

PARLIAMENT OF VICTORIA

LEGISLATIVE COUNCIL

Environment and Planning Committee



Inquiry into the protections within the Victorian Planning Framework

Interim report

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Legislative Council Environment and Planning Committee

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Committee membership



CHAIR

Ms Sonja Terpstra
Eastern Metropolitan



DEPUTY CHAIR

Mr Clifford Hayes
Southern Metropolitan



Dr Matthew Bach
Eastern Metropolitan



Ms Melina Bath
Eastern Victoria



Dr Catherine Cumming
Western Metropolitan



Mr Stuart Grimley
Western Victoria



Mr Andy Meddick
Western Victoria



Mr Cesar Melhem
Western Metropolitan



Dr Samantha Ratnam
Northern Metropolitan



Ms Nina Taylor
Southern Metropolitan
(until 5 April 2022)



Ms Sheena Watt
Northern Metropolitan
(from 5 April 2022)

Participating members

Ms Cathrine Burnett-Wake, Eastern Victoria *(from 2 December 2021)*

Ms Georgie Crozier, Southern Metropolitan

Hon David Davis, Southern Metropolitan

Dr Tien Kieu, South Eastern Metropolitan

Mrs Bev McArthur, Western Victoria

Mr Tim Quilty, Northern Victoria

About the Committee

Functions

The functions of the Legislative Council Environment and Planning Committee are to inquire into and report on any proposal, matter or thing concerned with the arts, environment and planning the use, development and protection of land.

The Environment and Planning Committee may inquire into, hold public hearings, consider and report on any Bills or draft Bills referred by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

Government Departments allocated for oversight:

- Department of the Environment, Land, Water and Planning
- Department of Premier and Cabinet.

Secretariat

Michael Baker, Committee Manager
Vivienne Bannan, Inquiry Officer
Hong Tran, Research Assistant
Jessica Wescott, Research Assistant
Sylvette Bassy, Administrative Officer
Cat Smith, Administrative Officer
Justine Donohue, Administrative Officer

Contact details

Address Legislative Council Environment and Planning Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Phone 61 3 8682 2869

Email epc.council@parliament.vic.gov.au

Web <https://www.parliament.vic.gov.au/epc-lc>

This report is available on the Committee's website.

Contents

Preliminaries

Committee membership	ii
About the Committee	iii
Terms of reference	viii
Chair’s foreword	xi
Recommendation	xiii
What happens next?	xv

1 About the Inquiry	1
1.1 The terms of reference	1
1.2 Submissions and public hearings	2
1.3 Scope of the Inquiry	2
2 The high cost of housing	9
2.1 Introduction	9
2.2 The provision of affordable housing	9
2.2.1 Is there enough affordable housing?	10
2.2.2 What’s being done to improve the provision of affordable housing?	11
2.2.3 Mandatory affordable housing	16
2.3 Outside of the planning scheme: first home buyer access, the cost of rental accommodation and factors encouraging housing as an investment vehicle	20
2.3.1 First home buyer access	21
2.3.2 Cost and settings for rental accommodation	26
2.3.3 Housing as an investment vehicle	29
2.4 Population policy	30
2.4.1 Population policy in practice	31
2.4.2 Planning and population policy	32
2.4.3 Growth and planning	33
2.5 Scope of further Inquiry	35
3 Environmental sustainability and vegetation protection	37
3.1 Introduction	37
3.2 Tree and biodiversity protections	38
3.2.1 Planning permit requirements	43
3.2.2 Penalties and enforcement	44

3.3	Climate change mitigation and adaptation	46
3.3.1	Urban heat island effect	49
3.3.2	Rising sea level	50
3.4	Pursuing best value in development	51
3.5	Environmentally Sustainable Development/Design (ESD) standards	54
3.6	Other issues	58
3.6.1	Protecting open space, especially public open space	58
3.6.2	Protecting agricultural land and food security	61
3.6.3	Water management	63
3.6.4	Rubbish dumping from development activities	64
3.6.5	Ensuring environmental justice	66
3.6.6	Acknowledgment of Country and its Traditional Owners	66
3.6.7	Promoting the role of the community	68
3.6.8	Environment Effects Statements	69
3.6.9	Overlays	71
3.6.10	Environmental offsetting	75
3.6.11	Public land and land use definitions	77
3.6.12	Habitat corridors	78
4	Fairness in planning decisions	79
4.1	Introduction	79
4.2	Mandatory controls	79
4.2.1	Mandatory height limits	79
4.2.2	Minimum apartment sizes	83
4.3	Green wedges and the urban growth boundary	86
4.4	Suburban character	92
4.5	Victorian Civil and Administrative Tribunal appeal processes	101
4.6	Consultation processes and third party appeal rights	106
4.7	Ministerial call-ins	116
4.8	Other issues: integrating public health into the planning process	122
5	Heritage protection	127
5.1	Introduction	127
5.2	Overview of heritage protection in Victoria	127
5.2.1	State and local heritage protection frameworks	128
5.2.2	National Trust of Australia (Victoria)	132
5.3	Heritage Council of Victoria's <i>State of Heritage Review: Local Heritage, 2020</i>	133
5.4	Adequacy of current criteria and processes	136
5.5	Possible federal involvement in Victorian heritage protections	140

5.6 Local heritage protection	142
5.6.1 Social and Cultural Reasons Included in Heritage Protection	142
5.6.2 Should heritage protection be separate to planning administration?	143
5.6.3 A need for adequate resourcing and appropriate expertise	147
5.6.4 Creation of an independent tribunal to hear heritage appeals	151
5.6.5 Financial incentives, better support for property owners	152
5.6.6 Penalties for illegal demolitions and tree removals	154
5.7 Other issues	159
5.7.1 Heritage overlay exemptions	159
5.7.2 Historical Archaeology in Victoria	159
Appendix A	
Submissions	163
Extracts of proceedings	169
Minority reports	187

Terms of reference

Inquiry into the protections with the Victorian Planning Framework

On 28 October 2020 the Legislative Council agreed to the following motion:

That this House requires the Environment and Planning Committee to inquire into, consider and report, by June 2022, on the adequacy of the *Planning and Environment Act 1987* and the Victorian planning framework in relation to planning and heritage protection, and in particular the Committee is to examine—

- (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;
- (2) environmental sustainability and vegetation protection;
- (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;
- (5) ensuring residential zones are delivering the type of housing that communities want; and
- (6) any other matter the Committee considers relevant.

Chair's foreword

This report into Protections within the Victorian Planning Framework is considered by the Committee to be an interim report. As a result of the timing of the Inquiry being commenced, the Committee has been unable to undertake a full and comprehensive inquiry into what is an important issue.

Therefore, the Committee has recommended, as its only recommendation in the Report, that a full inquiry be undertaken at the beginning of the next parliament to ensure that the issues raised in the terms of reference can be given due consideration.

Although the terms of reference were referred to the Committee by the Legislative Council some time ago, the Committee already had four inquiries in a queue and, in accordance with the Committee's practice, it had to complete each of the inquiries in the order in which they were referred. Therefore, by the time the Committee had completed the previous inquiries, with the last one being completed in May 2022, there was insufficient time prior to the 2022 State Election to undertake a full and comprehensive inquiry into the Planning Framework. It was the Committee's view that anything less than a full inquiry would be inadequate.

There has been commentary about the decision not to hold public hearings. There were suggestions that such a decision was made by the Government in order to close down the Inquiry. This misunderstanding was also reflected in some submissions which were apparently of the view that this was a government rather than a parliamentary inquiry. This is simply not true. The Environment and Planning Committee is a parliamentary committee which has ten members, only three of whom are government members. The Government has no control over decisions made by the Committee. The decision not to hold public hearings was in no way an attempt to close down the Inquiry but was, in fact, a recognition of the importance of the Inquiry and the need to be thorough in examining the issues raised in the very extensive terms of reference.

By way of comparison, the Committee's major inquiry into Ecosystem Decline in Victoria, which was tabled in December 2021, took more than 12 months to complete and involved 16 full days of public hearings. The Inquiry into the Planning Framework would be of similar size and complexity and would need at least comparable time to complete.

The Committee resolved to use the submissions received, many of which were extremely detailed and thoughtful, and provide a summary of the key issues and the views expressed about these issues. It is the Committee's intention in making its recommendation that the newly constituted committee be referred the terms of reference at the beginning of the new parliament where there will be time to undertake all of the necessary steps, including a detailed legislative and regulatory review of the current planning framework as well as extensive public hearings, to enable stakeholders and the community to have their say on the issues that matter to them. The Committee

has published the submissions received and it is its intention that these submissions will be able to be used by the new committee in undertaking any inquiry. The new committee will also be able to use this report as it sees fit.

In terms of the timing of the Inquiry, it is also worth noting that there are significant reviews being undertaken or have been recently completed into elements of the Planning Framework. All of these changes and reforms would need to be taken into account in any future full inquiry.

I would like to thank the members of the Committee for the professional and courteous approach to this inquiry and in particular the difficult timing issues involved. I would also like to thank the secretariat for the thorough examination of submissions and the work they did in pulling together the threads into a coherent and useful report. In particular, I would like to thank Committee Manager Michael Baker, Inquiry Officer Vivienne Bannan, Research Assistants Hong Tran and Jessica Wescott, and the Administration team of Sylvette Bassy, Cat Smith and Justine Donohue.

A handwritten signature in black ink that reads "S. Terpstra". The signature is written in a cursive, flowing style.

Ms Sonja Terpstra MLC
Chair

Recommendation

RECOMMENDATION 1: That, upon commencement of the 60th Parliament, an inquiry into the Victorian planning framework be referred to the Legislative Council Environment and Planning Committee with the following terms of reference:

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;
2. environmental sustainability and vegetation protection;
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 Victorian Civil and Administrative Tribunal 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;

(Continued)

RECOMMENDATION 1: Continued

- 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;
5. the implications for public health of planning decisions; and
 6. any other matter the Committee considers relevant.

The new inquiry should involve a full schedule of public hearings as determined by the Committee.

7

What happens next?

There are several stages to a parliamentary inquiry.

The Committee conducts the Inquiry

This report on the Inquiry into the protections within the Victorian Planning Framework is the result of extensive research and consultation by the Legislative Council Environment and Planning Committee at the Parliament of Victoria.

This interim report is based on a review of the issues raised in the submissions received. No public hearings were held.

A Parliamentary Committee is not part of the Government. Our Committee is a group of members of different political parties (including independent members). Parliament has asked us to look closely at an issue and report back. This process helps Parliament do its work by encouraging public debate and involvement in issues. We also examine government policies and the actions of the public service.

You can learn more about the Committee's work, including all of its current and past inquiries, at: <https://www.parliament.vic.gov.au/epc-lc>.

The report is presented to Parliament

This report was presented to Parliament and can be found at: <https://new.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-the-protections-within-the-victorian-planning-framework/reports>.

A response from the Government

The Government has six months to respond in writing to any recommendations we have made. The response is public and put on the inquiry page of Parliament's website when it is received at: <https://new.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-the-protections-within-the-victorian-planning-framework/reports>.

In its response, the Government indicates whether it supports the Committee's recommendations. It can also outline actions it may take.

1.1 The terms of reference

On 28 October 2020 the Legislative Council agreed to the following motion:

That this House requires the Environment and Planning Committee to inquire into, consider and report, by June 2022, on the adequacy of the *Planning and Environment Act 1987* and the Victorian planning framework in relation to planning and heritage protection, and in particular the Committee is to examine—

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;
2. environmental sustainability and vegetation protection;
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;

5. ensuring residential zones are delivering the type of housing that communities want; and
6. any other matter the Committee considers relevant.

1.2 Submissions and public hearings

In October 2021, the Committee called for submissions to the Inquiry into the Victorian Planning Framework in advertisements in the media, social media posts and in media statements. In addition, the Committee wrote to key stakeholders seeking input to the Inquiry.

As a result, the Committee received 287 submissions, many of which were substantial and detailed and which form the basis of this Interim Report.

1.3 Scope of the Inquiry

When the Victoria Planning Framework Inquiry was referred by the Legislative Council in 2020, the Committee already had a full schedule of inquiries. It was in the process of concluding its Inquiry into Nuclear Prohibition and had referrals for inquiries into Ecosystem Decline, the Health Impacts of Air Pollution in Victoria, and Renewable Energy in Victoria.

It has always been the Committee's practice to undertake the inquiries referred to it in the order in which they are received, unless there is some specific imperative. Therefore, it was always going to be difficult to complete an inquiry of this size and complexity within the time available prior to the dissolution of Parliament in October ahead of the State election in November 2022.

As a result, the Committee advertised the Inquiry calling for submissions but stated at the time that it would only be possible to hold limited public hearings. It was hoped that an inquiry would still be possible, albeit on a limited basis.

