

**Submission  
No 207**

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

**Organisation:** Glen Eira City Council

**Date Received:** 4 February 2022



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Environment and Planning Standing Committee  
Legislative Council  
Parliament of Victoria  
By email: [planninginquiry@parliament.vic.gov.au](mailto:planninginquiry@parliament.vic.gov.au)

4 February 2022

Dear Sir/Madam

**Submission from Glen Eira Council to the Inquiry to examine *Planning and Environment Act 1987***

Please find attached Council's submission to the Inquiry to examine *Planning and Environment Act 1987*.

Our submission responds directly to the committee's terms of reference.

Please note, we understand that the submission is being made late, however Council received approval for a late submission to allow the submission to go to Council Meeting.

If you have any questions, please contact [REDACTED] Senior Strategic Planner at [REDACTED]

Yours faithfully

**Rebecca McKenzie**  
Chief Executive Officer



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## GLEN EIRA CITY COUNCIL

INQUIRY TO EXAMINE PLANNING AND ENVIRONMENT ACT -  
SUBMISSION

18 JANUARY 2022

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# GLEN EIRA CITY COUNCIL SUBMISSION

## INQUIRY TO EXAMINE PLANNING AND ENVIRONMENT ACT:

Discussion and comment by chapter.

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## OVERVIEW

This is a submission from Glen Eira City Council (GECC) to the Inquiry to examine Planning and Environment Act being conducted by The Planning and Environment Committee.

The submission addresses all terms of reference, which are as follows:

- (1) the high cost of housing.
- (2) environmental sustainability and vegetation protection.
- (3) delivering certainty and fairness in planning decisions for communities.
- (4) protecting heritage in Victoria.
- (5) ensuring residential zones are delivering the type of housing that communities want.
- (6) any other matter.

The submission argues the most pressing issues for reform are the high cost of housing (in particular, affordable housing) and environmental sustainability and vegetation protection. Reform of these matters should be a priority.

There is a lack of affordable housing in the municipality, and insufficient regulatory mechanisms to address the issue. Council's climate emergency declaration requires consideration of how the planning system can drive climate change action. Currently, the Act focuses far more on planning than the environment.

Council considers these concerns could be more adequately addressed in both the Act and the Planning Policy Framework (PPF). Suggestions in relation to the other terms of reference items are included..

This submission was endorsed by Council on 1 February 2022 at its Ordinary Council Meeting.

## THE HIGH COST OF HOUSING

### Provision of social housing

The Act was updated to include a definition of affordable housing and to specify the household incomes in the very low, low and moderate range. The objectives of planning at Section 4 of the Act were also expanded to include the provision of affordable housing in Victoria as an objective.

Clause 16.01-2S of all planning schemes was updated to include a policy that sought to *deliver more affordable housing closer to jobs, transport and services*.

While Council welcomes their inclusion in the Act and the planning scheme, they only provide policy support rather than a statutory mechanism to require the provision of affordable housing.

Glen Eira's *Social and Affordable Housing Strategy 2019-2023* identifies 7,533 households or 13 per cent of all households in Glen Eira in housing stress. Glen Eira has a lower proportion of affordable housing compared to the Melbourne average (1.4 per cent versus 3.3 per cent of total dwellings) and the unmet need for affordable housing is in the order of 5,883 dwellings.

Council's *Social and Affordable Housing Strategy* notes that:

*For Glen Eira to meet its estimated need, over half of all new homes will need to be affordable housing. This is not achievable. A more realistic, but still aspirational target, would be for Glen Eira to reach the Melbourne average rate of 3.3 per cent social housing provision by 2036, which would require a further 1,800 social housing dwellings to be built, at a rate of 106 dwellings per year from 2019 to 2036. This would be an ambitious target, yet it would only address one third of the estimated need for social and affordable housing in 2036.*

Few affordable housing units have been constructed in Glen Eira since the changes to the Act were introduced. Some affordable housing dwellings are currently being constructed within the latest stage of Caulfield Village, there are commitments through the redevelopment of East Village and a proposed affordable housing proposal in Egan Street, Carnegie.

This demonstrates that the policy change has not been sufficient to deliver the affordable housing units required. Officers consider the provisions in the Act and Planning Policy Framework (PPF) to be insufficient.

A statutory mechanism to require a percentage of affordable housing in developments over a certain size, whether through a rezoning or a planning permit will be required. A position paper on Council's commitment to a planning mechanism for affordable housing contributions for new development was endorsed by Council on 29 June 2021. The position paper expresses Council's support for mandatory affordable housing contributions.

