

**Submission
No 259**

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

Organisation: City of Yarra

Date Received: 16 February 2022

Inquiry into the Protections within the Victorian Planning Framework.

Yarra City Council submission (February 2022)



Acknowledgement of Traditional Owners

Yarra City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Owners and true sovereigns of the land now known as Yarra. We also acknowledge the significant contributions made by other Aboriginal and Torres Strait Islander people to life in Yarra. We pay our respects to Elders from all nations and to their Elders past, present and future.

Submission

Yarra City Council welcomes the opportunity to make submissions to the 'Inquiry into the Protections within the Victorian Planning Framework. This submission has been prepared by Council officers and is not the result of a formal resolution of Yarra City Council.

The submission responds to each of the 6 areas in turn.

High Cost of Housing

Provision of social housing

In 2016, 9.5 per cent of households (3,790) lived in social housing in Yarra, the highest number and proportion in Victoria. As of mid-2018, 11 per cent (5,233) of the total number of dwellings (45,887) were social housing.

As of the 2016 Census, Yarra has the highest rate and number of people living in social housing of any Victorian municipality, the fourth highest rate of homelessness in the state (95 per 10,000) and an estimated 15% of households living in housing stress. Despite Yarra's higher provision of social housing, there are still not enough dwellings to meet current and future needs (having regard to the estimated population increase). The March 2019 Victorian Housing Register showed a social housing waitlist of 697 people in the North Eastern Melbourne area (Collingwood, Fitzroy, Richmond), with 355 of those applicants meeting the requirements for priority access.

Social housing is generally owned and managed by the Victorian Government's housing authority (Homes Victoria) or managed by providers on the Government's behalf. As such the role local government plays in funding, providing and improving social housing is limited in scope.

However, given the demand across the state, increasingly local governments have been supporting social housing through stronger advocacy, gifting or leasing council assets and other innovative programs. Yarra City Council has long advocated for increasing the provision of social housing and it remains a key strategic direction within the Council's Social and Affordable Housing Strategy.

In November 2020 the Hon. Richard Wynne MP, Minister for Housing and Planning, announced the Big Housing Build investment to boost Victoria's social housing supply by 10 per cent in four years. Officers strongly support this investment in providing more safe and stable homes for our most vulnerable community members.

Officers also support the state-wide Planning Scheme Amendments VC187 and VC190 (which came into effect on 1 December 2020) to streamline and accelerate the approvals of social and affordable housing development, funded by this investment. However, officers ask that any development proposal must be accompanied by extensive community consultation and demonstrated net community benefit.

Furthermore, Officers consider that social housing developments should be 'tenure blind'. Social housing and private dwellings should not be able to be readily differentiated through their appearance, quality or amenity. They should include high standards of accessibility, be durable and energy efficient.

[Access for first home buyers](#)

House prices in the inner metro region (the City of Melbourne and Port Phillip as well as Yarra City Council), irrespective of dwelling type, are exceptionally higher than in other metro regions.

As a result of homeownership becoming unaffordable to larger cohorts of the population (particularly first home buyers), Yarra has seen long-term trends in household tenure shifting towards greater proportions of private rentals and a considerable decline in those who fully own their homes. In 2016 most people in Yarra rented (54.6%), followed by people who had a mortgage (22.2%).

Given this, Council officers support recent reforms which have recognised that there will be a greater number of households who will be renting permanently. The amendments to the Victorian Residential Tenancies Act 1997 are premised on offering greater control for private rental tenants by ensuring the security of tenure and offering tenants more control over a range of issues, as well as recognising the specific needs of people experiencing family violence who are renting.

For lower and moderate-income households who can sustain a reasonable level of assured financial capacity, entering into a shared equity arrangement offers a unique pathway to buying a first home in Yarra.

A shared equity scheme is an arrangement whereby a homebuyer shares the capital cost of purchasing a home with an equity partner, generally a not-for-profit organisation or government entity. When the property is sold, the market value is divided between the parties so that they each receive the same proportion as their equity share. Shared equity schemes can reduce pressures on supported housing programs and other welfare supports and may return modest profits to equity partners.

Increasingly, innovative approaches are needed to respond to the growing demand for affordable housing in Yarra. Council officers support these schemes, of which there are several already in Yarra to allow lower and moderate-income households to enter the housing market for the first time.

[The cost of rental accommodation](#)

More than 3,000 rental households in Yarra are under housing stress (when housing costs rise too far above incomes). This makes it particularly important for Yarra City Council to find opportunities to create more secure, affordable rental housing.