The Committee's existing inquiries, in particular the Inquiry into Ecosystem Decline, were not concluded until the end of 2021. The Ecosystem Inquiry was the largest ever undertaken by the Committee. It received nearly 1,000 substantive submissions, involved 16 full days of hearings and the final report was nearly 750 pages.

As a result of the time it took to conclude the pre-existing inquiries (the report of the Renewable Energy Inquiry was not due to be tabled until late May 2022), the Committee resolved early in the year that the complexity of the Planning Framework Inquiry made it impossible for it to be undertaken with the level of detail necessary to properly address the issues involved. It would likely require at least 10 to 15 days of public hearings and would take nearly 12 months to conclude.

The Committee received 287 submissions, many of which were extremely detailed and thoughtful and raised significant concerns about the current planning system. The quality and passion displayed in the submissions reinforced for the Committee that it would not be possible to do justice to the Inquiry by holding two days of hearings, which had been the original intention, and there was not going to be time to undertake the necessary schedule of hearings. The concern was that the Committee could have heard from government and government agencies, peak bodies and professional associations, but the many community groups and members who had expressed their concerns so strongly in their submissions would remain unheard.

It was therefore decided that the Committee would use the submissions to prepare a detailed interim report for the Parliament, identifying the key areas of concern, and would recommend that the matter be re-referred at the commencement of the new Parliament. This would allow for a full inquiry, with the appropriate number of hearings to be undertaken, and enable the Committee to prepare a report commensurate with the complexity and importance of the issue of the planning framework. Such a new inquiry would have full access to the submissions provided to this Inquiry, as well as this interim report.

While the Committee completely understands that the decision to not hold public hearings has caused some dissatisfaction in the community, it remains convinced that this Inquiry is too important and too complex to undertake with the level of detailed consideration required in the time available prior to the 2022 State election.

It should also be made clear that the Committee's focus, and the focus of any future inquiry, will be on the systemic issues related to the planning framework. Parliamentary inquiries tend not to examine individual cases except as illustrations of broader systemic concerns. Some of the submissions the Committee received related to specific planning decisions. The Committee has not considered these cases in isolation or on their specific merits, but has referred to them only where they might illustrate a broader point. It is important that it is understood that Committees have no role as an alternative source of appeal for, or re-prosecution of, individual cases. They do, however, play a significant role in identifying systemic failings and shortcomings.

The Inquiry was also complicated by the significant number of reviews, reforms and strategies relevant to the planning sphere that are either in progress or have recently been completed, with some in various stages of implementation, meaning the planning system is somewhat in a state of flux. At the time of writing, the Committee was aware of the following current and recent works:

- *Open Space for Everyone: Open Space Strategy for Metropolitan Melbourne 2021*
- *Protecting Victoria's Environment – Biodiversity 2037*
- *Environmentally sustainable development of building and subdivisions: A roadmap for Victoria's planning system*
- *Turning Best Practice into Common Practice: Planning and Building Approvals Process Review*

- *State of Heritage Review: Local Heritage 2020*
- *Plan Melbourne 2017–2050 and the Plan Melbourne Five-Year Implementation Plan*
- *10-Year Social and Affordable Housing Strategy for Victoria*
- *Planning for Melbourne’s Green Wedges and Agricultural Land*
- *Improving the Operation of the ResCode: A new model for assessment*

The Committee is also cognisant of the amount of work involved in preparing submissions for so many projects and reviews in a relatively short period of time. This point was well made in one of the submissions to this Inquiry by the Nillumbik Shire Council, which told the Committee:

Council note that there has been this year (2021) a call from State government to an extensive number of consultations on reform matters. This has placed significant pressure on local governments given preparation of submissions is very resource intensive, requires cross-departmental coordination (internally), needs to be adopted by Councils and therefore needs briefing/reporting to be prepared in regard to the matter, and is always in a required timeframe that does not consider Council reporting workflows and lead times. Therefore, these submissions are prepared as ‘urgent matters’ with compressed timeframe, and this is all in addition to delivery of programmed projects, policy and operations of Council.¹

Nillumbik Council said of this Inquiry:

Council question why such an Inquiry is underway with submissions called, given the number of planning reforms being consulted on, advanced and implemented via DELWP [the Department of Environment, Land, Water and Planning] and other State departments, noting the Inquiry will report back in June 2022, when feasibly much of the work DELWP/State government is doing now in regard to planning reform will be either implemented or significantly advanced to implementation.²

The Committee acknowledges that the timing of this Inquiry has caused some difficulty for some submitters and that there may be changes that impact on issues raised in submissions. This is one of the reasons that the Committee will ensure that submissions to this Inquiry are made available to the proposed full inquiry in the new Parliament. By publishing the submissions received, the Committee has also ensured the Government has access to the submissions now and can consider them in any of the reviews being undertaken.

This interim report seeks to provide an overview of the issues identified in the terms of reference as addressed by the submissions received. As well as summarising and illustrating the issues raised, the Committee has sought to identify key questions that could be considered in a full inquiry and that may lead to recommendations.

¹ Nillumbik Shire Council, *Submission 10*, p. 4.

² *Ibid.*, p. 5.

The chapters of this report follow closely the terms of reference. However, some issues are addressed in more detail than others as reflected by the submissions. This is in no way intended to limit a more detailed future inquiry.

In Chapter 2, the Committee addresses the issue of housing affordability and availability. In doing so, the Committee has highlighted issues relating to:

- current measures to address affordable housing concerns
- mandatory affordable housing in new developments
- first home buyer access
- cost and settings for rental accommodation
- population policy
- housing as an investment vehicle

Chapter 3 examines the issues raised in a substantial number of submissions around environmental sustainability and vegetation protection, including:

- tree and biodiversity protections
- climate change mitigation and adaptation
- pursuing best value in development
- environmentally sustainable development/design standards
- other issues including—
 - protecting open spaces, agricultural land and food security
 - water management
 - rubbish dumping from development activities
 - ensuring environmental justice
 - Acknowledgment of Country and recognition of Traditional Owners
 - promoting the role of the community
 - Environmental Effect Statements
 - overlays
 - public land and land use definitions

A key issue in a number of submissions, that of fairness in planning decisions, is the subject of Chapter 4. This chapter includes discussion of:

- mandatory controls relating to height limits and minimum apartment sizes
- green wedges and the Urban Growth Boundary
- suburban character

- Victorian Civil and Administrative Tribunal (VCAT) appeal processes
- consultation processes and third party appeal rights
- ministerial call-ins
- integrating public health considerations with the planning system

Another area of considerable community concern was the issue of heritage protection. This is addressed in Chapter 5. Issues raised in submissions included:

- the adequacy of current criteria and processes
- federal involvement in Victorian heritage protection
- local heritage protection issues including—
 - the relationship between heritage and planning administration
 - the role and resourcing of local councils
 - heritage expertise at VCAT and need for an independent heritage tribunal
 - independent advisers and the level of heritage expertise in local councils
 - penalties and enforcement of illegal demolition and demolition by neglect
- other issues relating to heritage overlay exemptions and the status of historical archaeological sites

The term of reference relating to the issue of ensuring residential zones are delivering the type of housing that communities want is addressed in the context of the earlier terms of reference and, to some extent, is implicit in many of the concerns raised in submissions. There were few submissions that dealt with this issue as a stand-alone concern.

RECOMMENDATION 1: That, upon commencement of the 60th Parliament, an inquiry into the Victorian planning framework be referred to the Legislative Council Environment and Planning Committee with the following terms of reference:

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;
2. environmental sustainability and vegetation protection;
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 Victorian Civil and Administrative Tribunal 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;
5. the implications for public health of planning decisions; and
6. any other matter the Committee considers relevant.

The new inquiry should involve a full schedule of public hearings as determined by the Committee.

2 The high cost of housing

2.1 Introduction

This Chapter addresses evidence submitted to the Inquiry under term of reference (1), being the high cost of housing within the context of the Victorian planning framework.

The Committee notes the terms of reference for this Inquiry directed it to investigate the issue of housing affordability within this limited scope. Reviewing this issue through other lenses—e.g. tax law or health and welfare policy—may provide greater insight into other frameworks that equally affect the supply and demand, cost, and provision of affordable housing. Mornington Peninsula Shire Council submitted that ‘reform of the *Planning and Environment Act 1987* and the Victorian planning framework alone is not going to be able to reduce the high cost of housing’.¹ A further inquiry may provide scope for these considerations.

2.2 The provision of affordable housing

The obligation to supply affordable housing, including social housing, is incorporated in the Victorian planning framework. The *Planning and Environment Act 1987* (Vic) (the Planning and Environment Act) was amended in 2017 to:

- define affordable housing as housing (including social housing) appropriate for the housing needs of moderate to very low income workers²
- mandate that an objective of planning in Victoria is to ‘facilitate the provision of social housing’ across the state.³

The Committee received significant evidence outlining concerns with the provision of affordable housing in Victoria. While Victorian Government initiatives such as the ‘Big Housing Build’⁴ provided a welcomed investment in social and affordable housing, stakeholders overwhelmingly suggested that:

- the programs were not enough to meet the growing demand for affordable housing in the State, particularly as Victoria’s population continues to grow
- amendments made to the Victorian Planning Provisions to facilitate the Big Housing Build initiative caused concern, as they neutralised the role of local councils
- reforms to the Victorian planning framework were needed to facilitate and/or mandate the provision of affordable housing.

1 Mornington Peninsula Shire, *Submission 273*, p. 4.

2 Latrobe Health Advocate, *Submission 36*, p. 3AA.

3 *Ibid.*, p. 4.

4 Premier of Victoria, *Victoria’s Big Housing Build*, media release, Victorian Government, Melbourne, 15 November 2020.

2.2.1 Is there enough affordable housing?

A number of stakeholders told the Committee that more affordable housing is required to meet current demand, let alone the demand projected to result from population growth.

Council submissions outlined the current state of unmet social and affordable housing in their municipalities. For example:

- Maribyrnong City Council submitted that in September 2021, only 6.7% of properties in their municipality qualified as ‘affordable’. They said in the same year, 5,000 people remained on the social housing waitlist in West Melbourne, including 3,000 applicants eligible for priority access.⁵
- Moreland City Council submitted that there is a ‘significant gap between the supply and need of social housing’, adding that in 2016, 3,850 households in its municipality had ‘an unmet need for affordable housing’.⁶
- City of Yarra submitted that in 2019, 697 people were on the North Eastern social housing waitlist, with 50% meeting priority access requirements. They said this demonstrated that while the municipality has ‘a higher provision of social housing, there are still not enough dwellings to meet current and future needs (having regard to the estimated population increase)’.⁷
- City of Ballarat submitted that a ‘lack of investment in social and public housing has seen an ageing housing stock in our municipality fail to provide an adequate standard for many tenants’.⁸
- Mornington Peninsula Shire Council said that ‘housing is becoming increasingly unaffordable even for households on moderate incomes’ and that Council passed a resolution in October 2021 to declare a housing crisis with respect to housing availability and affordability.⁹

In relation to social housing particularly, the Committee heard that not only is availability an issue, but that current public housing stock is old, derelict or unsuitable for tenant needs. Moreland City Council said that ‘while many new affordable homes are needed, there is an urgent need to make healthy and safe the existing, ageing public housing stock.’¹⁰

Infrastructure Victoria¹¹ agreed. They said that dilapidated housing stock needed to be renewed and future-proofed to meet social housing objectives:

There is a mismatch between the public housing stock that exists, with half of dwellings having three bedrooms, and what people need, with around 80% of new applicants requiring a one or two-bedroom dwelling. Old low-rise apartments or ‘walk ups’ are

⁵ Maribyrnong City Council, *Submission 18*, p. 2.

⁶ Moreland City Council, *Submission 150*, p. 5.

⁷ Yarra City Council, *Submission 259*, p. 2.

⁸ City of Ballarat, *Submission 210*, p. 1.

⁹ Mornington Peninsula Shire, *Submission 273*, p. 4.

¹⁰ Moreland City Council, *Submission 150, Attachment 1*, p. 4.

¹¹ The State’s independent advisory and research body for infrastructure-related matters in Victoria.

inaccessible for some older people and people with a disability. Many dwellings also have low energy efficiency standards. This undermines affordable living, resulting in increased energy bills for tenants, and poor health outcomes.¹²

The Committee was told that standards of accessibility, durability and energy efficiency should be imposed into all new and renewed social housing developments.¹³

2.2.2 What's being done to improve the provision of affordable housing?

A number of submissions evaluated the Victorian Government's Big Housing Build and its commitment to the provision of affordable housing. Box 2.1 provides a summary of this project.

BOX 2.1: Big Housing Build

The *Big Housing Build* was announced in November 2020 as the country's 'biggest ever investment in public and community housing'. The \$5.3 billion program commits to building more than 12,000 seven-star energy efficient homes across the state, comprising:

- 9,300 new social housing properties, including:
 - the replacement of 1,100 old public housing units and
 - 2,000 homes for people living with mental illness
- 2,900 affordable homes for moderate to low income earners.