### Access for first home buyers

The Act and PPF do not address access for first home buyers.

Housing prices have risen significantly in recent years. Traditional detached housing (which is by far the dominant housing typology) in Glen Eira is becoming increasingly unaffordable. The price of housing is a significant barrier for first home buyers. Council is preparing a Housing Strategy that will be Council's framework for managing population and housing growth to 2036 with provision for continued growth beyond this timeframe.

It will guide appropriate future residential development to the right locations. It will identify projected population and housing growth and will ensure sufficient housing land is available to accommodate projected growth over the next 15 years.

It seeks to address the lack of access for first home buyers by improving housing diversity. The Housing Strategy will address this issue as best it can within the planning system. Planning policy seeks a balance between growth and neighbourhood character. The Housing Strategy will update Council's neighbourhood character statements and plan for future housing in a way that considers neighbourhood character.

There are planning practice notes that help councils understand neighbourhood character (PPN43) and apply the garden area requirement (PPN84). Neither the Planning for Housing practice note (PPN90), nor the Applying the Residential Zones practice note (PPN91) make mention of affordable housing nor first home buyers and need updating to reflect the changes in the Act and PPF that provide policy support for affordable housing and first home buyers.

There is little direction provided to councils to assist with the provision of affordable housing. A planning practice note or a mandatory mechanism like inclusionary zoning that support councils to secure affordable housing through the planning system is required. Nevertheless, there are a range of factors that contribute to a lack of access to affordable housing for first home buyers and these factors are beyond the control of Council and the planning system.

Council is concerned that a lack of access to home ownership for younger residents is contributing to an intergenerational divide. Older generations have had the benefit of access to home ownership and the security that it brings. Current generations do not have the same access.

Increasingly housing has been used as a tool for investment and wealth creation rather than as shelter. Foreign investment laws, mortgage lending practices and negative gearing are some of the factors at a federal level that contribute to a lack of access for first homebuyers, but these are not issues that can be addressed by the Act.

There is considerable weight given to neighbourhood character in planning in Victoria. If there were equal weight given to affordable housing, especially via a statutory control

rather than a policy-only focus, the planning system may be better able to deliver affordable housing to assist access for first home buyers.

### *The cost of rental accommodation*

The Act and PPF do not address the cost of rental accommodation directly. The planning system considers use and development of land. It does not consider residential tenure. The planning system cannot mandate the price of accommodation. It is predominantly driven by the market and governed by the *Residential Tenancies Act 1997*.

Council does not consider the Act and PPF an appropriate vehicle for addressing this concern.

### *Population policy, state and local*

Plan Melbourne acknowledges the growth of Melbourne and when councils prepare a Housing Strategy, PPN90 makes clear that there needs to be sufficient land available to accommodate projected growth for the next 15 years, outlined in *Victoria in Future*. That is an appropriate mechanism to plan for future growth.

The focus in Plan Melbourne of accommodating growth in established areas is also supported from an environmental and financial perspective. A more compact city is more environmentally sustainable and requires less expenditure on infrastructure on the fringe which saves the State money.

Council considers that population growth and encouraging decentralisation to regional centres is less well addressed. This could be an area for improvement, especially in the wake of the Covid-19 pandemic and increased digitisation of some workforces.

### *Factors encouraging housing as an investment vehicle*

The planning system (through the Act) regulates how land is used and what can be built on it. It does not regulate the financial and taxation systems that enable housing to be used as an investment vehicle.

The financial system and taxation are regulated through federal legislation and accordingly, the Act and PPF are not the appropriate vehicles for addressing this concern.

### *Mandatory affordable housing in new housing developments*

As previously discussed, affordable housing is not sufficiently addressed in the Act or PPF.

If there were to be a change to the planning system to introduce mandatory affordable housing in new developments, the following issues (among others) would need to be considered.

Council has a policy requiring a minimum of five per cent affordable housing on rezoned sites. Ideally this should be extended to higher density development proposals and adopted at a state level.

Analysis should be undertaken to establish what scale of development could accommodate affordable housing, what mechanism would be used to mandate this requirement and how to ensure the housing was “affordable” in the long term.

## ENVIRONMENTAL SUSTAINABILITY AND VEGETATION PROTECTION

Council declared a climate emergency in May 2020 and supports changes to the Act that drive action to reduce emissions from our community to zero by 2030 and ensures our community is resilient to the impacts of climate change.

Currently the Act and PPF do not suitably address environmental sustainability and vegetation protection in a metropolitan context. The Act predominantly focuses on *planning*, with *environment* a distant second. While the legislated objectives in the Act refer to ‘sustainability’ there is no explicit definition, meaning it is open to interpretation and viewed as discretionary. Similarly, there is no mention or definition of climate change within the Act.