Yarra City Council has long advocated for the best housing outcomes for its residents and is committed to working to increase the supply of affordable rental housing in the municipality.

Yarra is currently proposing to introduce a Housing Affordability Local Planning Policy into its Planning Scheme (Clause 16.01-2L) which would set a minimum 10% target for affordable housing (when sites are rezoned for residential use and in major developments of 50 or more dwellings). Clause 16.01-2L would provide a much-needed planning policy basis for seeking voluntary housing contributions of at least 10% from private developments and proponent led rezoning in the municipality.

An adopted, policy guidance note is also provided to property developers which outlines Yarra City Council's expectations relating to affordable housing outcomes. This policy guidance note includes information on Registered Housing Associations and Registered Housing Providers in the state of Victoria (not-for-profit organisations that provide and/ or manage affordable rental housing). Council wants to see more effective partnerships between community housing providers and property developers.

[Population policy, state and local](#)

Both the metropolitan planning strategy, *Plan Melbourne 2017-2050* and Yarra's adopted Housing Strategy (2018) are based on pre COVID19 population projections.

The Victoria in Future (VIF2019), is the current official state government projection of population and households and was also prepared pre COVID19.

However, the impacts of COVID-19 have likely reduced population and housing levels in 2036. Anecdotally, the nature of housing demand is also most likely to have shifted, potentially to larger dwellings (i.e. more bedrooms/space in apartments and a shift to (semi)detached dwellings).

The exact impacts of COVID19 are still very uncertain, as the pandemic remains on-going into early 2022. Officers support updated, regular State Government population forecasts and analysis to better help councils to:

- predict future demand and supply for housing post COVID19; and
- understand the full and lasting effect of pandemic trends on housing and employment.

[Mandatory affordable housing in new housing developments](#)

At present in Victoria, affordable housing can only be facilitated by the planning system through a voluntary negotiation with a private developer or land-owner, generally expressed in a Development Plan Overlay (DPO) and/or by entering into an agreement, under section 173(1A) of the Planning and Environment Act 1987.

This voluntary negotiation process has limited the ability of Victorian councils to mandate affordable housing outcomes from private developers. Over the last ten years, within this framework, Yarra City Council has only been able to secure approximately 219 affordable housing dwellings for the community through negotiations, on a site-by-site basis. The output across the State has fallen well short of expectations.

Because of Council's limited powers and success in delivering substantial affordable housing outcomes, Council has strongly advocated for the introduction of inclusionary zoning into the Victorian Planning Provisions, to be employed either at specific precincts and/or regions. If this were introduced by the State Government, developers would be required to deliver a certain proportion of dwellings as affordable.

The Minister for Planning and Housing set up a Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing (Committee) in September 2019 to provide advice on the possible models and options to facilitate the supply of affordable housing through the Victorian Planning System, including through inclusionary zoning. This was seen as a promising development; however, no further updates have been given by the Victorian Government. Officers support the release of the Ministerial Advisory Committee report.

[Environmental Sustainability and Vegetation Protection](#)

[Environmental Sustainability](#)

Currently, the *Planning and Environment Act 1987* and Planning Scheme does not adequately address environmental sustainability. This is evident through:

- The proposed City of Yarra Zero Carbon Planning Scheme Amendment, which has currently been joined by 31 Councils across metro Melbourne, regional and rural Victoria.
- Comparison of definitions of 'sustainable development' by the UN Agenda 21, and the current standard of development currently experienced in Victoria.
- The 20 local government areas that had to undertake planning scheme amendments for local ESD policies attempting to improve the standard of sustainable development see here for more info.
- The current ESD Roadmap initiative undertaken by DEWLP which is attempting to improve some limited aspects of sustainability.

Council strongly advocated for strengthening focus and policy towards improving environmental initiatives which continues the work and advocacy already lead by local government.

The City of Yarra has recently been part of a research piece commissioned through the Greenhouse Alliances into gaps in the current legislative framework in adequately addressing climate change. The final piece contains more detailed feedback and recommendations that this LC Environment and Planning Committee should consider. See the attached report "Climate Change and Planning in Victoria", Hansen Partnership 2021.

[Vegetation protection](#)

The objectives of Planning are set out in section 4 of the Act. The objectives are broad and whilst vegetation protection may be broadly covered, there would be benefit in specific reference to or greater emphasis on the importance of vegetation protection.

