

**Submission
No 34**

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

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Date Received: 24 January 2022

I wish to make the following submission in respect of the Parliamentary enquiry into the planning process and heritage.

- (1) the high cost of housing, including but not limited to —
- (a) provision of social housing;
 - (b) access for first home buyers;
 - (c) the cost of rental accommodation;
 - (d) population policy, state and local;
 - (e) factors encouraging housing as an investment vehicle;
 - (f) mandatory affordable housing in new housing developments;

Cost of housing is a factor of the role of private development as the primary means of creating and expanding residential accommodation. It is the most lucrative and profitable investment area with a high degree of certainty. The benefits all go to the individual beneficiaries rather than to the community. That is, new development benefits the investors, but not the purchasers or existing residents in established areas. The profit margins are so great that there is little competition between developers to attract low-income families by providing good cheap homes. There is no alternative to the commercial market since waiting lists for public housing are longer than many people's needs or too great to prevent their downward spiral into poverty.

Low-cost housing, pegged to a realistic proportion of people's incomes of 30% should be made available both directly by government at all levels – Federal, State and local. (if local councils are not authorised by statute to provide public housing they should be both legislated and compelled to).

Provision of public and low cost housing should be closely aligned with heritage protection, by requiring existing rental accommodation in inner suburban and heritage areas to include a component of price controlled rental accommodation. If necessary, this should be achieved by compulsorily acquisition of historically and culturally significant properties and conversion or renovation at public expense to create suitable accommodation. This would be one part of removing the profit incentive for developers and private owners to enlarge, alter, expand and demolish significant heritage places. Blanket bans on all extensions to heritage places would also put downward pressure on prices in heritage area since where people cannot increase the total floor area of a house, limitations to its redevelopment will reduce the resale value.

The bottom 20% of Australians earners get just 4% of Australia's overall income, while the top 20% have 48% of all income. This disparity is exacerbated by the unaffordability of basic accommodation which consumes the vast proportion of poorer peoples' income. Therefore, if we are not going to provide for meaningful wealth and income redistribution through tax and government benefits, we should at least address the housing inequities, this being the most fundamental human right. All large-scale developments, whether multi-unit, high rise, or suburban detached residential developments, should include a mandated 5% social and 5% public housing. That is, the developer must rent out or sell 5% of the residences at a rate

that is affordable to the bottom 20% of the population, while another 5% should be handed to the government as a development tax. This 5% would then be provided as social housing at 30% of income rates on an equitable basis.

(2) environmental sustainability and vegetation protection.

We are losing both native vegetation biodiversity and urban greenery at ever expanding rates, while new housing estates offer extremely limited scope for revegetation and greening of the environment, creating larger heat sinks and urban heat islands, contributing to stresses on urban and suburban life.

Native vegetation is part of the estate of Australia's first people, and as an important aspect of Aboriginal cultural heritage as the stone artefacts, archaeological places, and traditional knowledge. The experience of the Western Highway bypass involving removal of culturally significant trees demonstrates the importance of this aspect of our environment to first nations people. Therefore, all remnant native vegetation, and in particular any tree that is old enough to have been alive before the arrival of white people should have blanket protection as Aboriginal cultural heritage. In the same way as all historical archaeological deposits, features and relics are automatically considered to fall under the protection of the Heritage Act 2017, all old growth trees should be considered Aboriginal cultural heritage places under the Aboriginal Heritage Act. Similarly, all mature native and exotic trees in urban areas should be given prima facie protection. It should be at the onus of the property owner or manager whether private or government to demonstrate either that a tree is not so significant, or that the arguments for its removal are stronger than for its retention.

Environmental sustainability also goes to the way we build, alter and demolish the built environment. All new development should be mandated for the highest energy saving and environmentally sustainability ratings. Issues of natural light, solar energy, pervious ground surfaces, passive solar, heating and cooling, recycling of materials, realisation of embodied energy in existing buildings, minimising the energy inputs in demolition and rebuilding, and reduction of carbon footprint should be mandated in the planning process through regularly reviewed (i.e. increased) targets.

(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;

(4) protecting heritage in Victoria, including but not limited to —

- (a) the adequacy of current criteria and processes for heritage protection;
- (b) possible federal involvement in heritage protection;
- (c) separating heritage protection from the planning administration;
- (d) establishing a heritage tribunal to hear heritage appeals;
- (e) the appointment of independent local and state heritage advisers;

- (f) the role of Councils in heritage protection;
- (g) penalties for illegal demolitions and tree removals

I have dealt with planning and heritage matters together here because the two are so intrinsically aligned.