Without making climate change and sustainability considerations explicit or mandatory they will continue to be overlooked in favour of policy considerations that are more well defined within the Planning Scheme.

This is supported in the recently released report *Climate Change and Planning: Ensuring Victoria’s planning system effectively tackles climate change*, commissioned by the Council Alliance for Sustainable Built Environment and the Victorian Greenhouse Alliances. The report assesses the current barriers impacting the contribution the planning system can make in mitigating emissions and adapting our built environment to climate change. It identifies a number initiatives to address these barriers, including legislative change to the Act.

Council supports the recommendation to seek an amendment to the *Planning and Environment Act 1987* to provide clearer direction on the consideration of climate change in assessment and decision making. Specifically:

- Inclusion of an additional, and specific, reference to climate change considerations within the Objectives of the Act, similar to the recent change relating to affordable housing. If affordable housing required a specific reference, then it is logical that climate change would also benefit from an explicit reference.
- Clarity on the duties required under the Act could be referenced under Section 12 (duties and responsibilities) to confirm that a Planning Authority must provide appropriate responses to climate change.

- Changes could be made to Section 46AZL to ensure that the principles guiding decision-making in declared areas also have consideration for appropriate mitigation and adaptation responses.

However, these legislative changes cannot be taken in isolation, as the key mechanism for implementing change under the Act is through the Planning Schemes, and update to these should be a priority. Statutory planners and other decision-makers need specific content in Planning Schemes to support them in delivering climate responsive outcomes. If there is no reference in the scheme, the ability to deliver outcomes is compromised and inconsistent and relies more heavily on individual decision-making and capacity.

These changes will also address the misalignment between the Act and the *Local Government Act 2020*. The *Local Government Act 2020* now includes an overarching governance principle that requires councils to promote the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, (Section 9 (2)(c)). Given the little or no mention of sustainability and climate change in the Act, it is challenging to fulfil this new requirement in relation to council's roles as a planning authority or responsible authority.

There is also a disconnect between the state government's Climate Change Strategy direction to build greener homes and buildings, and the day-to-day decisions that are being made. Although emissions reduction targets and commitments to adaptation have been made, these have not yet 'trickled down' to inform decision-making within the built environment, and more particularly, to decisions made through Victoria's planning system.

To support any legislative change, preferred practice should be documented through new or amended Practice Notes. In undertaking both strategic planning, and in the assessment of developments, planners rely heavily on Practice Notes produced by the State Government. The integration of climate change consideration into these Practice Notes is currently poor, and in many cases, non-existent. Key areas that could benefit from new or updated Practice Notes include:

- The integration of climate change responses in the preparation of Structure Plans.
- How to prepare Climate Change Response Plans.
- How to apply ESD policy in practice, with reference to the role of external tools in demonstrating delivery of best practice.

## DELIVERING CERTAINTY AND FAIRNESS IN PLANNING DECISIONS FOR COMMUNITIES

### Mandatory height limits and minimum apartment sizes

The Victorian planning system is principally a performance-based system. Mandatory controls are used in certain circumstances. Nevertheless, the Neighbourhood and General Residential Zones have mandatory height limits built into them and there is the ability to mandate the height in the Residential Growth Zone. As a predominantly residential municipality, mandatory height limits apply to most of the land in Glen Eira.

There is some community support for more mandatory heights in activity centres and in the absence of this for preferred height limits that include better guidance on the exercise of discretion for exceeding a preferred height limit.

In this respect it is submitted that the Act and PPF should be strengthened to provide more certainty for all involved in the process. This could include:

- mandatory maximum height controls being used as a legitimate planning tool to simplify the planning system; and
- where discretionary controls are implemented, clearer guidance for the 'exercise of discretion' (eg. criteria for when height limits can be exceeded and by how much. For example, a 10 to 20 per cent increase and not double as is sometimes sought by applicants).

Apartment sizes are already discretionary. This enables consideration to be given to the quality of the space in terms of flexible furniture layouts, circulation and good natural lighting. Smaller apartments are more affordable and policy and controls that aim to improve the quality of the space may be more useful than mandating a minimum size. Well-designed smaller housing accommodates more people in well connected, areas, close to shops and services, and offers an affordable housing option. The quality of the space is more important than mandating a minimum size. Mandating a minimum size may contribute to making affordable housing even more elusive than it already is.