Council is currently progressing Amendment C269 which proposes to update the local policies in the Yarra Planning Scheme, consistent with the structure recently introduced by the State Government. A number of submissions to C269 raised issues relating to 'environment and landscape values', in particular: the need to protect significant trees,

street trees, avenues of trees, culturally significant trees, trees in parks AND that water corridors should be managed and protected including protection from impinging development.

Council's response to these types of submissions (as outlined in the Council report and attachments, 3 August 2021) included that (in summary):

- Council has Tree Removal Guidelines that recognise trees are the most important and highly visible asset within Yarra's parks, gardens and streets. Many of the City's trees are culturally important and some have heritage significance.
- Council's aim is to retain trees wherever possible and manage their wellbeing. Council receives many requests each year to remove trees and the Guidelines provide the framework for decision making.
- In addition, Council has a register of significant trees that have horticultural, aesthetic, historical, environmental, social or cultural value, and are located on public land and private properties. Trees can be nominated to be added to the register. Once registered a permit is required to remove or prune trees. It is administered through Local Laws rather than the Planning Scheme.
- Amendment C269 recognises the importance of vegetation protection in proposed Clauses:
 - O2.03: Create a healthy and growing urban forest that includes all trees and plants in Yarra, by greening open spaces, streetscapes and buildings; and Reduce the urban heat island effect by increasing the tree canopy by 25% (from 2014 levels) by 2040.
 - 12.01-1L Biodiversity
 - 15.01-2L Building design – building setbacks and landscaping
 - 15.02-1L Environmentally sustainable development – urban ecology
 - 18.02-3L Road system
- C269 recognises the importance of the waterway corridors, in particular, the strategic directions and proposed Clause 12.03-1L Yarra River, Darebin and Merri Creek corridors.

Council also has an adopted Nature Strategy: Protecting Yarra's Unique Biodiversity (2020-2024). The Nature Strategy was developed to protect our unique biodiversity. It has four strategic goals including:

- Goal 1: Increase the diversity, connectivity and resilience of Yarra's natural environment
- Goal 2: Encourage people to appreciate and actively enhance Yarra's natural landscape
- Goal 3: Embed nature at the core of Yarra's business practices
- Goal 4: Make innovation, communication and collaboration the cornerstones of Yarra's nature-focussed programs.

[Certainty and Fairness in Planning Decisions](#)

[Mandatory Height Limits and Minimum Apartment Sizes;](#)

[Mandatory Heights](#)

Council submits that it is manifestly clear that there will be sustained pressure to exceed the preferred heights Yarra, in particular the Activity centres.

While the Victorian Planning system prefers the use of preferred requirements, guidance of the application of mandatory controls is provided in the Department of Environment, Land, Water and Planning's Planning Practice Note 59 and 60.

Planning Practice Note 60 details that mandatory height and setback controls would only be considered in 'exceptional circumstances', where they are absolutely necessary to achieve the built form objectives or outcome identified within a comprehensive built form analysis.

A number of Councils are now (and have been over many years) seeking mandatory building height controls as it is sometimes the case that discretionary, or "preferred heights", result in unpredictable built form outcomes, and create uncertainty for local communities and even developers.

Council has applied mandatory controls selectively to Activity Centres. Extensive strategic work was undertaken and provides sufficient justification for the use of mandatory controls. Mandatory controls were applied where it is considered 'absolutely necessary' (in accordance with PPN59) to protect intact heritage streetscapes and heritage buildings; sensitive interfaces with low scale residential properties; the southern footpaths of key streets to maintain pedestrian amenity; and views to key landmarks.

Example amendments include C191 (Swan St), C220 (Johnston St) and C231 (Queens Parade). All the independent planning panels considering those amendments supported the approach taken by Council.

Yarra notes that in 2018 DELWP released its findings on Activity Centre Pilot Program. The purpose of the programme was to identify how planning controls could be used to provide greater clarity and certainty about development heights in activity centres and to ensure the community and developers have a clearer understanding of the form of new development expected in activity centres. Johnston Street Activity Centre was part in a pilot project.

The program identified

that if set at appropriate levels that will deliver desired growth targets, mandatory controls do not necessarily inhibit development and can deliver clarity, certainty and consistency in outcomes (page 16).