Current policy in planning appears to be a free-for-all at least for large developers. The conversion of the traditional inner city strip shopping streets (Lygon St, Nicholson St, Sydney Road, chapel Street, Mount Alexander Road, etc.), into 6-10 storey apartment canyons is destroying one of the most attractive aspects of the inner and middle suburbs – the local accessible shopping and service areas. Increased residential densities in these areas, with a diminishing work opportunities is creating unnecessary commuter traffic and leading to ever increasing congestion. In middle ring suburbs, street after street of attractive period detached housing with gardens are being turned into multi-unit development deserts with little greenery and poor amenity for the new residents, while destroying the character that makes these areas attractive in the first place. A free-for-all in residential multiunit development is not an efficient planning system. What is necessary is carefully planned transition, with provision for services, amenities, green space, community activities and other essential elements of community and society to be created in tandem. Prescriptive planning limiting development within certain envelopes and mandating a social or community contribution by any new development is essential if we are to protect what makes Melbourne liveable.

The VCAT process does not serve the community. It only serves developers' profits and government ambitions to show economic increases. VCAT hearings are very one-sided with developers' advocates having sometimes multiple QCs, a range of hired gun experts and funds to maintain a long term campaign to achieve an unpopular planning outcome, basically wearing down both the community opposition and the regulator.

Very few VCAT members and town planners have any understanding or training in heritage matters, building construction or design, and on the whole are exposed to the lobbying and influence of developers, rather than giving equal weight to local residents and community groups. Poor outcomes are the result. Decisions involving specialist areas, whether good design, community amenity or heritage should be by referral to an independent expert body, similar to Heritage Victoria. VCAT members should only make determinations in their own areas of expertise, or their decision should be informed by an external heritage referral body, to which they should be bound.

VCAT and Victorian Heritage Council decisions very often ignore local both heritage policy in the planning scheme, and community objections. This results in precedents that are against policy but become de facto policy.

Resources among local government bodies in design and heritage is inadequate, with short term temporary and limited time contract heritage advisors, and many rural LGAs with no heritage advisers. Many metropolitan LGAs either fail to engage a heritage specialist or ignore the advice given.

In all cases, the outcome is a lottery, and dependent on the individual biases and sometimes vested interests of the people making the decisions. A truly independent planning and heritage assessment would either be based on expert advice, not commissioned by the proponent of a development, or based on a popular survey of effected public. For example, the residents and users of a local area have next to no influence on the decisions, when they are the people most affected by them.

Government departments should not be exempted from heritage policy and planning law. Nor should the minister be able to call in decisions, unless there is clear evidence that the independent process has been circumvented or is not capable of ensuring a democratic outcome. Increasingly, heritage demolitions are being approved that are contrary to good conservation practice and damaging to our cultural values. For example, the GMH Fisherman's Bend Factory, the home of the FJ Holden and the most iconic site of manufacturing in Australia, will be all but demolished, with no evidence of the actual manufacturing buildings or processes to be seen but just token administrative buildings retained due to the influence of Melbourne University and the intervention of the planning minister.

Funding for heritage in all spheres has been cut back or frozen for decades, or else, where made available, has been short term and tied to political interests and outcomes. Staffing levels at Heritage Victoria are particularly inadequate, with barely enough resources to process new applications, and no ability to be proactive, undertake new thematic, regional or policy studies, identify new places for protection, enforce protection of places being intentionally neglected or illegally impacted, or undertake public education and promotion to raise the profile of heritage. Local council funding for heritage is equally abysmal, with few dedicated heritage staff, haphazard and limited use of heritage advisors, and hardly any funding for heritage identification, promotion and conservation projects.

The purpose of heritage protection should be to prevent loss of heritage values, and where possible enhance them. To this end there should be NO approvals to demolish significant buildings or alter significant places. Facadism should be outlawed. All heritage places should have height and view-line controls. Demolition by neglect and illegal demolition should be properly prosecuted and in the most blatant cases such as 65 The Grove, or the Carlton Inn, emergency works should be undertaken by the regulator at the owner's expense, or if they don't pay up, they should forfeit the property. Heritage Victoria should be properly funded, probably by increasing their budget 10-fold. All councils should have a dedicated heritage officer who has appropriate qualifications, skills, and experience in heritage conservation. Funding for local and community heritage groups should be reinstated and be at a level that allows them to properly identify and research heritage places and advocate for heritage

Strong advocates should be appointed to the Heritage Council and other heritage decision bodies. State and local regulators should be funded to have sufficient staff qualified in all areas of heritage. Legislation should be amended to enforce heritage protection and remove loopholes that allow demolition by neglect or by stealth.