#### Protecting Green Wedges and the urban growth boundary

Being an inner/middle ring municipality, Glen Eira City Council does not interact regularly with the legislative framework relating to the protection of green wedges and the urban growth boundary. There are some protections with Part 3AA of the Act and the Green Wedge Zone within the suite of VPP provides an assessment framework for the majority of uses that might undermine the purpose of the zone.

Council does acknowledge that green wedge areas are intrinsic to a healthy city of Melbourne and should be protected more robustly as development pressure increases. There is clear direction in Plan Melbourne to support a more compact city which would reduce pressure on the urban growth boundary, yet it has been extended several times in the past. Its continued extension will not contain urban sprawl. Further extension of the urban growth boundary would also consume valuable and finite agricultural land. As such it is suggested that more robust protection is provided via the Act.

#### Community concerns about VCAT appeal processes

Feedback from the community is that VCAT far too often does not give enough weight to local concerns in their decision making. The perception is that VCAT weighs too much in favour the future interests of Victorians at the detriment of the current interests of

Victorians. There is also a perception that VCAT does not have appropriate regard to the number of objectors in considering whether the use or development may have a significant social effect.

Council also considers that the Act should elevate the status of local planning policy and enable local policy language to be directive and provide certainty in decision-making.

This will enable Council's strategic intent of approved planning policy to be delivered and improve the effectiveness of the local planning system.

The State Government planning system restricts how prescriptive or absolute local planning policies can be — resulting in applicants arguing and interpreting planning rules at VCAT, who are only required to consider local planning policy. It does not make it mandatory for VCAT to implement local planning policy. This situation negatively affects confidence and credibility of the planning system.

### Protecting third party appeal rights

Third party appeal rights have been a fundamental aspect of the Victorian planning system since its inception and ought to remain a key part of the process. This ensures a transparent and participatory planning process.

There has been some reduction of rights, notably through the introduction of the VicSmart provisions. This is considered an appropriate balance to remove rights for minor works that have no material detriment to any person. There are opportunities through the VPPs to further identify types of minor applications that could be exempt from notice such as two lot subdivisions where there is an approved development, the display of signs in commercial and industrial areas.

A key concern is more recent changes to VPPs that remove rights for projects that are identified as State significant projects, non-government schools and significant housing projects on behalf of the Director of Housing. These can have significant impacts within existing areas, and third-party rights should be preserved for these communities. Legislation already seeks to ensure that the views of affected parties are considered. Legislation could be strengthened to ensure that this remains the case.

### The role of Ministerial call-ins

Council is best placed to consider planning applications as the primary decision maker. Glen Eira City Council professionally and efficiently administers planning applications in a transparent and open way. The Act provides the ability for the Minister to call-in applications. It does not provide a framework for what may be called-in and how an application will be considered.

While it is accepted that the Minister ought to have the power to call-in applications as he or she sees fit, it should still be limited to applications of State significance and subject to a transparent and participatory assessment framework that includes:

- Procedural fairness to all parties
- Meaningful community consultation
- Council having the ability to decide who is to be notified

Council's view of the application must be sought and given due weight.

### *Certainty and Fairness in the Planning Scheme Amendment Process*

It is considered that improvements can be made to the planning scheme amendment process in achieving greater certainty, transparency and the reduction of amendment timeframes.

Steps towards achieving this include removing the Ministerial authorisation (to prepare an amendment) stage, enabling Councils to prepare and exhibit an amendment without this requirement. Council's preparation of an amendment would still have regard to advice from DELWP, but Council is best placed to decide on the preparation and exhibition of amendments that satisfy State planning policy and respond to the needs of its community.

Should this not be supported by the Committee, the Act should be updated to include a mandatory timeframe for the Ministerial authorisation process. Furthermore, in granting authorisation, the Minister should be bound by planning scheme amendment *planning practice notes* and be required to outline how the relevant practice notes have been considered, particularly for amendments that are supported by robust strategic planning justification developed through extensive community consultation.

## PROTECTING HERITAGE IN VICTORIA

### *The adequacy of current criteria and processes for heritage protection*

The current criteria and process for heritage protection is generally adequate. One of the objectives of planning in Victoria is *to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value*. There is policy protection for heritage in the PPF and the Heritage Overlay at Clause 43.01 allows a planning authority to identify places of local heritage significance to be included in the planning scheme. Places of state significance are included on the Victorian Heritage Register.

The current framework allows for a rigorous assessment of proposed heritage places and ensures that places covered by heritage overlay require a planning permit to alter them. While the framework is generally adequate, an improvement would be providing a legislated fast track process that provides quicker protection for at risk heritage buildings. At present the process requires an application for interim heritage protection. This does not have any guaranteed timeframe or likelihood of success. It would be more efficient if this process could be legislated through a fast-track process to enable quicker resolution.