- *Applying a mix of mandatory maximum height controls (for areas of special character requiring certainty in building design responses) and preferred maximum height controls, could be a suitable option for many activity centres (page 16).*

Yarra draws attention to that report and the need to implement measures to address all issues raised. In addition to the continued ability for Council's to apply mandatory height controls clear direction is required on the criteria that can be included to assess additional height, exceeding a preferred height. This was also raised in the 2018 Activity Centre Pilot Program. The program findings identified that:

'Preferred height provides an opportunity to deliver public benefits, however, this must be under strict articulated criteria. Value uplift should not be associated with 'excellence in design' or amenity considerations which must be delivered in all circumstances. Requirements should be included in the controls that directly relate additional height to the provision of a specified benefit that supports the design objectives of the overlay. By providing a direct link between height and an additional benefit, a flexible approach is still maintained, while providing clarity regarding outcomes sought'.

Although raised, there however remains no clear model on how to apply an approach that delivers public benefit or additional benefit.

Minimum Apartment Sizes

As submitted in the previously parliamentary inquiry into Apartment Design Standard, standards B46/B24 (Functional layout) as included in Clause 55 introduced minimum bedroom and living room sizes, which have significantly improved the amenity of apartments, however, it is recommended that living area dimensions include both a width and depth (similar to bedrooms) to avoid elongated spaces with narrow depths.

It is noted that the updated BADS (Better Apartments Design Standards) proposes to introduce minimum areas for bedrooms, this is also supported.

A shortfall of the standards is that there is no requirement to allocate space in apartments for a dining table or any guidance on kitchen location. This could be addressed by introducing minimum dimensions for open plan living spaces, inclusive of kitchens and a dining area into Standard B47/B25 or/as well as minimum total apartment floor areas.

The NSW guidelines include a design guideline that kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space). It is encouraged that a similar standard is introduced for all apartments into the Functional layout.

There is also insufficient guidance in the Scheme for studio apartments, with often these suffering from poor internal amenity, with only a 10sqm living area required to meet the standard. Studios are again becoming increasing common as a housing option within development and more guidance is required to ensure a minimum amenity level is achieved.

In both the NSW and London planning guidelines, for example, minimum floor areas are nominated for various apartment sizes, including studios, as illustrated in the tables below:

Number of bedrooms (b)	Number of bed spaces (persons (p))	Minimum gross internal floor areas and storage (sqm)			
		1 storey dwellings	2 storey dwellings	3 storey dwellings	Built in storage
1b	1p	39 (37)*			1
	2p	50	2b	2b	1.5
2b	3p	61	1b	1b	2
	4p	70	1b	1b	
3b	4p	74	1b	1b	2.5
	5p	86	1b	1b	
	6p	95	1b	1b	
4b	5p	90	1b	1b	3
	6p	99	1b	1b	
	7p	108	1b	1b	
	8p	117	1b	1b	
5b	6p	103	1b	1b	3.5
	7p	112	1b	1b	
	8p	121	1b	1b	
6b	7p	116	123	129	4
	8p	125	132	138	

*Where a studio / one-bedroom one-person one-bedspace (i.e. one single bedroom) dwelling has a shower room instead of a bathroom, the floor area may be reduced from 39 sqm to 37 sqm, as shown bracketed.

Figure 1: excerpt from London planning regulations

Apartment type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

Figure 2: excerpt from NSW planning regulations

Recommendation made into the last inquiry included:

- Introduce minimum widths for living spaces;
- Introduce minimum open plan dimensions i.e. to accommodate a dining table and kitchen;
- Include a standard that kitchens are not be located as part of the main circulation space (such as hallway or entry space); and
- Introduce minimum apartment floor areas, particularly for studio apartments.

[Community concerns about VCAT appeal processes](#)

VCAT strives to give “Fair, efficient justice for all Victorians” however VCAT’s systems and processes can be complex to navigate for lay people. The language used in VCAT’s forms and the sheer volume of information can be overwhelming for lay people to navigate. Council is aware of community concerns that the complexity of the process deters greater community participation in VCAT appeal processes.

VCAT importantly allows self-representation in order to provide low-cost dispute resolution for the entire community however in major development applications for review, lay people are often in a “David and Goliath” battle against multimillion developers, their legal firm and numerous expert witnesses. Objectors to a VCAT application for review often complain that VCAT is a system which favours developers over the general community.