Premier Daniel Andrews said the initiative would increase Victoria's social housing supply by 10% in four years and would be delivered alongside the *Homes for Victorians* scheme.

The *Homes for Victorians* scheme was announced in 2017 as a \$2.6 billion investment in increasing and renewing public housing to address homelessness, aiming to deliver 6,000 new social housing properties and renew 2,500 existing properties. It included the:

- Public Housing Renewal Program—a public housing redevelopment and construction program projected to deliver 1,800 new social housing homes
- Social Housing Growth Fund—a collaboration between government, philanthropic and private sectors that funds Community Housing Agencies to deliver more social housing

Source: Premier of Victoria, Victoria's Big Housing Build, media release, Victorian Government, Melbourne, 15 November 2020; Australia New Zealand infrastructure Pipeline, *Victorian public housing renewal program*, <<https://infrastructurepipeline.org/project/public-housing-renewal-program>> accessed 17 May 2022; Victorian Government, *Social Housing Growth Fund, 2022*, <<https://www.vic.gov.au/social-housing-growth-fund>> accessed 17 May 2022.

¹² Infrastructure Victoria, *Submission 126*, p. 2.

¹³ Jesuit Social Services, *Submission 204*, pp. 6-7; Yarra City Council, *Submission 259*, p. 3.

While the majority of stakeholders who discussed the program welcomed the additional investment in social and affordable housing, they argued that more needed to be done within or beyond the program to meet demand.

Infrastructure Victoria submitted that the number of properties to be delivered under the Big Housing Build would fall short of ensuring the state meets the national social housing benchmark. It said:

The Big Housing Build program will build 9,300 dwellings over a 10 year period. While this is laudable, more needs to be done to achieve the national benchmark of 4.5 social housing properties for every 100 households, from the current provision rate of 3.2 per 100 households. Our estimates indicate that between 3,900 to 4,900 extra dwellings will need to be constructed each year by 2031, depending on population growth rates.¹⁴

The Housing Industry Association (HIA) was similarly concerned, submitting it ‘will monitor Government’s response on [the Big Housing Build] initiative’.¹⁵ The HIA said in its submission that it had raised its concerns that Victorian Government projections on the number of social housing dwellings needed to maintain a 3.5% growth rate—30,000, or 1,600–1,700 new properties each year until 2036—was based on ‘conservatively low’ modelling, with its own projections closer to 35,000.¹⁶

Other stakeholders advocated for increased funding, or funding for a longer-term than the Big Housing Build commits. Moreland City Council said:

The promise of the Big Housing Build to increase social housing stock by at least 10% over four years is a welcome signal that the state government sees social and affordable housing as a core responsibility. However, the challenge remains that the generational underinvestment will not be addressed, or market failure reversed, by a marginal short-term boost. Social and affordable housing in Victoria needs a long-term commitment to funding.¹⁷

Similar suggestions were received from:

- the Municipal Association of Victoria (MAV), which said continued funding is needed to ‘meet the needs of all Victorians’¹⁸
- Maribyrnong City Council, which called for a ‘significant long term investment’ in affordable housing beyond the Big Housing Program¹⁹
- Brimbank City Council, which advocated for increased funding from both State and Federal Governments²⁰

¹⁴ Infrastructure Victoria, *Submission 126*, p. 2.

¹⁵ Housing Industry Australia, *Submission 11*, p. 29.

¹⁶ Ibid.

¹⁷ Moreland City Council, *Submission 150, Attachment 1*, p. 5.

¹⁸ Municipal Association of Victoria, *Submission 268*.

¹⁹ Maribyrnong City Council, *Submission 18*, p. 2.

²⁰ Brimbank City Council, *Submission 54*, p. 4.

- Ballarat City Council, which said ‘ongoing commitments to increasing housing stock and investing in maintenance of existing dwellings is necessary.’²¹

The Committee also heard that a number of local government stakeholders called for a whole-of-government, collaborative approach to the provision of affordable housing, including the implementation of the Big Housing Build program.

The City of Casey said:

Whilst Council is taking a stronger role in supporting the housing needs of its residents, and connecting vulnerable residents with housing and homelessness services, greater support is necessary from all levels of government.

Council welcomes the Victorian Government’s investment in social housing through the Big Housing Build and the establishment of Homes Victoria. Continued investment and coordination across all levels of government is required.²²

Bayside City Council submitted:

While the Big Housing Build provides significant funding and streamlines the planning approval processes in place for new affordable developments, it cannot be the sole remedy to the high cost of housing challenges, rather there is a need to adopt an approach that encourages local governments to achieve greater outcomes within their municipality, while incentivising registered housing agencies and the private sector to partner with these bodies.²³

Other concurring stakeholders included the M9 group of Councils (a coalition representing the nine municipalities of inner Melbourne), Maribyrnong City Council and Bendigo City Council.²⁴

The Committee received a number of additional suggestions for the improvement of the Big Housing Build, as well as the Victorian Government’s commitment to the provision of affordable housing. These included:

- the prioritisation of Big Housing Build projects²⁵
- the integration of Big Housing Build into the Homes Victoria 10 Year Strategy²⁶
- the collaboration with industry to increase affordable housing supply, within or beyond Big Housing Build²⁷
- mandating that new developments provide a certain percentage of social and affordable housing (discussed in Section 2.2.3).

²¹ City of Ballarat, *Submission 210*, p. 2.

²² City of Casey, *Submission 154*, p. 2.

²³ Bayside City Council, *Submission 134*, p. 7.

²⁴ Maribyrnong City Council, *Submission 18*, p. 22; City of Greater Bendigo, *Submission 284*, p. 32; Port Phillip Council, *Submission 136, Attachment 1*, p. 5.

²⁵ Maribyrnong City Council, *Submission 18*, p. 17.

²⁶ Moreland City Council, *Submission 150, Attachment 1*, p. 17.

²⁷ Housing Industry Australia, *Submission 11*, p. 29.

Big Housing Build Amendments to the Victorian planning framework

To facilitate the Big Housing Build, the Victorian Government introduced amendments to the Victorian Planning Provisions. This included introduction of:

- Clause 52.20 (Victoria's Big Housing Build)
- Clause 53.20 (Housing by or on behalf of the Director of Housing).

The Committee heard the amendments were designed to streamline the planning process and speed-up the delivery of social and affordable housing.²⁸ Yet in streamlining the process for Big Housing Build and affiliated projects, the requirements for consulting with local councils and complying with local planning schemes was removed.²⁹

Stakeholders argued this was disadvantageous given the knowledge that Councils have of their area, including the layout of the municipality and the needs of their residents. Latrobe City Council said:

The introduction of Clause 52.20 and 53.20 as part of the Big Housing Build resulted in reduced standards and the requirement to consider local planning policy in the assessment of social and affordable housing proposal leading to poorer outcomes in the development for members of the community who truly need it.

The removal of the consideration of local housing policy in social and affordable housing developments means that local Housing Policy cannot be considered, including the consideration of appropriate location for these types of development. Latrobe City Council Housing Strategy 2019 provides clear guidance about what types of developments would be supported and where. As a Regional City this was important to the community to ensure appropriate development was happening in the region.³⁰

Port Phillip Council agreed:

Councils have a role to play in ensuring well-designed housing projects that are responsive to the local context. This is essential to justify exemptions to normal public notice and review rights, and to create confidence and acceptance of developments within local communities.³¹

City of Boroondara, in an attachment to its submission, said:

Council questions the approaches being undertaken by Homes Victoria through the Big Housing Build, particularly the lack of community involvement in decision-making and the confined scope of matters to be consulted on with local councils by Homes Victoria.³²

²⁸ Brimbank City Council, *Submission 54*, p. 5. Nillumbik Shire Council, *Submission 10*, p. 6.

²⁹ Brimbank City Council, *Submission 54*, pp. 5–6.

³⁰ Latrobe City Council, *Submission 217*, p. 3.

³¹ Port Phillip Council, *Submission 136*, p. 2.

³² City of Boroondara, *Submission 53, Attachment 1*, p. 27.

Victorian Local Governance Association (VLGA) said that:

even in the face of a fast-tracked approvals system, demonstrated alignment with local planning frameworks is vital to ensuring that the legacy of such development is net positive.³³

Ms Kaye Oddie, a North Melbourne resident, conveyed in her submission that Big Housing Build projects were already taking advantage of the circumvention of local planning laws:

A State Government Big Housing Build proposal for social housing has been put forward in my street ... that does not comply with the Melbourne Planning Scheme provisions. Instead Clause 52.20 has been introduced that quashes the planning scheme provisions and 3rd party appeal rights. As a result, hard won height and setback controls applicable to the site ... have been ignored. Why couldn't the Big Housing Build development comply with the existing controls and meet council and community expectations about development in their neighbourhood? If the proposed Big Housing Build development had met the [local height and setback control] guidelines, then the matter of 3rd party appeal rights would likely be immaterial. Instead, the State Government is seen as 'Big Brother' putting the 'Big Boot' into local planning to justify overriding planning controls.³⁴

Ms Oddie said while the community 'strongly opposed the development that flouted planning provisions for the street', this amounted to none. Evidence received on the impact of such amendments on the fairness of planning decisions, particularly community consultation and third party appeal rights, are discussed in Chapter 4.

The Committee received a number of submissions that advocated for Council consultation on Big Housing Build projects. Evidence suggested there is support³⁵ for streamlined planning provisions but not at the expense of council involvement. Stakeholders suggested that:

- mechanisms be incorporated into the proposed Social and Affordable Housing Compact (between councils and Homes Victoria) to ensure councils can contribute to planning decisions for the provision of affordable housing³⁶
- any development proposals be 'accompanied by extensive consultation and demonstrated net community benefit'³⁷
- the Victorian Government undertake 'formal consultation with the relevant Council, where streamlined planning approval processes are used under Clauses 52.20 and 53.20 of Planning Schemes to facilitate housing projects'³⁸

³³ Victorian Local Governance Association, *Submission 63*, p. 2.

³⁴ Ms Kaye Oddie, *Submission 83*, p. 1.

³⁵ Yarra City Council, *Submission 259*, p. 31.

³⁶ Brimbank City Council, *Submission 54*, p. 3.

³⁷ Yarra City Council, *Submission 259*, p. 3.

³⁸ Port Phillip Council, *Submission 136*.

- a 4–6 week timeframe be introduced to allow councils to assess Big Housing Build applications, aiming to balance the need to streamline the planning process while enabling council input³⁹
- social housing and market intervention policy proposals undergo a ‘stress-test’ against Victorian Planning Provisions to determine whether it is the planning framework or the project proposal that needs amending.⁴⁰

Questions for consideration by a future inquiry

1. Are current social housing projects and state government initiatives sufficient to:
 - a. maintain the national benchmark of social housing to dwellings?
 - b. meet projected population growth, conservative or otherwise?
 - c. renew social housing stock, including to ensure they are energy efficient and meet cost of living affordability?
 - d. meet the objectives of planning as outlined in the Planning and Environment Act to provide affordable housing?
2. What are the effects of the amendments introduced to facilitate state social housing projects, particularly in relation to council involvement or the bypassing of local planning frameworks?

2.2.3 Mandatory affordable housing

Mandatory affordable housing—also known as mandatory inclusionary zoning—refers to the allocation of a certain percentage of homes within a new development to social and affordable housing. The policy proposes to amend the Victorian planning framework so that developers are compelled to provide social and affordable homes as part of their projects.

The Committee notes this issue was raised in the *Inquiry into homelessness in Victoria* undertaken by the Legislative Council’s Legal and Social Issues Committee over 2020 and 2021. It recommended that the Victorian Government investigate the implementation of mandatory affordable housing, including how to incentivise developers and ensure the costs of other properties in the development are not increased. The Government Response to this Report has not yet been tabled.⁴¹

³⁹ Brimbank City Council, *Submission 54*, p. 4.

⁴⁰ Victorian Local Governance Association, *Submission 63*, p. 3.

⁴¹ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into homelessness in Victoria*, March 2021, p. 319.

A number of stakeholders to this Inquiry, however, supported the inclusion of mandatory affordable housing in the Victorian planning system.⁴²

The Committee notes that the planning system already provides for voluntary affordable housing agreements between councils and developers through s 173 of the Planning and Environment Act.⁴³ However, the Committee was informed that a number of stakeholders had concerns regarding the efficacy of voluntary agreements. Brimbank City Council said:

the emphasis on voluntary negotiations does not appear to have significantly increased supply.

Research led by the University of Melbourne has identified and assessed the key barriers to affordable housing agreements, which include lack of incentives for developers, limited capacity to enforce negotiated contributions, and lack of skills and knowledge across the key stakeholder groups.