### Possible federal involvement in heritage protection

Heritage places of national significance are included on the Australian National Heritage List and the Commonwealth Heritage List. They are subject to federal heritage protection. The federal government is already involved in heritage protection to an appropriate extent.

### Separating heritage protection from the planning administration

Heritage included on the Victorian Heritage Register is already separated from planning administration. This often results in a fragmented two application process with an application needing to be submitted to both a local council and Heritage Victoria for consideration. To further separate heritage consideration from planning administration would potentially add to the administrative burden of planning for councils as heritage is usually not the only planning permit trigger.

It would be ideal for heritage protection consideration to remain part of the planning administration. The system could also be highly improved if the consideration of applications associated with buildings on the Victorian Heritage Register could also be included in an ordinary council planning assessment with Heritage Victoria established as a determining referral authority. This would allow for a more integrated approach to the assessment of heritage within planning administration.

### Establishing a heritage tribunal to hear heritage appeals

A separate heritage tribunal would also potentially add to the administrative burden of planning for councils as heritage is usually not the only planning permit trigger.

The consideration of a planning permit application needs to balance heritage among other issues such as height, setbacks, building design, sustainability, neighbourhood character etc. Heritage is not considered in isolation. The current process allows for all these factors to be considered. A separate heritage tribunal could potentially lead to a two-step process for a permit – one for heritage and one for planning.

### The appointment of independent local and state heritage advisors

The Act does not currently require or facilitate independent local or state heritage advisors.

Glen Eira City Council is in the fortunate position of funding a local heritage advisor who provides expert advice to planners when deciding an application where heritage is a trigger for a planning permit. They also provide limited heritage advice to property owners whose land is affected by a Heritage Overlay.

If there were to be funding for a local heritage advisor, the funds would be welcome, particularly if the function of the position could be expanded to provide greater advice to owners of properties with a Heritage Overlay.

Not all councils are equally resourced, and some councils may have financial and/personnel constraints. As such, independent local and state heritage advisors provided to councils would allow for the more even and considered protection of heritage for all Victorians.

### *The role of Councils in heritage protection*

Councils can and must play an ongoing role in heritage protection. Councils are best placed to work with heritage experts to identify properties for potential inclusion in the Heritage Overlay. However as noted above, different councils have different levels of resourcing, so if financial support was available to pay for heritage assessments for those councils with fewer resources, it would improve heritage protection across the state.

It is noted that there are significant impediments to preserving heritage, including the costs associated with professional reports and documentation and the time required to undertake the amendment process. There is greater opportunity to streamline this process and legislate a fast-track amendment process.

### *Penalties for illegal demolitions and tree removals*

The current penalties for illegal demolitions and tree removals are inadequate. Currently fines and penalties are not significant enough.

Heritage is protected for the benefit of all Victorians and the illegal demolition of heritage sites is detrimental to the fabric of our communities. The removal of trees reduces the tree canopy and biodiversity as well as contributes to the urban heat-island effect. As development pressure increases so should the penalties for illegal demolitions and tree removals. A more nuanced penalty system could be introduced where the value of the penalty is related to the potential value of the development proposed. This could result in illegal demolitions being rendered non-profitable. Greater financial penalties that affect the viability of a site's redevelopment should be considered.

## ENSURING RESIDENTIAL ZONES ARE DELIVERING THE TYPE OF HOUSING THAT COMMUNITIES WANT

The residential zones do not specify housing types but a Housing Strategy ensures that there is sufficient land available to meet projected growth. It considers this growth in the context of the preferred neighbourhood character, which can be either the existing character or a future character, distinct from the existing.

The "community" comprises various groups of people with a range of different housing needs. A Housing Strategy should be able to identify what sort of housing is likely to be needed and the residential zones can then be applied to ensure those needs are met. In this way, the Act seeks to provide the types of housing the community needs.

Section 4(g) of the *Planning and Environment Act 1987* seeks to *balance the present and future interests of all Victorians*. This is an important objective of planning in Victoria. Planning helps us prepare for the future. A Housing Strategy helps councils understand whether the residential zoning provides for the types of housing that are likely to be needed. It then supports a planning scheme amendment that proposes changes to the zones or schedules.

Considering the above, officers conclude that the current settings strike the right balance and no change is required

## ANY OTHER MATTERS

There are no other matters that Council wishes to address.

If the Committee has any questions or queries in relation to Council's submission please contact [REDACTED], Senior Strategic Planner at [REDACTED]