It is considered that the use of expert witnesses in VCAT planning hearings is problematic and requires significant review. An expert witness is not an advocate for a party to a proceeding however the issue of their impartiality and independence is often the subject of dispute. For example, it is common for an expert witness to be from the same firm that lodged the planning application with Council. In the recent proceeding of VCAT Application P702/2021 the developer’s heritage expert was not only from the same firm that lodged the application with Council but was involved as part of the design team. While it is a matter for the Tribunal of what weight to give to the expert evidence, it erodes public confidence that the system is fair. To improve the perception of fairness and impartiality of expert witnesses, they could be appointed by the Tribunal and not the party seeking to rely on an expert.

The relatively recent introduction of compulsory conferences in the Planning List at VCAT (replacing mediations) has been very successful for settling planning disputes. It is forum that truly embraces resolving disputes with as little formality as possible and this seems to encourage wider community participation. A significant benefit of a compulsory conference

is that they are conducted with the help of a VCAT member who can express an opinion on a particular issue or process, if requested. This provides lay people with an opportunity to ask questions from “a neutral party” and in Council’s experience this has instilled lay people with greater confidence in negotiating outcomes to settle a dispute.

Protecting third party appeal rights

The Planning and Environment Act 1987 and planning scheme seek to strike the right balance between protecting third party appeal rights and cutting “red tape” in the planning system. The VicSmart assessment process has been very successful and should be reviewed regularly to facilitate more classes of development that comply with strict criteria.

It is considered that the exemption from notice and review for the construction of a building and carrying out of works in the Commercial 1 Zone and Commercial 2 Zone requires review. Currently, notice and review rights only apply to land within 30 metres which is in a residential zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre.

In the City of Yarra there has been significant development pressure in the Commercial 2 Zone for multi-storey buildings in the order of 10-15 storeys high and it is considered that the off-site amenity impacts generated by these multi-storey developments often impact land beyond 30 metres of the development site and should not be limited to residentially zoned land only. The impact of a proposal on surrounding commercial development is an important consideration in supporting sustainable growth and employment opportunities. It is therefore considered that notice and review rights should apply regardless of the zone of the surrounding land.

The role of Ministerial call-ins

The process of Ministerial Call Ins can be problematic for local government namely in 3 areas:

- Clarity around why applications are being ‘called in’
- Timeframes for referrals to Council;
- Community participation in the process
- Transparency

Over the Covid -19 affected period, several processes have been implemented to ‘fast track’ development whether that be through the development facilitation program or the BVRT (Building Victoria’s Recovery Taskforce). It is understood that Ministerial intervention in applications occurs, however clarity around the types of applications being called in is required which Council understands is currently being developed.

Clarity around process and the expectations of Council is required. The current referral process to Council includes timeframes that are unrealistic usually between 14 – 28 days. The expectation that Council undertakes full assessment of applications within this timeframe including referrals fails to understand the workload this requires from staff and does not recognise the need in many instances for these reports to be presented to Council for consideration. Greater timeframes are required to enable proper assessments of these larger and more complex applications.

It is acknowledged that many Ministerial call ins generally occur after notice of an application is given which at a minimum socialises an application amongst a potentially affected community. It is recommended that community participation is secured in any future processes and needs to recognise that the removal of appeal rights by objectors is difficult as aggrieved parties feel excluded by the process.

The final decision of a Ministerial call in is generally presented as an order for the approval of a development. In many instances, some conditions recommended by Council are not included or amended with little explanation. Officer reports prepared by DELWP are not released and therefore understanding decisions can sometimes be difficult and needs to be changed to ensure all decision making is transparent and public.

The role of Council of Council post approval also needs to be clarified as plans and reports are often then referred to Council to review and approve and or all enforcement responsibilities fall to Council.

It is recommended that fees for any Ministerial call in need to be fairly distributed to Council in recognition of the workload expected of Council when responding to a referral from DELWP.

Protecting Heritage in Victoria

[The adequacy of current criteria and processes for heritage protection](#)

Planning Practice Note 1 (PPN1) provides guidance about applying the Heritage Overlay, it includes a number of criteria (Criteria A - H) for the assessment of the heritage value of a heritage place. Whilst most of the current criteria for heritage protection seem to be working well, however, there is a the need to review the threshold for application of Criteria 'G' (Social Significance) which includes strong or special association with a particular community or cultural group for social, cultural or spiritual reasons Many council's as Yarra City Council have found it difficult to include a place in the Heritage Overlay (HO) as the statement of significance based social and cultural criteria could not justify protection of the building itself. A recent example in Yarra is The *Corner Hotel* 57-61 Swan Street, Richmond. Detailed guidance is needed on the level of documentation and justification required to protect a place based on social and cultural aspects.