The research, which is based on a survey of almost 150 stakeholders, concludes that a majority of developers, financiers, local government and not-for-profit providers prefer consistent mandatory affordable housing requirement for all developments.⁴⁴

The City of Yarra concurred, saying it has ‘strongly advocated for the introduction of inclusionary zoning’⁴⁵ due to its limited success negotiating voluntary affordable housing agreements. It submitted:

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 Planning 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 housing dwellings for the community through negotiations, on a site-by-site basis. The output across the State has fallen well short of expectations.⁴⁶

⁴² Bayside City Council, *Submission 134*, p. 5; Moreland City Council, *Submission 150*, p. 4; City of Whittlesea, *Submission 202*, p. 2; Glen Eira City Council, *Submission 207*, p. 5; Latrobe City Council, *Submission 217*, p. 5; 3228 Residents Association, *Submission 199*, p. 1; Mr Ross and Mrs Lyn Campbell, *Submission 130*, p. 2; Mrs Nina Earl, *Submission 190*, p. 1; The 3068 Group, *Submission 278*, p. 8; Robin Kelly, *Submission 67*, p. 8; Infrastructure Victoria, *Submission 126*, p. 3; Sustainable Population Australia, Victoria/Tasmania branch, *Submission 160*, pp. 9–10.

⁴³ Department of Environment, Land, Water and Planning, *Planning: New planning mechanisms for affordable housing*, 2019, <<https://www.planning.vic.gov.au/latest-news/affordable-housing-agreements>> accessed 3 June 2022.

⁴⁴ Brimbank City Council, *Submission 54*, p. 8.

⁴⁵ Yarra City Council, *Submission 259*, p. 4.

⁴⁶ *Ibid.*, pp. 4–5.

Stonnington City Council outlined Priority One of the M9's Officer-endorsed Social and Affordable Housing Strategy, which calls for mandatory affordable housing as voluntary contributions alone 'will not deliver certainty'. Priority One reads:

Introduce mandatory affordable housing controls in the Victorian Planning System to deliver social and affordable housing with certainty and at scale. The Victorian Planning System can best deliver both scale and diversity of affordable housing through a combination of voluntary 'value sharing' mechanisms (already available under the current system of Voluntary Housing Agreements) and mandatory approaches. Use of voluntary mechanisms alone will not deliver certainty nor the level of housing needed to make a meaningful contribution, given the scale of the affordable housing problem and the lack of up-take of voluntary mechanisms. Mandatory controls have the potential to make a significant contribution to addressing the housing shortfall and increase private sector involvement in both social and affordable housing delivery.⁴⁷

Ruskin Park Residents Action Group also submitted that voluntary affordable housing agreements have been 'ineffective' and not added affordable supply.⁴⁸

In supporting the introduction of mandatory affordable housing, Professor Michael Buxton, Emeritus Professor of Environment and Planning, RMIT University, said a number of international jurisdictions had already implemented the concept successfully:

The lessons from international experience are clear. Mandatory measures such as inclusionary zoning and mandated affordable housing requirements, both planning and building, are essential to achieve affordable housing components in new developments.⁴⁹

He further raised that the Victorian planning system already provides for the mandatory provision of public benefits. Such requires developers to, as part of the approval process:

- pay an infrastructure levy
- make an open space contribution
- provide physical public infrastructure.⁵⁰

Bayside City Council said that this model could be used to facilitate mandatory affordable housing:

Where mandatory contributions for items such as public space and infrastructure are applied through a consistent process in the planning system, developers have proven to be able to make these contributions work within their business model. A similar approach should be adopted for the provision of social and affordable housing.

⁴⁷ City of Stonnington, *Submission 131*.

⁴⁸ Ruskin Park Residents Action Group, *Submission 122*, p. 3.

⁴⁹ Professor Michael Buxton, Emeritus Professor Environment and Planning, RMIT University, *Submission 93*, p. 6.

⁵⁰ *Ibid*, p. 5.

Feedback from the development industry suggests many are not necessarily opposed to the concept of mandatory provisions, providing transitional arrangements are put in place so that these costs can be factored into the initial purchase of land.⁵¹

Stakeholders said that if mandatory affordable housing is to be introduced, there needs to be:

- flexibility as to how the obligation is delivered⁵²
- a gradual introduction so as developers can consider cost when purchasing land for development⁵³
- collaboration with local government to test and model proposed changes⁵⁴
- care taken to ensure the planning scheme retains its integrity⁵⁵
- greater leadership taken by the State Government to build community awareness and acceptance for social and affordable housing, advocating it as a state-wide benefit to meet community needs⁵⁶
- a clear definition of what affordable housing means⁵⁷
- analysis to determine what scale of development could accommodate affordable housing⁵⁸
- appropriate management to ensure affordable housing
 - meets the needs of those who require it, and
 - is fairly allocated.⁵⁹

The Committee also received submissions advocating against mandatory affordable housing. A submission from HIA said:

HIA does not support mandatory affordable housing quotas being introduced into the planning scheme as they act as a tax on home buyers. In practical terms, HIA believes that the mandatory affordable housing quota concept is inequitable as:

- A dwelling which is mandated to be sold as an ‘affordable house’ still costs the same to build but must be marketed and sold for less.
- Costs incurred by developments in subsidising the affordable unit must invariably be borne by the new home-buying public, who will pay more for the other units which are not marketed and sold as ‘affordable housing’.

⁵¹ Bayside City Council, *Submission 134*, p. 5.

⁵² Victorian Planning & Environmental Law Association, *Submission 215*, p. 5.

⁵³ Ibid.

⁵⁴ Brimbank City Council, *Submission 54*, p. 8.

⁵⁵ Kingston Residents Association, *Submission 221*, p. 9.

⁵⁶ City of Whittlesea, *Submission 202*, p. 5.

⁵⁷ Cardinia Shire Council, *Submission 206*, p. 2.

⁵⁸ Glen Eira City Council, *Submission 207*, pp. 7–8.

⁵⁹ Cardinia Shire Council, *Submission 206*.

- It is possible in many schemes that affordable housing units can be bought for a lower price and subsequently sold for market value, therefore yielding a greater profit to the purchaser.
- There also appears to be a lack of appropriate management arrangements for these types of housing solutions.⁶⁰

HIA said it supports other mechanisms to address affordable housing matters, including voluntary agreements.⁶¹

Greater Torquay Alliance, a Surf Coast Shire residents group, feared that mandatory affordable housing would result in poor housing quality:

Affordable housing needs to be defined. Its relative to an area. Mandatory affordable housing will lead to poor housing outcomes. “Affordable” will often translate to ‘cheap and nasty’, particularly if left to developers forced to provide some portion of their development. It’s an outcome that no community would want to see in their area. Better to provide incentives for investors to offer affordable housing—maybe better tax incentives.⁶²

As mentioned in Section 2.1, this Inquiry is limited to reviewing the issue of housing affordability through the lens of the Victorian planning framework. A wholistic review could be undertaken in a future inquiry with terms of reference that permit the Committee to consider other social and legal policies and frameworks.

Questions for consideration by a future inquiry

1. How could the planning scheme be amended to compel mandatory affordable housing, and how could financial incentives assist developers to comply, ensuring good quality housing?
2. What, if any, amendments to the planning scheme should be made to introduce and/or regulate short-term housing solutions, such as pop-up shelters, where houses earmarked for development have been un-occupied for a specified period of time?

2.3 Outside of the planning scheme: first home buyer access, the cost of rental accommodation and factors encouraging housing as an investment vehicle

Terms of reference (1)(b), (c) and (e) ask the Committee to review the protections provided for the following issues, within the Victorian Planning Framework:

- access to the housing market for first home buyers

⁶⁰ Housing Industry Australia, *Submission 11*, p. 30.

⁶¹ Ibid.

⁶² Greater Torquay Alliance Inc, *Submission 187*, pp. 1-2.

- the cost of rental accommodation
- factors encouraging housing as an investment vehicle.

The Committee heard that currently, the Planning and Environment Act and Victorian planning framework do not address access for first home buyers.⁶³ Latrobe City Council noted such areas fell within the functions of the State and Federal Governments and ‘recommended that this remains outside the realm of the Act and the Victorian Planning Framework.’⁶⁴

Brimbank City Council agreed:

It is not the function of Planning Schemes to increase access for first home buyers, reduce the cost of rental accommodation or influence housing an investment vehicle. While it is acknowledged that planning policy may influence these matters and the high cost of housing, the Victorian Planning Framework have a limited role in implementing tangible outcomes. The Federal and State governments are primarily responsible for the provision of social and affordable housing and policy interventions in the housing market.⁶⁵

However, the Committee received numerous submissions as to how the planning system contributes to these issues, including suggestions as to how frameworks could be amended to manage these issues.

2.3.1 First home buyer access

The Committee received evidence that first home buyer access is linked to housing affordability, with the lack of supply to meet demand contributing to increased housing costs.

The Grattan Institute, an independent policy think tank, provided a lengthy submission on issues affecting housing affordability. The submission said that home ownership rates among young people are falling and that without intervention, ‘many more young Victorians will be locked out of the housing market.’⁶⁶

What said intervention could look like varies, however the Grattan Institute told the Committee boosting housing supply is key to lowering housing prices, and increasing accessibility for all, including first home buyers. It submitted:

Boosting housing supply would especially help low-income earners. Irrespective of its cost, each additional dwelling adds to total supply, which ultimately affects affordability for all home buyers. This is not merely theory: international evidence suggests that ‘filtering’ occurs in practice. Initially expensive homes gradually become cheaper as they

⁶³ Glen Eira City Council, *Submission 207*, p. 6; Latrobe City Council, *Submission 217*, pp. 4, 6.

⁶⁴ Latrobe City Council, *Submission 217*, p. 4.

⁶⁵ Brimbank City Council, *Submission 54*, p. 4.

⁶⁶ Grattan Institute, *Submission 178*, p. 3.

age, and are sold or rented to people with more modest incomes. Our research suggests that a 10 per cent fall in private market rents would reduce by 8 per cent the number of low-income households nationwide who are suffering housing stress.⁶⁷

Bayside City Council agreed, but said housing needs to happen in urban areas close to key infrastructure:

Council notes that there are a range of incentives and supports available to first home buyers. A key focus should be to ensure that there is greater provision of more affordable housing in urban areas to ensure that young professionals and key workers can afford to live in inner suburbs and areas close to employment opportunities and services ...

It is critical to ensure that young professionals, young families and key workers are able to afford property in inner suburbs and Council supports incentives to achieve these outcomes.⁶⁸

However a number of submissions questioned whether lack of supply was the only problem.

The Boroondara Heritage Group for Advocacy and Protection submitted that there was a huge amount of vacant housing (which has subsequently been confirmed in the 2021 national census results⁶⁹):

Research on vacant land and housing in Melbourne estimates there are 69,000 empty houses and blocks of land in Melbourne. The number of empty and underutilised properties could house over 185,000 people, potentially reducing the public housing waiting list. In Boroondara, a walk in most residential streets reveals many empty residences with overgrown gardens and empty blocks of land. 2020 research has shown there are thousands of vacant blocks of land and empty houses, particularly in the suburbs of Boroondara. Demolition of heritage houses in the last five years has exacerbated this issue. This waste of housing resources must be fixed.⁷⁰

Christina Branagan in her submission also pointed out that authorities tolerating so many properties being kept vacant was also pushing up house sale prices and rental prices:

Empty houses: A growing number of heritage protected houses are being left empty and used as investments, or land banks, often by international purchasers. This is leading to the degrading of these properties when they are not maintained and presents a longer-term risk to Melbourne's and Australia's heritage. It also removes them from the pool of available homes for renters and buyers; pushing up rents and house prices and degrading the economic and social aspects of life in these communities and streets.⁷¹

⁶⁷ Ibid.

⁶⁸ Bayside City Council, *Submission 134*, p. 8.

⁶⁹ Australian Bureau of Statistics, *Census of Population and Housing: Housing data summary*, 2021.

⁷⁰ Boroondara Heritage Group for Advocacy and Protection, *Submission 196*, p. 3 (with sources).

⁷¹ Christina Branagan, *Submission 103*, p. 7.

The Boroondara Heritage Group cited that vacancy taxes designed to reduce this problem were not being enforced and evasion action has been observed:

The Vacancy taxes imposed by State and Federal governments appears not to be enforced in Melbourne. The owners' business model of paying staff to make it appear someone is living in an unoccupied house by shuffling rubbish bins in and out and moving cars in the driveway, is currently very obvious to those walking the streets of Boroondara.⁷²

Nerida Muirden also provided a substantial submission, including pictures of houses kept empty with ample evidence of how owners attempted to portray the houses as occupied, and included media coverage of the issue.⁷³

Planning Democracy disputed the claim that the problem underlying the lack of affordable housing was supply:

Contrary to the claims of the property industry, the problem of unaffordable housing and Lilliputian apartments is not a supply problem. There has been a dramatic increase in the supply of housing in the inner cities of Melbourne and Sydney, and demonstrably no reduction in sale prices or rents in housing in the middle and outer suburbs. The Council to Homeless Persons said in 2018 "Despite record dwelling constructions across Victoria in recent years, new supply alone has demonstrably failed to provide for greater affordability".