As a case study in this I note that 25 years ago, I could see that the developer at the Brunswick Brickworks had no intention of preserving the heritage values of the site and told them so. At that time, it was clear that they would try get as much development from the property as possible (more than would normally be allowed at the time supposedly to help fund to the conservation works), that they would try to get as much of the site demolished as possible (one of the kilns, the gatehouse office, boiler house, brick press building and now engine house), and that when they had made whatever profit they could, they will walk away from it. Heritage Victoria was either complicit in this process or incredibly naive in making concession after concession, with no evidence of good will from the owner. An alternative community proposal for low impact, low cost, community run restoration, conservation and adaptive reuse was ignored because of an inability to recognise the need for committing public money to the site and/or ensure such stringent and immutable heritage protection that the developer would be forced to conserve the site or sell it back to public ownership without the exorbitant profits. The result is the almost total loss of the heritage values of this place. There is nothing in place to prevent this from happening again.

After 35 years in heritage, I am less optimistic than ever that heritage matters to either the regulators or developers, but that it matters more than ever to ordinary Victorians. It should not be the case that every conservation issue is an uneven battle, where money and political connections nearly always win out. Communities, local residents and affected general public should be given primacy in decision making over the vested interests of developers and even individual property owners.

Demolition by stealth or neglect also encompasses the entirely illegal actions of some developers such as the Corkman cowboys, who despite some chest thumping from various regulatory bodies, are pretty much getting away with minimum financial or practical impost. My calculation is that by demolishing the building rather than retaining and propping the facades (as they would probably have been allowed under the then prevailing planning and heritage rules) they have saved themselves several million dollars, despite the fines that were imposed. (Incidentally, I can find no way of confirming that they have even paid any fines so far). Instead of a meaningful penalty that would have been a disincentive to others (for example a fine that was greater than an profit they could make from the site), they were rewarded with ministerial approval for a 12 story development. It would have cost about \$4 million extra to erect the supporting framework and construct in the constraints of propped facades, so they are ahead regardless.

Heritage listing criteria has become convoluted, complex, and open to the pedantic sophistry of legal redefinition. Places of very clear heritage importance, such as Gough Whitlam's birthplace, have been lost because of the way the criteria and thresholds are established and the way heritage regulator jurisdictions pass the buck, leaving gaps and loopholes in the system. Very little weight is given to either community interest, or the heritage expertise of opposing (i.e., non-developer) representation. Many area sof heritage are poorly represented in heritage listings at local or state level, while local councils have been very uneven in their recognition of heritage places and application of heritage controls. Some rural LGA's have almost no places in the Heritage Overlays, and what they have included have bene forced on them through the parallel listing on the Victorian Heritage Register.

Significant themes in Victoria's history and built environment are poorly reflected in heritage conservation, with gaps in twentieth century buildings, post war suburbs, all forms of industrial heritage, rural heritage reflecting the range of pastoral and agricultural pursuits, migrant heritage, Aboriginal historical heritage, political and trade union history. There have been almost no significant gap studies of thematic assessments in the last 20 years, with the heritage bodies relying on incomplete and out of date information to make decisions about new registrations or permits.

Even where there are studies, these are very difficult to come by. Many exist only in paper copy in Council files or locked away in the Victorian Government Library Service out in Werribee. All heritage studies should be scanned and made available publicly on the internet. Many of these documents are included as incorporated documents or reference documents in planning schemes and are supposed to be referred to in planning decisions, but with so much of the material invisible, this requirement is often ignored.

Facadism and retention of tokenistic and meaningless fragments or fake reproductions have become standard approaches to allowing development of heritage sites. This is contrary to all heritage conservation theory and practice. Australia was instrumental in developing policy on good heritage practice through Australia ICOMOS, the Australian Heritage Commission, its National Trusts and in particular the Burra Charter. We have now fallen back to almost pariah status in terms of heritage management.