YCC also sees the need to bring in clarity to the criteria for application of the internal controls PPN1 recommends that internal controls should be applied sparingly. Not applying internal controls have resulted in loss of significant portions of heritage buildings. In Yarra, this has also resulted in the loss of some of the significant interiors of old theatres and hotels. It is therefore submitted that the thresholds for application of internal controls in the current PPN1 should be reviewed and revised to provide detailed guidance and criteria that can better protect significant interiors of heritage buildings.

The level of documentation that is required in the statements of significance, to list a place in the planning scheme needs to be reviewed and new guidance needs to be provided on this matter through revision of the PPN1 or a new practice note.

Currently the statement of significance (SoS) gets referred to and picked apart at the tribunal, and if an item is not mentioned in a SoS, its significance is often not considered in

the decision making. Seeking a specialist's advice and undertaking heritage studies on specific aspects for representation of the matter in the Victorian Civil and Administrative Tribunal (VCAT) also greatly inflates the cost of heritage studies to the point where they are becoming unaffordable.

A precinct/area level SoS is written in the same format as for an individual place and include many individually significant and contributory places. Since there are no detailed statements for individually significant places within a precinct, during the development assessment process it has been difficult to protect all that is of significance in an individual place.

Currently, the studies with detailed citations of places are included as a reference document or a background document as such during the planning assessment process they do carry the same weight as SoS's which are incorporated. The guidance in PPN1 should be revised to provide a clear link between a SoS and its citation, so that all the heritage values included in a citation are considered during preparation of a development proposal and equal weight is given to the SoS and citation during the development assessment and VCAT process.

Recent changes to the planning scheme suggest incorporation of a shorter version of SoS. This suggests a further need for a clear guidance through the planning practice note regarding weightage given to the detailed citations during the planning assessment process.

The current planning process is more focussed on individual places. A new planning practice note is needed to provide guidance and focus on how to avoid cumulative adverse impact of the redevelopment of individual places within a heritage precinct.

[Possible Federal involvement in heritage protection](#)

There is a need that Federal government sets the standard for heritage protection so that similar standards are followed by each state and territory.

Currently, the Federal government is managing places of national and world heritage significance under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Under this act, onus of referral of the matter to the Federal government is mainly with the proponent of the development which in many cases has impacted the decision-making process. This process must be updated. Further, this process is exclusive and unrelated to the state and local planning permit processes. This adds another layer of complexity to the decision making. These processes must be reviewed and revised.

[Separating heritage protection from the planning administration](#)

Separating local heritage protection from planning administration (under the Planning and Environment Act 1987) is not supported and instead following submissions are made regarding improving the process for assessment of development applications of places on Victorian Heritage Register, particularly where both, heritage assessments is required under the Victorian Heritage Act and planning assessments are required Planning and Environment Act:

Many times, there are differences between Heritage Victoria's (HV) position and Council's position on planning matters. The process should recommend more collaboration between

the State and local governments where differences could be avoided or resolved before the matter is referred to or is being presented to the VCAT.

Where HV responds to a referral, HV should also be a party to the proceedings of the VCAT Hearing. Heritage Victoria's participation in some of the recent planning applications before VCAT has been very disappointing.

Yarra City Council (YCC) has had major development applications before VCAT that are within the World Heritage Environs Area and Heritage Victoria has elected not to participate in the proceedings, despite raising concerns about the impact of a proposal on the heritage qualities of the environs to the Royal Exhibition Building. In one application, Heritage Victoria advised Council that the proposal development is not appropriate and would significantly impact on view lines to the Royal Exhibition building. Council refused the application and requested Heritage Victoria join as a party to the VCAT proceeding which they declined due to "inadequate resources". The Tribunal's Order (VCAT Ref P327/2021) made the following remarks about Heritage Victoria not participating at the hearing:

[17] In respect of the relevant heritage considerations in this proceeding, Heritage Victoria filed a Statement of grounds, but did not seek to become a party to this proceeding. Attached to their Statement of grounds was a letter which expressed concern regarding the impact of the proposed development, on the heritage qualities of the environs to the REB. These concerns were based on modelling undertaken by Heritage Victoria, the results of which were also provided. It is unfortunate that Heritage Victoria chose not to become a party to the proceeding and participate in the hearing. As a result, we have not been able to be informed of, and test, the accuracy of the modelling that was relied upon by Heritage Victoria. We have also not been able to fully inform ourselves as to the reasons for Heritage Victoria's conclusions regarding the potential impact on this heritage place. Further, the modelling and Heritage Victoria's position was not updated in response to the latest amended plans that are now before us, and so we are unaware as to whether the conclusions previously reached by Heritage Victoria, are still relevant in relation to the latest version of the proposal. For these reasons, we find that the position of Heritage Victoria as expressed in their Statement of grounds and related attachments do not greatly assist us in our decision-making task.