Elvis Presley is sighted more often than downward pressure on house prices arising from construction.

In fact, the more construction that happens in a given area, the more valuable it becomes, so the higher the price of land. And it is rising land prices that are proving so lethal for young would be home owners.⁷⁴

The Committee notes the views presented in these submissions, but has not undertaken work to verify their accuracy.

The Baw Baw Planning Alliance submitted that developers are providing 'cookie cutter' houses that place pressure on Councils to provide infrastructure to sustain. This is further exacerbated by the lack of environmentally sustainable design directives in planning frameworks. It said:

Developers have championed the ideal of housing affordability and the access to housing for first home buyers. This ideal is to the detriment of any environmentally sustainable design directives that are clearly absent in the Victorian Planning Provisions. This has resulted in Estates being developed in a manner which takes little account of the topography, does not value the landscape and vistas, and fails to retain or maintain the local natural environment. Particularly, that Council also struggles to provide the required infrastructure necessary to service the growing population. The type of

⁷² Boroondara Heritage Group for Advocacy and Protection, *Submission 196*, p. 10 (with sources).

⁷³ Nerida Muirden, *Submission 164*.

⁷⁴ Planning Democracy, *Submission 28*, p. 8.

building being constructed in high density areas result in “cookie cutter” housing, lack of amenity and disregard of the negative impacts on climate change by these practices. The built houses tend to be carbon copies with little social or environmental amenity. First home buyers might buy them but are unlikely to live there for many years. The incentives provided by State and Federal Governments, should ensure the Shire is not required to provide affordable housing which results in inferior builds and infrastructure problems which need to be resourced, in the main, from ratepayer funds.⁷⁵

City of Whittlesea agreed that there has been an increase in developers wanting to provide housing stock, and that a framework could alleviate key challenges in providing this:

It is critical that the supply of affordable housing is not to be achieved by delivering smaller, poorer quality or located housing within larger precincts. Rather that affordable housing needs to be well located and well designed to meet the needs of the residents it intends to support.

Without a clear and consistent framework, there are challenges concerning implementation. In particular, the means-tested allocation is a challenge for both developers and Councils to navigate.

Further there are also no mechanisms for ensuring the property remains as affordable housing beyond the initial sale. The Ministerial Direction requires the longevity of affordable housing be considered however, there is no guidance or acceptable approach for doing this. A future social and affordable housing system should facilitate secure affordable homeownership options with mechanisms to ensure that the longevity of the affordable housing is protected.⁷⁶

The Grattan Institute said that the Victorian Government has a ‘key role’ to play in facilitating housing affordability:

The state government sets the overall framework for land and housing supply, governs the local councils that assess most development applications, and sets building regulations that affect building costs. This inquiry should acknowledge that Victoria’s current planning framework puts too many restrictions on development, and change is needed to boost housing supply.⁷⁷

In an attachment to its submission, the Grattan Institute provided its 2018 report *Housing affordability: re-imagining the Australian dream*.⁷⁸ The report provides suggestions on amendments to the planning framework to improve housing affordability, which could benefit first home buyer access. These include that:

- States should reform planning rules to make it easier to develop medium-density housing in middle-ring suburbs.

⁷⁵ The Baw Baw Planning Alliance, *Submission 59*, p. 4.

⁷⁶ City of Whittlesea, *Submission 202*, pp. 4–5.

⁷⁷ Grattan Institute, *Submission 178*, p. 3.

⁷⁸ Grattan Institute, *Submission 178, Attachment 1*.

- States should set housing targets and make sure Councils meet them.
- State governments should increase density along key transport corridors.⁷⁹

The Grattan Institute did not support incentives provided to first home buyers to help purchase their first home, such as stamp duty concessions or first home buyer grants. It said:

federal and state governments have provided financial assistance to first home buyers in various forms for decades. Government assistance has mainly pushed up purchase prices for first home buyers rather than making the first purchases of a home more affordable.⁸⁰

A number of stakeholders submitted that stamp duty concessions and first home buyer grants do little to facilitate affordability and access for first home buyers as developers raise their prices to factor in the rebates.⁸¹ Other stakeholders also raised the issues of negative gearing, which fall within federal taxation settings.⁸²

The Committee accepts evidence that the planning framework may benefit from amendments to facilitate affordable housing, but suggests a further inquiry evaluate how first home buyer access can be best facilitated in the future, including with reference to state and federal taxation settings and incentives.

Questions for consideration by a future inquiry

1. What are the key issues that first home buyers face? Could these be improved via:
 - a. state incentives and tax benefits, with consideration state and federal taxation settings?
 - b. increasing housing supply, including via amendments to the planning framework?
 - c. ensuring developers are facilitated in providing high quality affordable properties?
2. What amendments to the current federal tax setting, besides limiting the number homes that attract negative gearing benefits to two, can the State Government advocate for to improve first home buyer access?
3. In light of rising prices, how can the Victorian Planning Framework regulate a 'right to rent' scheme for market foreclosures, in which homebuyers can remain in their homes for up to five years and rent?

⁷⁹ Ibid., pp. 114–118.

⁸⁰ Grattan Institute, *Submission 178, Attachment 2*, p. 36; See also pp. 136–137.

⁸¹ Greater Torquay Alliance Inc, *Submission 187*, p. 1; Ms Jane Hildebrandt, *Submission 26*, p. 3; 3228 Residents Association, *Submission 199*, p. 3.

⁸² Name withheld, *Submission 31*, p. 1; Maribyrnong City Council, *Submission 18*, p. 22.

2.3.2 Cost and settings for rental accommodation

The Committee received evidence that there is need for more secure, affordable rental housing across Victoria.⁸³ A number of stakeholders submitted on this issue:

- Bayside City Council said that housing and rental costs are high in its municipality, stating that in 2018, no rental listings would have been affordable to very low income families.⁸⁴
- Yarra City Council said that more than 3,000 rental households in its municipality experience housing stress.⁸⁵
- The 3068 Group⁸⁶ said that the SGS Economics' Rental Affordability Index 'lays bare a devastating failure' with Melbourne being 'extremely unaffordable'.⁸⁷
- Both Glenelg Shire Council and the Australian Food Sovereignty Alliance (AFSA) told the Committee the lack of rental accommodation was impacting migration of key workers to rural areas.⁸⁸

The Committee heard myriad issues have impacted or do impact the cost of rental accommodation. These include:

- the lack of social housing⁸⁹
- the lack of housing in general⁹⁰
- the increased use of homes for holiday houses⁹¹ and/or the rise in short-term rentals, resulting in higher financial return⁹²
- an increase in investment properties (see Section 2.3.3)⁹³
- changes to rental accommodation laws that discourage owners offering longer term leases.⁹⁴

Councils told the Committee that planning frameworks do not provide for tenancies. Glen Eira City Council explained:

The planning system considers use and development of land. It does not consider residential tenure. The planning system cannot mandate the price of accommodation.

⁸³ Name withheld, *Submission 16*, pp. 5–6; The 3068 Group, *Submission 278*, p. 34.

⁸⁴ Bayside City Council, *Submission 134*, p. 9.

⁸⁵ Yarra City Council, *Submission 259*, pp. 3–4.

⁸⁶ A community advocacy group for postcode 3068 covering the North Fitzroy and Clifton Hill area.

⁸⁷ The 3068 Group, *Submission 278*, p. 3.

⁸⁸ Glenelg Shire Council, *Submission 163*, p. 1; Australian Food Sovereignty Alliance, *Submission 43*, p. 4.

⁸⁹ Glenelg Shire Council, *Submission 163*, p. 1.

⁹⁰ Ibid.

⁹¹ Ibid.; 3228 Residents Association, *Submission 199*, p. 3; Australian Food Sovereignty Alliance, *Submission 43*, p. 4.

⁹² Glenelg Shire Council, *Submission 163*, p. 1.

⁹³ Sustainable Population Australia, *Submission 160*, p. 8.

⁹⁴ Glenelg Shire Council, *Submission 163*, p. 1.

It is predominantly driven by the market and governed by the *Residential Tenancies Act 1997* (Vic).

Council does not consider the Act and PPF an appropriate vehicle for addressing this concern.⁹⁵

Nonetheless, the Committee received suggestions on actions and/or considerations that could be taken to manage rental affordability. Nillumbik Shire Council said that a holistic approach must be taken:

Council note that price, location, security of tenure, access to transport/amenity, connection to support services are all important, one is not more important than the other. It is important to add 'connection to social support networks' as well as 'support services'. For example, having cheap rent in an area that does not have accessible transport or employment opportunities will not provide effective outcomes and access for people as well if that housing was in a location that was close to transport and job opportunities.⁹⁶

Infrastructure Victoria, in advocating for mandatory affordable housing (see Section 2.2), told the Committee planning needed to:

Use value-capture mechanisms to deliver very low income housing (Strategy recommendation 36). Within the next two years, change and actively apply planning regulations to provide affordable rental housing for Victorians on very low incomes in places with good access to public transport and services, when they are re-zoned for more intensive residential use in partnership with local government, review planning settings to allow increased housing density.⁹⁷

Bayside City Council said a National Rental Affordability Scheme should be implemented:

To ensure rental accommodation options are afforded to those in need a new National Rental Affordability Scheme (NARS) should be considered and implemented. Learnings from the now discontinued NARS and similar international schemes from the US and the UK should be considered. As a result, future subsidised affordable housing schemes will require greater permanence and consistency to secure and attract investment as well as clear, measurable and achievable objectives.⁹⁸

On further suggested changes to the Victorian planning framework:

- AFSA told the Committee it commended the Victorian Government's planning amendment which removed the need for a permit for on-farm worker accommodation for up to 10 people. It called for further amendments to the planning framework, so as larger farm zone properties to 'avail themselves of this noteworthy planning change.'⁹⁹

⁹⁵ Glen Eira City Council, *Submission 207*, p. 7.

⁹⁶ Nillumbik Shire Council, *Submission 10*, p. 8.

⁹⁷ Infrastructure Victoria, *Submission 126*, p. 3.

⁹⁸ Bayside City Council, *Submission 134*, p. 9.

⁹⁹ Australian Food Sovereignty Alliance, *Submission 43*, p. 4.

- Surf Coast Energy Group told the Committee there is a rising tiny house movement in the Surf Coast Shire and submitted planning considerations could consider how to facilitate the movement, which it argues has the potential to ‘provide important housing accommodation for those who are either long term renters or who are saving up for their first home.’¹⁰⁰
- Mornington Peninsula Shire advocated for a reform of the Victorian planning system to better facilitate Build to Rent schemes, in which developments are built and rented to tenants by a single entity.¹⁰¹

The Committee additionally received myriad suggestions from stakeholders that fell outside the scope of the planning framework. These included:

- changing tenancy laws to secure longer term tenure for renters¹⁰²
- reforming land taxes to encourage increased institutional investment in rental properties (for example, build-to-rent schemes);¹⁰³ the Committee notes since receipt of these submissions, the Victorian Government has introduced some land tax concessions for eligible build-to-rent developments, as part of the Big Housing Build initiative outlined in Section 2.2.2¹⁰⁴
- introducing a portion of price controlled rental accommodation¹⁰⁵
- providing low-income renters with direct financial assistance¹⁰⁶
- reviewing ‘incentives’ that lead to empty houses and capital appreciation on these.¹⁰⁷

Whilst outside the scope of the planning framework, the Committee believes a further inquiry could review these issues.

Question for consideration by a future inquiry

1. What are the factors contributing to the rental affordability crisis and how can solutions be facilitated?

¹⁰⁰ Surf Coast Energy Group, *Submission 22*, p. 3.

¹⁰¹ Mornington Shire Council, *Submission 273*, p. 7.

¹⁰² Grattan Institute, *Submission 178, Attachment 1*, p. 6; Sustainable Australia Party, *Submission 51*, p. 2.

¹⁰³ Grattan Institute, *Submission 178, Attachment 1*, pp. 124–25; Ms Jane Hildebrandt, *Submission 26*, p. 5; Municipal Association of Victoria, *Submission 268*, p. 5.

¹⁰⁴ Department of Treasury and Finance, *Land tax concession for build-to-rent projects*, 2021, <<https://www.dtf.vic.gov.au/build-to-rent>> accessed 8 June 2022.

¹⁰⁵ Gary Vines, *Submission 34*, p. 2.

¹⁰⁶ Grattan Institute, *Submission 178, Attachment 2*, p. 30.

¹⁰⁷ Ms Janice Davies, *Submission 85*, p. 1.

