

**Submission
No 113**

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

Organisation: Obesity Policy Coalition

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Obesity Policy Coalition – January 2022

Submission to Inquiry into the Protections within the Victorian Planning Framework

Background

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Victoria, VicHealth and the Global Obesity Centre at Deakin University, a World Health Organization (WHO) Collaborating Centre for Obesity Prevention. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children.

We welcome this opportunity to provide comments on the Terms of Reference relating to the protections within the Victorian Planning Framework. Our comments relate primarily to the third point in the Terms of Reference, about how the *Planning and Environment Act 1987* (the Act) and the Victorian Planning Framework deliver certainty and fairness in planning decisions for communities, including community concerns about VCAT appeal processes.

Summary of recommendations

The planning system must be updated to incorporate public health, to protect and improve the health and wellbeing of Victorians and align the planning system to the Victorian Government's public health goals. To achieve this, key reforms that should be adopted are:

- The objectives of the Act and the planning framework be amended to expressly include the promotion of public health, including healthy diets and active living, and
- The planning system must be changed to enable local communities, through local councils, to consider the impact on public health when making a planning decision. These factors must be incorporated throughout the planning framework and be considered as part of any review processes. These factors must expressly include the impact on overweight, obesity and diet within a community.

Background

The OPC is interested in the planning system because we know that the environment we live in has a significant impact on our health and wellbeing. All Victorians should be able to go about their daily lives in an environment that promotes their health and wellbeing. There are many elements that come together to influence the environment we live in, and the planning system has a significant impact on many parts of this, for example by influencing how easy or difficult it is to access fresh, healthy foods, the access to and availability of unhealthy food, including the number and location of fast food outlets, and how easy or difficult it is to be physically active within a community. The influence of the planning system, of course, extends beyond food to the access and availability of other harmful products, including alcohol and gambling, and has a significant impact on public health across many areas.

For more information on how the planning system influences public health, specifically its impact on overweight, obesity and diet within a community, please refer to the OPC's policy brief: [*Prioritising health: Reforming planning laws to reduce overweight and obesity in Australia*](#)

Aligning the planning system to Victoria's public health goals

To protect and improve the health and wellbeing of Victorians, the planning system, including its legislation, policies, and processes must be updated to reflect the link between planning and public health. This is also necessary to ensure the planning system reflects and can support the public health goals of the Victorian Government. The Victorian Government has a strong commitment to public health, as documented in legislation, plans and strategies that highlight the importance of the environment in supporting health and wellbeing, and refer specifically to changes in planning, urban design and the built environment.

For example, the Victorian [*Public Health and Wellbeing Plan 2019-2023*](#) refers (at p33) to the importance of '*...urban planning and built environment initiatives...*' in the context of achieving healthy eating and highlights the role of the Act in preventing or minimising air, water, soil and noise pollution. Victoria's five year action plan for children's health and wellbeing, [*Healthy kids, healthy futures*](#), is described by the Victorian Government as having '*... a strong focus on creating supportive environments for healthy eating and active living, as well as capturing complementary mental wellbeing initiatives...*'¹ and includes a priority action to explore legislative options to create healthier environments for children and young people, as well as a priority action to build on work done through a 20 minute neighbourhood pilot project, which incorporated healthy and active design objectives, and embed this into planning policy to create healthier communities. While legislative options to create healthier environments for children must be broader than planning, with a focus on protecting children from unhealthy food marketing, reforms to planning regulation are also an important element in creating healthier environments.

Reforms to the Victorian planning system provide an important opportunity to change the system to reflect and strengthen the Victorian Government's strong commitment to public health, and to create an environment that promotes health and wellbeing for all Victorians.

Enabling fair planning decisions to empower communities

The Inquiry's Terms of Reference ask about how the Act and the Victorian Planning Framework deliver certainty and fairness in planning decisions for communities. A key concern with the current planning system is that it is not delivering fair outcomes for communities that respect and reflect their valid concerns about the public health impacts of planning applications.

The current system also fails to acknowledge the important role local governments have in protecting and promoting the health of their community, including preventive health. This role has been recognised in government policy and legislation, including in the *Public Health and Wellbeing Act 2008* which requires each local council in Victoria to develop a Municipal Public Health and Wellbeing Plan outlining goals and strategies to create a local community where people can achieve maximum health and wellbeing.

These concerns can be seen in the way the planning system fails to empower local councils to effectively reject a planning application on the basis that the planned use of the land is

¹ See <https://www.health.vic.gov.au/health-strategies/healthy-kids-healthy-futures>

likely to have a negative impact on the health and wellbeing of their community, and in particular a negative impact on the levels of overweight, obesity and poor diet in the community. For example, to decide not to approve the development of chain fast food outlet. This is because the planning system doesn't provide a clear mechanism for public health, and in particular preventive health, to inform planning decisions.

In some cases where applications have been rejected by councils taking public health issues arising from the use of the land into account, review by the Victorian Civil and Administrative Tribunal (VCAT) has found that the impact on community health and wellbeing cannot be considered (see case studies below). This results in outcomes that are not fair for communities, as the profits of global fast food corporations are placed ahead of the interests and views of the relevant community.

Case Study: Tecoma

In early 2013 the Yarra Ranges Shire Council refused planning permission for a new McDonald's outlet in Tecoma in Melbourne's east. The council acted consistently with the sentiment of the local community, having received 1,300 objections from local residents in opposition to the development, on grounds including the health implications of a fast food outlet in the immediate vicinity of a primary school and childcare centre. McDonald's sought review in the VCAT², which applied the regulations - considering the local planning scheme and the Act and noting that concerns about the health impacts of a fast food outlet were not relevant considerations under the regulations. The council's refusal was overturned, resulting in a prolonged and disruptive campaign of community activism at the site.

Case Study: Mansfield

In 2020 the Mansfield Shire Council refused planning permission for a convenience restaurant in Mansfield, in rural Victoria. There was significant community concern about the proposal, with the council receiving 261 objections. The permission was refused by the council on a number of grounds, including the health effects of food sold from convenience restaurants. Review was sought in the VCAT,³ with the tribunal noting that no permit is required for the use of the site, only for the development itself, and that any concerns relating to the use of the land and the impact of that use are not relevant considerations. In this case the council's decision to refuse permission was upheld, on different grounds – the health effects were not considered by VCAT and evidence on those issues was not admitted.

These decisions clearly show that the current planning system does not empower councils to make planning decisions that reflect their fundamental role in promoting the health of their residents, and that reflect the concerns of those residents about the impact of planning outcomes on community health and wellbeing. This does not result in fair planning decisions and review outcomes for communities.

We recommend amendments to incorporate public health into the planning system and empower local communities, including:

- The objectives of the Act and the planning framework be amended to expressly include the promotion of public health, including healthy diets and active living, and

² *McDonald's Australia Pty Ltd v Yarra Ranges SC* [2012] VCAT 1539

³ *40 High Street Pty Ltd v Mansfield SC* [2021] VCAT 291

- The planning system must be changed to enable local communities, through local councils, to consider the impact on public health when making a planning decision. These factors must be incorporated throughout the planning framework and be considered as part of any review processes. These factors must expressly include the impact on overweight, obesity and diet within a community.

Wider reform will likely be required to incorporate public health throughout the planning process, however these fundamental steps must be a priority. We strongly support these changes to recognise the important role of planning in creating health promoting communities, and in ensuring that the planning system reflects and is supportive of the Victorian Government's strong commitment to public health. A planning system that promotes health and wellbeing is a central part of a whole of government approach to improving the health of Victorians.