[Establishing a heritage tribunal to hear heritage appeals](#)

Formation of a heritage tribunal to hear heritage appeals for local heritage places being considered under the Planning and Environment Act 1987 is not supported; instead it is submitted that heritage expert members should sit on every VCAT hearing involving heritage issues. Members of the Heritage Council of Victoria's Appeals Committees could also be appointed to be a part of the pool of VCAT members.

[The appointment of independent local and state heritage advisers](#)

YCC supports appointment of independent and state heritage advisers and advocates for the state initiating a funding program for providing funds to the local governments to support their appointment of independent heritage advisers.

When the heritage advisory service was first set up, this service was provided by Heritage Victoria (HV) and it might be well worth considering reverting to this model. When independent advisors were funded by HV (through heritage grants) and were administered

by councils, HV had some control over the quality of the service and some protection to the independence of the advisor. HV should be able to provide funding for heritage advisers at least in regional and outer suburban areas.

[The role of Councils in heritage protection](#)

Councils clearly have a very important role in the protection of heritage and have done well in the past and therefore it is strongly supported that Council's retain this role. The findings and recommendations of the State of Heritage Review: Local Heritage, recently undertaken by the Heritage Council Victoria is supported. The report can be accessed from the following weblink: [HCV-StateofHeritageReview-LocalHeritageReport2020.pdf](#) (heritagecouncil.vic.gov.au)

It may be further mentioned that YCC is currently progressing Amendment C269 which proposes to update the local policies in the Yarra Planning Scheme, consistent with the structure recently introduced by the State Government. Amendment C269 proposes an updated Heritage Local Policy at Clause 15.03-1L that provides the detailed policy directions for heritage in Yarra. The proposed local policy helps to implement state policy in a way that is relevant for Yarra. It includes strategies relating to residential development and the introduction of policy on commercial and former industrial heritage.

[Penalties for illegal demolitions and tree removals](#)

The recent amendment to the planning scheme that allows reconstruction of buildings illegally demolished is supported. However, recognising that there are discussions about the need for preparation of a Model local law on demolition by neglect it is also advocated that a priority should be given to introducing such a law. Further, it may be mentioned that councils across Victoria, as YCC, have found that it is difficult to enforce penalties and therefore the need for a centralised body for enforcement of infringements is emphasised.

It is worth mentioning that Victorian Heritage Restoration Fund (VHRF) is a good mechanism that provides incentives to heritage place owners towards restoration of their heritage places. Currently, the fund is operating with the help of the contributions made by the participating local councils a proportion of which goes towards administrative expenditure thus reduces the actual amount of the grant for restoration. There is a need that the State provide funding support VHRF towards administrative expenditure, in an ongoing basis. The State funding support and expansion of such a programme could be a positive step towards avoiding neglect or demolition of heritage places.

[Residential Zones](#)

The residential planning zones in Victoria were reformed in 2013 to provide clearer direction on levels of housing growth in residential areas, including the introduction of mandatory height controls.

The reformed residential zones gave councils a way to protect neighbourhoods with a special character and heritage significance from inappropriate development, by directing housing growth to areas around main roads, shopping centres and transport hubs.

In Yarra, it is considered that the preferred scale and form of new development in the residential neighbourhoods are appropriately captured through existing zoning provisions. Structure plans, local area plans and other built form frameworks have been prepared for areas, outside of residential zones, to better manage development outcomes.

Other

Heritage

Following additional points are being made as a part of consideration of this enquiry into heritage:

- As identified in the *State of Heritage Review – Local Heritage 2020* there is a need to improve the broader community's understanding of the heritage systems. To address this State may allocate more resources on educational material on the local heritage system, the implications of heritage listings (e.g. the HO does not mean that a place cannot change) and the benefits of heritage protection; as well as prepare communication material that can showcase and celebrates good examples.
- The State can also promote heritage education and professional training programs for planners, architects, developers, and other related professionals focussing on application of the Burra Charter principles in the assessment of development proposals and management of heritage places.
- There is a need for preparation of standard guidelines to streamline and maintain a consistent level of information in heritage studies across the State to address the issue of the variable quality of municipal studies noted in the Heritage Council's review of local heritage. .
- The State through Heritage Victoria/ Heritage Council may explore ways to promote heritage trades by engaging with relevant professional bodies.
- There is a need for State and/or Federal government funding support for restoration and adaptive reuse of local heritage places.