2.3.3 Housing as an investment vehicle

Few submissions discussed factors encouraging housing as an investment vehicle within the context of the Victorian planning framework. The issue was, however, extensively canvassed in the context of tax and fiscal policy.

Emeritus Professor Michael Buxton said that government policy settings in Australia have favoured investors at the expense of lower house prices:

For decades, property prices in many European countries, such as Germany, remained relatively flat because governments regard houses as places to live instead of a source of rising wealth. Such differential outcomes are no accident but are determined by government policy settings designed to influence the investor property market.¹⁰⁸

He said the factors encouraging housing as an investment vehicle ‘have been canvassed extensively in Australia’¹⁰⁹ and include:

- low interest rates, particularly for investors where interest rates are relative to those for owner occupiers
- low capital gains tax
- the use of negative gearing
- few restrictions on overseas investment in property
- international financial flows.¹¹⁰

The Committee notes that these factors are federal taxation settings that fall outside of State control. However, the Kingston Residents Association suggested that such factors needed to be addressed as they contribute to housing unaffordability.¹¹¹ As discussed in Section 2.2 of this Report, the provision of affordable housing is an objective of planning in Victoria.

Maribyrnong City Council discussed the role of taxation in affordable housing, saying that since capital gains tax was introduced, housing prices grew on average 7.3% per year (as opposed to 2.8% per annum inflation). It said:

The Committee may wish to make recommendations regarding the Victorian Government’s role in advocating changes to Federal Government tax treatment of housing, including on capital gains tax concessions and negative gearing, and also to examine the impact of State Government taxes on home ownership.¹¹²

¹⁰⁸ Professor Michael Buxton, *Submission 93*, p. 4.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Kingston Residents Association, *Submission 221*, p. 9.

¹¹² Maribyrnong City Council, *Submission 18*, p. 4.

Sally Vivian, a planner with over 40 years' experience in local and state government planning, told the Committee that the factors encouraging housing as an investment vehicle can only be addressed through changes to fiscal policy. Ms. Vivian submitted:

Housing as an investment vehicle is clearly one factor in increasing house prices. One issue which is well recognised and understood but no government is game to address, is the impact of negative gearing on house prices, and multiple home ownership etc ... These and similar issues can only be addressed through monetary and fiscal policy, changes to taxation systems and regulation of the finance industry.¹¹³

Evidence received suggested private residents, not just experts, considered that tax policy influences the purchase of housing as an investment vehicle. Ms Janice Davies said:

I believe that the current tax arrangements support and encourage housing as an investment, vehicle for example, negative gearing and housing investments in superannuation portfolios. I think that a review of the tax incentives for owning multiple houses is required at the State and Federal levels. Perhaps with each additional property the land tax increases. Even if this did not encourage people to sell their excess houses, the extra tax may pay for social housing.¹¹⁴

The Committee notes that besides housing affordability issues, the balance of evidence suggests a further inquiry review the factors contributing to housing as an investment vehicle through a taxation lens.

Question for consideration by a future inquiry

1. What frameworks and policies, including taxation settings, are in place that facilitate housing as an investment vehicle, and how do these impact housing affordability?

2.4 Population policy

Population policy refers to government policy that seeks to predict population trends, anticipate the impact of population trends and implement public policy and action to manage those trends.¹¹⁵

Term of reference (1)(d) limited the scope of this Inquiry to reviewing state and local population policy, within the Committee's jurisdiction. However, the Federal Government plays a key role in population policy, through federal migration programs,

¹¹³ Ms Sally Vivian, *Submission 216*, p. 2.

¹¹⁴ Ms Janice Davies, *Submission 85*, p. 1.

¹¹⁵ Gavin W Jones, *An Australian Population Policy*, research paper, no. 17, Parliament of Australia, 1996–97; Professor Peter McDonald, *Pursuit: How does Australia manage population growth?*, 2018, <<https://pursuit.unimelb.edu.au/articles/how-does-australia-manage-population-growth>> accessed 8 June 2022; United Nations Department of Economic and Social Affairs, *Population Division: World Population Policies 2009*, <<https://www.un.org/en/development/desa/population/publications/policy/population-policy.asp>> accessed 8 June 2022.

federal budgets and intergenerational reports. Such documents often provide population projections and actions to be taken, including investment in States to manage.¹¹⁶

At a state level, population policy manifests through state budgets and population forecast documents, such as *Victoria in Future 2019*.¹¹⁷ Such influences population policy on a municipal level, which can be found through housing strategies, particularly those that comply with Planning Practice Note 90 (PPN90—requiring local governments to plan for housing needs, based on projected municipal population growth over 15 years).¹¹⁸

2.4.1 Population policy in practice

Stakeholders told the Committee that in practice, population policy has pursued one of rapid and unconstrained growth.¹¹⁹ It heard that policies have aimed to secure economic growth¹²⁰ at the cost of the environment and residential liveability.

In a submission to the Inquiry, Chris Sutton said:

A major policy of State (and Federal government) since the 1980's has been the lack of population policy that articulates a population target that supports a sustainable economy and environment. The unconstrained pursuit of population growth to support economic growth has eroded the liveability of Melbourne suburbs and the environmental integrity of our grasslands and vegetated surrounds. The urban growth boundary continually expands like adding more notches on a belt to accommodate an ever expanding waistline.¹²¹

Sustainable Population Australia, Victoria and Tasmania Branch, also referenced the impact of population growth in planning:

In recent decades very fast population growth has put pressure on the planning system in Victoria necessitating Victorian Governments to come out with various planning blueprints to accommodate this growth.¹²²

¹¹⁶ For example: The Treasury, *2021 Intergenerational Report: Australia over the next 40 years*, Commonwealth of Australia, Canberra, 2021; The Treasury, *Budget 2022–23 Paper No. 1 Budget Strategy and Outlook*, Canberra, 2022; Department of Home Affairs, *How to engage us: Australia's 2022–23 Migration Program*, 2022, <<https://www.homeaffairs.gov.au/help-and-support/how-to-engage-us/consultations/australias-22-23-migration-program>> accessed 8 June 2022.

¹¹⁷ For example: Department of Treasury and Finance, *Victorian Budget 2022/23 Putting Patients First: Rural and Regional Victoria*, Melbourne, 2022; Department of Environment, Land, Water and Planning, *Victoria in Future 2019: Population projections 2016 to 2056*, Melbourne, 2019.

¹¹⁸ Maribyrnong City Council, *Submission 18*, p. 14; Glen Eira City Council, *Submission 207*, p. 7; Bayside City Council, *Submission 134*, p. 9; Latrobe City Council, *Submission 217*, p. 4.

¹¹⁹ 3228 Residents Association, *Submission 199*, p. 3.

¹²⁰ The 3068 Group, *Submission 278*, p. 5.

¹²¹ Chris Sutton, *Submission 173*, p. 1.

¹²² Sustainable Population Australia, *Submission 160*, p. 20.

The group submitted that changes introduced to the planning blueprints to meet population growth have variously led to:

- loss of environment (parklands, tree canopies, natural areas)
- increased density in suburban areas
- disruption and expense from replacement of infrastructure
- constant development.¹²³

In this regard, a number of submissions canvassed population policy reforms. Suggestions included the need for population policy that:

- balances economic growth and liveability¹²⁴
- nurtures liveability¹²⁵
- develops limits based on environmental considerations and infrastructure capabilities¹²⁶
- is informed by objective analysis and debate¹²⁷
- stabilises the population (whilst supporting refugee intake)¹²⁸
- consults local government.¹²⁹

2.4.2 Planning and population policy

Submitters were concerned about the planning system's capability to respond to current population policy and projections.

Dingley Village Community Association said since the Planning and Environment Act's introduction, Melbourne's population has grown by more than two million people, driving development. This made clear the adverse effects of urban sprawl on the environment and health and wellbeing of Victorians.¹³⁰ Accordingly, it submitted:

Given the changes to Melbourne's natural and social environments since the creation of the Planning and Environment Act 1987, we believe it is highly appropriate to revisit the Act, and strengthen it to better defend Victorian people and spaces against inappropriate overdevelopment.¹³¹

The Committee also heard there should be consistency across municipalities when it comes to planning frameworks.

¹²³ Ibid.

¹²⁴ The 3068 Group, *Submission 278*, pp. 5–6; Chris Sutton, *Submission 173*, pp. 1–2.

¹²⁵ Chris Sutton, *Submission 173*, p. 2; The 3068 Group, *Submission 278*, pp. 5–6.

¹²⁶ Kingston Residents Association, *Submission 221*, p. 2.

¹²⁷ Mr Peter and Mrs Rita Fellows, *Submission 14*, p. 3.

¹²⁸ Ms Patricia Carden, *Submission 124*, p. 1.

¹²⁹ Name withheld, *Submission 16*, pp. 5–6; Cardinia Shire Council, *Submission 206*, pp. 1–2.

¹³⁰ Dingley Village Community Association, *Submission 75*, p. 1.

¹³¹ Ibid., p. 2.

2.4.3 Growth and planning

A common theme throughout the Inquiry were concerns about the role of planning in managing population density and providing infrastructure to meet population growth, particularly in regard to increased urban densification.

Some stakeholders favoured growth in urban areas as infrastructure already exists there. Glen Eira City Council said this is found in Plan Melbourne—Victoria’s metropolitan planning strategy—of which it supports, as ‘[a] more compact city is more environmentally sustainable and requires less expenditure on infrastructure.’¹³²

Infrastructure Victoria agreed. It said the Victorian Government needs to ‘support more homes in priority established areas’ and called for it to:

identify new priority locations in established suburbs for residential intensification to better use existing infrastructure. Following this, in partnership with local government, review planning settings to allow increased housing density. This approach can also apply to priority locations experiencing growth in the established areas of regional cities.¹³³

However, whether existing infrastructure can sustain this growth, or whether more is needed and can be provided, was a key theme in other submissions.

South Smith Street Action Group, a residential advocacy group from Fitzroy and Collingwood, said it was witnessing ‘out of control’ population growth with no alleviating infrastructure in sight:

We say this is ‘out of control growth’ because, despite living in the state’s LGA with the second highest population density, there are thousands of new apartments being added in a very confined area, and there is absolutely no indication that there is corresponding provision of additional amenities for the local community, let alone maintenance of existing amenity, either by the council or the state government.¹³⁴

This theme was discussed in submissions from other community groups and private residents¹³⁵ as well as metropolitan councils. A number of local government submissions outlined challenges with providing infrastructure to meet growth. For City of Casey, this is a ‘significant challenge’:

[A]s one of the fastest growing municipalities in Victoria, Casey faces the significant challenge of connecting a growing population with supporting facilities, services and infrastructure. More lower-price housing is being located in areas with limited access to public transport, local jobs, and other services; this increases the costs of living and worsens health outcomes.¹³⁶

¹³² Glen Eira City Council, *Submission 207*, p. 7.

¹³³ Infrastructure Victoria, *Submission 126*, p. 3.

¹³⁴ South Smith Street Action Group, *Submission 65*, pp. 1–2.

¹³⁵ Save Kingswood Inc, *Submission 145*, p. 3; Mr Ross and Mrs Lyn Campbell, *Submission 130*, p. 2; Name withheld, *Submission 159*, p. 1.

¹³⁶ City of Casey, *Submission 154*, p. 2.

Bayside City Council said that infill development places demand on Councils and developers to provide amenity that State Government could alleviate. It submitted:

Council notes there are considerable infrastructure burdens placed on developers and Council as infill development occurs, with State authorities often playing a lesser role in infrastructure delivery. Council considers that the State Government must play a stronger role in investing in infrastructure delivery to support community outcomes.¹³⁷

Latrobe City Council also stated that population policy outlined in the Latrobe Planning Scheme needs to be ‘supported by economic growth, education and investment infrastructure (both critical and supportive infrastructure)’.¹³⁸

As a solution to urban densification, submitters discussed decentralisation—or diverting growth from Melbourne to regional Victoria.¹³⁹ However, this would require increased infrastructure¹⁴⁰ that may be difficult to provide.

Infrastructure Victoria submitted on this issue. It estimated that Melbourne’s population will increase by 3.2 million people by 2051, and if half of this growth is diverted to regional Victoria, an estimated 65,000 people will move there each year between 2017 and 2051.¹⁴¹ Infrastructure Victoria said this is ‘likely to have large consequences for infrastructure planning, costs and delivery’ as:

The infrastructure solutions for supporting major growth in regional Victoria are different to those required for infill development in Melbourne or expansion on Melbourne’s fringe. Existing infrastructure may not be well equipped to accommodate additional growth. For example, many regional Victorian towns and cities offer smaller scale infrastructure that is often more difficult to leverage, have greater transmission costs to supply energy and water, and potentially greater environmental constraints on development. It would also require a vastly different infrastructure investment program, which cannot be assumed to result in savings.¹⁴²

According to one stakeholder, the aftermath of the COVID-19 pandemic provides a good opportunity to rethink decentralisation.¹⁴³ Glen Eira City Council agreed, stating that decentralisation is ‘less well addressed’ in Plan Melbourne, but that ‘this could be an area for improvement, especially in the wake of the Covid-19 pandemic and increased digitisation of some workforces.’¹⁴⁴

Population policy, urban density and decentralisation is also discussed in Chapter 3.

