliamentary Inquiry into environmental infrastructure for growing populations. The report identifies the challenges faced by middle ring councils in the provision of open space to meet population demand and makes several recommendations to address these challenges. Council notes that while populations increase, there is a finite amount of recreational and open space land available to service these populations. This has been highlighted by Council's recent involvement in the SRL IAC EES, where Council has noted that a significant portion of a regional open space (Sir William Fry Reserve) and proposed regional sporting field at the Delta site is likely to be sacrificed to the development of a new station in that location and stabling yards. Council notes that if it is to accommodate population increases a commensurate level of investment in public open space is required. Council's involvement in the Kingswood Golf Course SAC reinforced the tension it sees between retaining areas of open space and accommodating its share of population increase.

4. Protecting heritage in Victoria

Kingston values and protects its heritage fabric. We note the passage of the *Planning and Environment Amendment Act 2021* creating stronger protections for heritage properties from unlawful demolition or intentional neglect. Council is currently undertaking a municipal wide heritage study and a review of the *Heritage Study 2000*. This review will include scope to assess all places currently protected by an Overlay and investigate new places worthy of inclusion which were not assessed in the 2000 study, such as mid-Century Modern architecture. This study will likely recommend amendments to the current Schedule to the Heritage Overlay. Recommendations will also consider the recent legislative changes and other non-statutory mechanisms which could be leveraged to protect Kingston's heritage.

As noted earlier in this submission, a number of level crossings have been removed in Kingston as part of the State Government's Level Crossing Removal Project. Notably, the Station building at Chelsea was demolished through the level crossing removal process despite being identified as a Heritage place under the Schedule to Clause 43.01. Other station buildings with heritage listings, such as those at Mentone have been salvaged. In the case of Mentone, the building was replaced in situ and celebrated as a feature of the station precinct. This was the result of collaborative work between Council and the LXRA.

Further level crossings proposed to be removed in Parkdale are likely to impact the Parkdale Station and surrounding landscaping which dates to 1919 and is considered to have local heritage significance. Council has sought the application of an Interim Heritage Overlay over the station building and associated landscaping to ensure heritage is considered in any planning for the site (notwithstanding the application of Clause 52.03 over the precinct). As with Mentone and Cheltenham, Council expects to be recognised as an important stakeholder in planning for the station precinct - particularly through participation in forums such as the Urban Design Advisory Panel - to ensure the best outcome for the community in terms of built form and respect for the heritage fabric of the area.

5. Ensuring residential zones are delivering the type of housing that communities want

Local policy that is strategically sound and well drafted is fundamental to achieving the type of housing communities want.

Council adopted its *Housing Strategy and Neighbourhood Character Study* (HS & NCS) at the Ordinary Council meeting held on 25 October 2021. The HS&NCS is underpinned by collaborative work with officers from DELWP and is underpinned by a body of strategic work that aligns with Planning Practice Notes 90 and 91.

Council recently lodged an Amendment request to implement new residential zones, overlays and local policy to implement the recommendations of the HS & NCS and an associated landscape character assessment. Local objectives and decision guidelines have been included in proposed residential schedules to give effect to desired character and landscape outcomes for each area, in accordance with PPN91. This has been the work of extensive community and stakeholder consultation. Council believes the document strikes an appropriate balance between the need to accommodate population growth anticipated over the life of the HS&NCS and the expectations of the community.

In December 2021, Council adopted a submission to the discussion paper *Improving the Operation of ResCode*. A copy of Council's endorsed submission is **Attachment 4**. In this submission, Council raised concerns about the introduction of Performance Assessment Measures and related changes to the VPP. Council considers that these changes would significantly diminish the role of local policy, neighbourhood character objectives and decision

guidelines which have been developed after extensive consultation with the local community and key stakeholders.

Any changes to the Planning Scheme which diminish the role of local policy undermines the principles of integrated decision making embedded in Clause 71 of the Planning Scheme and ignores the significant role of Council in developing strategies that reflect the needs and aspirations of the communities it represents.