Other

Council's Heritage Advisory Committee (HAC) has also reviewed the terms of reference and have sought for their views to be considered. In response to matters related to Heritage the HAC's general view was the that the terms of reference for the enquiry are too broad but provide the following responses. It is noted these views are limited to the HAC and may differ from those provided in the body of the submission.

The adequacy of current criteria and processes for heritage protection

The current criteria have been negotiated over some time and now seem to be working well, however, there is a need to improve the process of heritage protection. The level of documentation that is required in the statements of significance (SoS), in order to list a place in the planning scheme needs to be reviewed. Currently the SoS gets referred to and picked apart at the tribunal and if an item is not mentioned in a SoS, its significance is often not

considered in the decision making. This also greatly inflates the cost of heritage studies to the point where they are becoming unaffordable.

Possible Federal involvement in heritage protection

There is a need that Federal government sets the standard for heritage protection so that similar standards are followed by each state and territory.

Currently, the Federal government is managing places of national and world heritage significance under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Under this act, onus of referral of the matter to the Federal government is with the proponent of the development which in many cases has impacted the decision-making process. This process must be updated. Further, this process is exclusive and unrelated to the state and local planning permit processes. This adds another layer of complexity to the decision making. These processes must be reviewed and revised.

Separating heritage protection from the planning administration

HAC does not support separating heritage protection from planning administration. Instead HAC recommends:

There is need to improve the planning process. Many times, there are differences between Heritage Victoria's (HV) position and Council's position on planning matters. These differences should be avoided before the matter is referred to or is being presented to VCAT. Where HV responds to a referral, HV should also be party to the proceedings of the VCAT Hearing.

Establishing a heritage tribunal to hear heritage appeals

Instead of an independent Specialist Heritage Tribunal, heritage expert members should sit on hearings involving heritage issues. Members of the Heritage Council of Victoria's Appeals Committees could also be appointed to be a part of the pool of VCAT members.

The appointment of independent local and state heritage advisers

HAC was concerned about the quality and uptake of heritage adviser's advice when they are independent and not a part of the council; and recommend that councils should be encouraged to employ their own inhouse heritage advisers like planners and ESD advisers. When the heritage advisory service was first set up, this service was provided by Heritage Victoria (HV) and it might be well worth considering reverting to this model. When independent advisors were funded by HV (through heritage grants) and were administered by councils, HV had some control over the quality of the service and some protection to the independence of the advisor. HV should be able to provide funding for heritage advisers at least in regional and outer suburban areas.

The role of Councils in heritage protection

Councils clearly have a very important role in the protection of heritage and overall, councils have done well in protection of heritage in the past. However, in recent years there seem to have been a change in attitude partly emanating from the State planning department itself. Until a few years ago, the default assumption was that a place on the heritage overlay would remain largely intact. This may still be true in most residential areas but no longer applies in other zones. The practice note tells us that internal controls should be used sparingly but the lawyers seem to have convinced the tribunal that if there are no internal controls only what you can see from the street matters so if it is a parapeted terrace or shop-house only the front façade matters! This was certainly not the intention.

Penalties for illegal demolitions and tree removals

The recent amendment to the planning scheme that allows the minister to require reconstruction of buildings illegally demolished was supported.

There are discussions about the need for preparation of a model local law on demolition by neglect. Priority should be given to introducing such a law in Yarra.

In the absence of such a law at the State level, some councils (Geelong and Whittlesea) have introduced local laws. YCC should consider modifying its local laws to include penalties for demolition due to neglect during its next revision.

Council can also investigate introducing differential rates, where people who do not maintain their heritage property have to pay a rate increase and those who maintain it well, get the benefit of a rate reduction.

In addition to these topics, it was suggested that in view of the variable quality of municipal studies noted in the Heritage Council's review of local heritage that studies might be better commissioned by Heritage Victoria.

It was noted that there is a discussion paper being prepared on a review of Res- Code and neighbourhood character which is likely to have serious implications.

Concluding comments

Yarra would welcome ongoing involvement in this inquiry and welcomes the opportunity for ongoing involvement of any reform proposed.

Date: 15/02/2022