¹³⁷ Bayside City Council, *Submission 134*, p. 10.

¹³⁸ Latrobe City Council, *Submission 217*, p. 4.

¹³⁹ Glen Eira City Council, *Submission 207*, p. 7; Mr Ross and Mrs Lyn Campbell, *Submission 130*, p. 2.

¹⁴⁰ Glen Eira City Council, *Submission 207*, p. 7.

¹⁴¹ Infrastructure Victoria, *Submission 126*, pp. 2–3.

¹⁴² *Ibid.*, p. 3.

¹⁴³ Name withheld, *Submission 159*, p. 1.

¹⁴⁴ Glen Eira City Council, *Submission 207*, p. 7.

Questions for consideration by a future inquiry

1. How is population policy formed, managed and coordinated across all levels of government?
 - a. How does population policy affect planning considerations in state and municipal settings?
 - b. What are the effects of current population policy and, if there are adverse impacts, how can these be negated?
 - c. Should policies of urban densification and decentralisation be pursued? What is needed to facilitate the healthy, positive implementation of these?
2. Does the *Planning and Environment Act 1987* (Vic) need to be revisited to ensure it meets the challenges of contemporary population growth?

2.5 Scope of further Inquiry

Nillumbik Shire Council submitted:

that the housing market responds to consumer needs and wants, and it is shaped by Federal, State and local regulations relating to building regulation, taxation, urban policy, zoning and social policy. For instance, housing markets must respond to Commonwealth government policies on taxation and population, and to State government policies on taxation, transport, urban consolidation, and the provision of social housing.¹⁴⁵

The Committee agrees that a number of factors impact the cost of housing and associated sub-issues. The terms of reference for this Inquiry limited the Committee to reviewing housing affordability through the protections provided within the Victorian planning framework.

However, housing affordability is complex and a number of laws, policies and economics intersect on this issue. The Committee notes the number of submissions received discussing this issue in wider frameworks than the terms of reference provides.

In light of evidence received to this Inquiry, the Committee suggests that the issues addressed in this Chapter could, independently or together, form a more fulsome terms of reference for a subsequent parliamentary inquiry.

¹⁴⁵ Nillumbik Shire Council, *Submission 10*, p. 1.

3 Environmental sustainability and vegetation protection

3.1 Introduction

This Chapter provides an overview of the key concerns raised by stakeholders in relation to environmental sustainability and vegetation protection in the Victorian planning framework. They serve as the starting points for a more thorough examination of these issues in a future, full-scale inquiry.

The terms of reference do not specify the key issues the Committee is to consider within the broader subject of environmental sustainability and vegetation protection. However, the following themes emerged as key concerns in the submissions received:

- tree and biodiversity protections
- climate change mitigation and adaptation
- protecting open space, and public open space in particular
- pursuing best value in development
- environmentally sustainable development and design (ESD)
- other issues including—
 - protecting agricultural land and food security
 - water management
 - rubbish dumping from development activities
 - ensuring environmental justice
 - Acknowledgment of Country and recognition of Traditional Owners
 - promoting the role of the community
 - Environmental Effects Statements
 - bushfire and environment management overlays
 - environmental offsetting
 - definitions of public land.

3.2 Tree and biodiversity protections

The Committee received numerous submissions that argued for the stronger protection of trees/vegetation and biodiversity in Victorian planning schemes, due to any or all of their environmental, social and economic significance. The National Trust of Australia (Victoria) said:

Significant trees and vegetation contribute environmentally, socially, and economically across Victoria. It is well known that trees can mitigate the urban heat island effect and provide health benefits to the community, as well as create healthier ecosystems with a greater diversity of species.

No urban tree should be removed unnecessarily as we face the climate crisis. The environmental services that urban trees provide are essential to sustainable, viable and liveable cities, especially in cities that face warmer temperatures and lower rainfall.¹

The critical role of trees in the fight against climate change in acting as a natural mechanism of carbon sequestration was also pointed out. On this, Dr Peter Vadiveloo said:

The climate emergency is the result of too much CO₂ in the atmosphere. The only known proven 'technology' that remove CO₂ in a widespread and cost-efficient way is trees. Therefore strong protections must be put in place to save any and all trees.²

Despite these vital functions, community members, associations and local government authorities were concerned that vegetation and biodiversity in Victoria is quickly declining as a result of land development. For example, the Surf Coast Energy Group submitted:

Victoria represents the most highly cleared state in Australia with approximately half of its former extent of native vegetation cleared for agriculture, mining and urban development since 1750. Across the 14 million hectares of private land (two-thirds of Victoria), 80% of the former extent of native vegetation has been removed, particularly grasslands, chenopod shrublands, grassy woodlands, riverine woodlands and wetlands). As a consequence of this extensive habitat loss, most native vegetation on private land is classified by the state government as either endangered, vulnerable, rare or depleted.

While broad-scale removal of native vegetation is now regulated, approximately 1200 ha of native woody vegetation and 3200 ha of grassland vegetation continues to be removed in Victoria every year, principally in threatened woodland and grassland ecosystems.³

¹ National Trust of Australia (Victoria), *Submission 129*, p. 24.

² Peter Vadiveloo, *Submission 81*, p. 1.

³ Surf Coast Energy Group (SCEG), *Submission 22*, p. 6 (with sources).

This practice gave rise to stakeholder concerns about the negative impacts on urban and suburban life. For example, Gary Vines stated:

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.⁴

A number of stakeholders linked this decline to increasing development. They argued that development was one of the leading factors that contributed to the loss of trees on a large scale. As pointed out by the Protectors of Public Land Victoria, there have been enormous changes since the adoption of *the Planning and Environment Act 1987* (Vic) (the Planning and Environment Act) that have brought in excessive development and caused widespread impact on the environment:

There is now increased use of plastics, more pollution, more deforestation and huge population increases. Additional population requires more housing, more foods, more waste disposal and more clearing of land and reducing vegetation and therefore massive effects on wildlife populations.⁵

Moreland City Council also noted the repercussions of infill urban development:

infill urban development being the key contributor to the loss of vegetation and decline of Moreland's urban forest. Currently, landscaping including tree planting occurs once the site layout has been determined, resulting in small areas of open space that can only accommodate small trees.⁶

Defenders of the South East Green Wedge similarly said, 'Our green wedge's vulnerability to development pressure has led to a continuing loss of open space, vegetation, environmental resources, biodiversity and productive farmland.'⁷

The Committee was told that developers are exacerbating this by their tactics to accelerate their projects at the expenses of environment. For example, the Dingley Village Community Association pointed out that, before application, developers often removed trees deliberately and illegally, choosing to absorb the negligible cost of fines for doing so, or they might apply to remove multiple trees individually. During the application process, developers would claim market research and advertising as community consultation, and ignore feedback from communities and councils. Following initial rejection based on local policy, they then appeal to the Victorian Civil and Administrative Tribunal (VCAT) with identical plans.⁸

Land subdivision practice was also identified as having contributed to biodiversity loss. For example, the Greater Torquay Alliance said that 'biodiversity within Victoria is

⁴ Gary Vines, *Submission 34*, p. 3.

⁵ Protectors of Public Land Victoria, *Submission 213*, p. 4.

⁶ Moreland City Council, *Submission 150*, p. 12.

⁷ Defenders of the South East Green Wedge, *Submission 195*, p. 1.

⁸ The Dingley Village Community Association (DVCA), *Submission 75*, p. 1.

being decimated to make way for large subdivisions, primarily constructed as hardstand paved areas.⁹

In addition to land development, submissions pointed out other key drivers of vegetation destruction and removal, including bushfire, fear of trees falling on private assets, and community ignorance of the ecological services provided by healthy ecosystems and vegetation.¹⁰

In contrast to a number of existing factors that caused tree and biodiversity decline, the Committee heard the Victorian planning framework only provided limited protection. For example, the Grassy Plains Network told the Committee:

Victoria's grasslands are undergoing death by a thousand cuts. Every planning decision that allows for the loss of grassland is contributing to the ongoing decline of these ecosystems. The systems that are in place are insufficient, enforcement is lacking, vision is absent. And despite considerable efforts, there is no sigh that this decline is halting. This, in turn, suggests the frameworks that should be providing the necessary protections are not adequate, or fit for purpose.¹¹

The Combined Residents of Whitehorse Action Group commented:

The State also has lofty ambitions for tree canopy and biodiversity, but its regulations and the minutiae in law and weak compliance, work against these.

Poorly regulated vegetation controls through the planning scheme contribute to poor outcomes.¹²

They added, 'there are inadequate protections for trees and especially canopy within the Planning Framework and within Council regulations.'¹³ Other stakeholders shared this view. For example, Save Kingswood noted that 'at the same time Government is trying to establish new trees, there is not enough protection for existing.'¹⁴ Another submitter said:

Engaging with the planning process, we were appalled to learn how little protection the Greater Geelong Planning Scheme provides to trees. The Scheme only protects native Victorian trees on private property, and despite provisions in the Victorian Planning Provisions, private non-native trees, regardless of their age and their value to the community, receive no protection in Geelong.¹⁵

The Committee also received submissions that identified weaknesses in the planning provisions relating to the protection of trees and biodiversity. According to Victorian National Parks Association (VNPA), the strategic planning approaches are 'essentially

⁹ Greater Torquay Alliance, *Submission 187*, p. 3.

¹⁰ Name withheld, *Submission 98*, p. 1.

¹¹ Grassy Plains Network, *Submission 148*, p. 2.

¹² Combined Residents of Whitehorse Action Group, *Submission 180*, p. 3.

¹³ Ibid.

¹⁴ Save Kingswood, *Submission 145*, p. 4.

¹⁵ Vanessa Whittem, *Submission 186*, p. 1.

reactive development controls rather than pro-active mechanisms to identify, protect, restore and reconnect habitat.¹⁶ The Council Alliance for a Sustainable Built Environment (CASBE) said that the lack of explicit recognition of canopy trees as a critical part of street planning made it challenging for delivering broader objectives around greening.¹⁷ CASBE also pointed out:

Currently relevant spatial outcomes identified in areas such as biodiversity protection are poorly integrated into planning, and there is little reference to key areas of habitat or to regional habitat linkages.¹⁸

The National Trust said that:

While a number of Councils in Victoria protect significant trees under mechanisms such as local laws and registers of significant trees, there is a lack of consistency across the state in protections.¹⁹

Some stakeholders argued that current planning schemes are human-centric and do not have adequate regard to the needs of wildlife. For example, the 3068 Group submitted:

Planning is almost exclusively human-centric, without regard to the needs of wildlife. Studies need to be done as to the effect of highrise and high density development on wildlife. It is necessary that the fact that we share this planet with other species is acknowledged, and that responsibility is taken for including the interests of wildlife in any development and in our planning legislation. There are many examples of government projects destroying trees and wildlife without the requirement of either consultation or permit, particularly recent examples during road building ... There was no requirement within the planning laws themselves to avoid this breach of the law and loss of wildlife and wildlife habitat.²⁰

Dr Ken Marriott highlighted that a lenient approach to tree removal has been adopted at both local and state government levels:

Victoria's local and state governments are still approving the removal and harvesting of ancient native forests, still allowing the removal of mature trees to facilitate higher density residential developments and not requiring effective tree replacement levels where there is no other option than to remove trees. Little appears to be underway to protect fragile marine environments.²¹

For their part, local councils identified the challenges they faced when having to reconcile competing priorities relating to environmental protection requirements. For example, the City of Greater Bendigo said:

One of the challenges facing the City relates to balancing the competing priorities of vegetation protection, bushfire management and risk, and residential growth. While

¹⁶ Victorian National Parks Association, *Submission 165*, p. 22.

¹⁷ Council Alliance for a Sustainable Built Environment, *Submission 272*, p. 3.

¹⁸ *Ibid.*, p. 3.

¹⁹ National Trust of Australia (Victoria), *Submission 129*, p. 24.

²⁰ 3068 Group, *Submission 278*, p. 9.

²¹ Ken Marriott, *Submission 47*, p. 1.

State policy regarding bushfire risk assessment is understood and necessary, the City is having difficulty in obtaining State government advice and guidance on a municipal wide bushfire risk assessment to assist with guiding the locations of residential growth and change. It is understood that other councils are facing similar issues.²²

Whitehorse City Council noted that managing community expectations was challenging:

Managing community expectations in the protection of canopy trees has been very challenging in Whitehorse with a number of community groups regularly advocating for more stringent controls and monitoring by Council²³

The Committee received a number of suggestions for measures to enhance the protection of vegetation and biodiversity on private land under Victorian planning schemes.

The Committee was told that vegetation and biodiversity on private land accounts for a significant share of Victorian ecosystems, but the protection of such landscapes is a weakness in Victorian planning framework. The Blackburn and District Tree Preservation Society noted 50% of tree canopy and vegetation is on private land, and that 'It is this land which the planning scheme impacts most.'²⁴ This was similarly emphasised by the Surf Coast Energy Group:

Given biodiversity decline is accelerating and there is a direct correlation to habitat loss on private land; there is a lot riding on private land stewardship across Victoria.²⁵

Some submitters considered that state and local governments had not done well in this area. Pointing to the City of Whitehorse as an example, Robyn Weir said:

over 1000 trees are removed annually on private land within Whitehorse with little or no attempt at administering a tree succession program. The authorities at State and local level keep shifting responsibility and either appear powerless or unwilling to act.²⁶

Local government authorities believed that gaps in the planning provisions accounted for most vegetation loss on private land. For example, Mornington Peninsula Shire submitted:

The greatest losses of native vegetation occur on private land through clearing for permitted land uses or exemptions. This results in a net loss, despite some gains achieved through protection and management, and the policy directives in the VPPs under clause 12.01-1S.²⁷

²² Greater Bendigo City Council, *Submission 284*, p. 3.

²³ Whitehorse City Council, *Submission 171*, p. 2.

²⁴ Blackburn Village Residents Group, *Submission 184*, p. 3.

²⁵ Surf Coast Energy Group (SCEG), *Submission 22*, p. 7.

²⁶ Robyn Weir, *Submission 110*, p. 1.

²⁷ Mornington Peninsula Shire, *Submission 273*, p. 14.

Port Phillip City Council pointed to the lack of regulatory strength and resources:

In relation to vegetation protection, Council's experience is that tree protection, retention and enforcement on private land is difficult, lacking the regulatory strength and resourcing for implementation.²⁸

The Grassy Plains Network discussed several gaps that indicated a 'deficiency in the planning framework.'²⁹

Another submitter argued there were insufficient protections for non-native trees on private land, regardless of their age and their value to the community, which paves the way to 'regular indiscriminate clearing of all vegetation, the perimeter trees, on entire blocks of land to facilitate easy and cost-effective access and development.' It also serves as grounds for developers to argue for the approval of applications at VCAT. They cited an example put by a lawyer in one case that:

in the absence of particular provisions in the Planning Scheme, [VCAT] cannot reject the application on the basis of tree removal and any associated heat island impacts.³⁰

3.2.1 Planning permit requirements

Stakeholders told the Committee that project proponents often tried to avoid meeting requirements for permit approval, for example by removing trees before lodging a permit application.

Mitchell Shire Council said that 'Too much canopy vegetation is being lost as it is removed prior to an application being lodged, or not thoroughly being assessed.'³¹

Bayside City Council pointed to the same problem:

Whilst there are provisions within planning schemes to manage this, the removal of trees and vegetation from a site occurs prior to a planning permit application being made, which impacts both the character, biodiversity and environmental outcomes at the site.³²

Bayside City Council noted that the problem had been worsened by the introduction of the 'VicSmart' fast-track process:

So that major developments can be completed in a shortened timeline the Victorian Planning Authority has produced a fast track program which is aimed at streamlining the approval process and removing community input with the loss of third party objection rights.³³

²⁸ Port Phillip City Council, *Submission 136*, p. 2.

²⁹ Grassy Plains Network, *Submission 148*, p. 3.

³⁰ Jeanne Nel, *Submission 194*; *ibid.*, p. 3 (with sources).

³¹ Mitchell Shire Council, *Submission 73*, p. 7.

³² Bayside City Council, *Submission 134*, p. 11.

³³ Darebin Appropriate Development Association, *Submission 88*, p. 3.

Third party objection rights are discussed in Chapter 4.

Blackburn Village Residents Group similarly pointed out that the introduction of VicSmart, which allows single tree removal applications to be assessed in 10 business days, had contributed to increasing tree loss.³⁴

Moreland City argued that works exempted from planning permits could undermine environmental protection measures:

A permit is, in many cases, not required for works near to protected vegetation. This includes significant site cut or fill, new buildings or paving that may ultimately kill the vegetation.³⁵

3.2.2 Penalties and enforcement

Stakeholders complained that penalties for illegal tree removal failed to act as an effective deterrent while enforcement was weak.

Glenelg Shire Council said that while the laws had become stricter over time, many permit applicants considered non-compliance to be the easier option:

In terms of vegetation protection the laws have over time become stricter to protect whilst allowing for some safety exemptions. For an applicant seeking to remove vegetation, most require engaging a professional arborist or ecologists. Offset then in turn can add significant costs. The intent of the laws in doing this is to reduce and minimise any vegetation which is reinforced by significant costs in removing any vegetation of strong biodiversity value.

However the process and costs in doing it the compliant manner, can create an environment where applicants perceive it easier to be non-compliant in removing vegetation without permits.³⁶

Similar sentiments were expressed in submissions from Whitehorse City Council,³⁷ Cardinia Shire Council³⁸ and several other submitters.³⁹

Blackburn Village Residents Group noted:

The impotence of the compliance and enforcement regime with weak policy, small penalties for infringement and a process that is cumbersome and costly to initiate proceeding for serious offenses resulting in small fines that rewards bad behaviour.⁴⁰

³⁴ Blackburn Village Residents Group, *Submission 184*.

³⁵ Moreland City Council, *Submission 150*, p. 12.

³⁶ Glenelg Shire Council, *Submission 163*, p. 2.

³⁷ Whitehorse City Council, *Submission 171*, p. 2.

³⁸ Cardinia Shire Council, *Submission 206*, p. 6.

³⁹ See for example: Blackburn and District Tree Preservation Society, *Submission 263*, p. 5; Colin Gridley, *Submission 91*, pp. 1-2; Janice Davies, *Submission 85*, p. 2; Name withheld, *Submission 159*, p. 3.

⁴⁰ Blackburn Village Residents Group, *Submission 184*.

Another submitter agreed that councils failed to undertake effective enforcement.⁴¹ However, Whitehorse City Council submitted that resource and process constraints made this challenging:

Monitoring and assessment of vegetation and responding to reports of illegal tree removal is resource intensive and can be lengthy process depending on the extent of illegal removal⁴²

Nillumbik Shire Council considered local officers needed greater enforcement powers:

Fines are very important in deterrence, however greater powers to authorized officers to cause cessation of unauthorised clearing of vegetation is also considered integral, particularly considering the limited ability for authorized officers to ensure the cessation of unauthorized activities whilst on-site with offenders.⁴³

Some stakeholders suggested more punitive measures to secure behavioural change. Sustainable Population Australia argued:

Penalties need to be substantially larger and supported by powerful community education and advertising to change community attitudes to wanton acts of environmental and heritage damage or destruction, with serious acts of damage/demolition defined in criminal parlance.⁴⁴

One submitter suggested more significant consequences for illegal clearing were needed:

The penalties need to match the situation. Currently they are a joke. Perhaps forfeiture of the land, meaningful fines in the range of hundreds of thousands to millions of dollars, and requirements to restore the land to its original state.⁴⁵

Nillumbik Shire Council also urged the State Government to play a more active role in enforcement:

the State government should consider whether the value of the fines are adequate for the purposes of deterring illegal works, and whether the State government should play a role rather than leaving the action to local authorities to prosecute.⁴⁶

⁴¹ Name withheld, *Submission 159*, p. 3.

⁴² Whitehorse City Council, *Submission 171*, p. 2.

⁴³ Nillumbik Shire Council, *Submission 10*, p. 16.

⁴⁴ Sustainable Population Australia (Victoria/Tasmania Branch), *Submission 160*, p. 13.

⁴⁵ Janice Davies, *Submission 85*, pp. 2–3.

⁴⁶ Nillumbik Shire Council, *Submission 10*, p. 15.

Questions for consideration by a future inquiry

1. What are the key drivers of tree, vegetation and biodiversity decline within the planning framework?
2. What measures should be added to enhance the protection of trees and biodiversity?
3. Is the protection of trees and vegetation on private land disproportionately overlooked by the planning system?
4. Can the permit application process be amended to better deter instances of illegal tree removal prior to lodging an application?
 - a. How can monitoring of compliance with permit conditions be improved after approval is granted?
 - b. Should the permit approvals be conditional on requiring developers to undertake post-completion activities such as landscaping, cleaning and refurbishment of site amenity within a reasonable period of time?
5. How can penalties better be structured to create an effective deterrent for illegal tree/vegetation removal in comparison to perceived benefits of non-compliance?
6. How can local councils be better supported and resourced to undertake enforcement and compliance activities?
7. To what extent should the State Government be involved in enforcement activities?

3.3 Climate change mitigation and adaptation

Local councils and community groups discussed the urgency of climate change and the need for it to receive greater attention in the Victorian planning system, particularly in relation to mitigation and adaptation.

CASBE submitted that climate change should be 'elevated as a central consideration in both strategic and statutory planning'. It indicated the urgent need to improve the current planning framework to ensure its climate change resilience:

We are in a state of climate emergency and need urgent changes to our planning system to support both mitigation of climate change and the implementation of adaptation strategies for new and existing communities.⁴⁷

Nillumbik Shire Council emphasised the need to 'acknowledge climate change within the planning system'. It said that 'There is a need for the [Planning and Environment Act] to consider the effects of and contributors to climate change and to mitigate

⁴⁷ Council Alliance for a Sustainable Built Environment, *Submission 272*, pp. 2, 4.

the environmental, social and economic effects of climate change and any emerging planning issues'.⁴⁸

Many stakeholders concurred with this view.⁴⁹ While Mitchell Shire Council stressed the need for measures to avoid future impacts:

The Planning Scheme provides measures to adapt to the risks of climate change but falls short in measures to avoid future greenhouse gas emissions. There should be greater and stronger policy guidance to avoid and mitigate emissions and adapt to the negative impacts of climate change.⁵⁰

Several local councils illustrated actions being undertaken to combat climate change. For example:

- City of Kingston declared a Climate and Ecological Emergency in January 2020 and adopted a Climate and Ecological Emergency Response Plan (CEERP) in July 2021, seeking to achieve net zero greenhouse gas emissions in the community by 2030.⁵¹
- Mornington Peninsula Shire adopted *Council and Wellbeing Plan 2021–2026*, which details a commitment to tackling climate change at a time when a Climate Emergency has been declared, calling for immediate and urgent action to reverse global warming.⁵²

The Municipal Association of Victoria (MAV) pointed out that buildings are one of the channels through which the planning system can aid in the mitigation of and adaptation to climate change:

Our building stock is a significant source of emissions, both through construction and in operation. The planning system can also increase our resilience to climate change through promotion of a healthy built and natural environment. Both the planning and building regulatory systems should explicitly pursue a goal of net zero emissions.⁵³

To ensure the enforceability of planning schemes in the context of climate change, the MAV suggested that:

The Victoria Government advocates for stronger climate change considerations in National Construction, and unilaterally implement reforms through Victorian building regulations if necessary.⁵⁴

In addition, the MAV offered several tools within the planning framework to cope with climate change induced problems, such as 'Ministerial intervention to apply appropriate

⁴⁸ Nillumbik Shire Council, *Submission 10*, p. 13

⁴⁹ Municipal Association of Victoria, *Submission 268*; Scale It Down - Protect Brunswick Parks, *Submission 271*; Nepean Conservation Group, *Submission 267*, p. 4; Sally Clarke, *Submission 141*, p. 1.

⁵⁰ Mitchell Shire Council, *Submission 73*, p. 7.

⁵¹ Kingston City Council, *Submission 280*, p. 3.

⁵² Mornington Peninsula Shire, *Submission 273*, p. 10.

⁵³ Municipal Association of Victoria, *Submission 268*, p. 7.

⁵⁴ *Ibid.* p. 7.

planning controls in planning schemes to manage sea level rise, inundation and flooding risk based on the best available data and science.⁵⁵

Stakeholders identified several shortcomings in the current planning framework in responding to climate change. Victoria Greenhouse Alliance and Council Alliance for Sustainable Built Environment said in their joint submission that:

Local government in Victoria has identified a disconnect between high level policy positions on climate change, both by State and local government, and the day-to-day decisions that are being made through the planning system.⁵⁶

Nillumbik Shire Council highlighted the gap between policy objectives and actual implementation:

There is a distinct disconnect between policy objectives in the Planning Policy Framework in regard to climate change, and actual implementation tools within planning schemes.⁵⁷

Bayside City Council noted:

A key gap within the *Planning and Environment Act 1987* is its undeniable weaknesses in relation to its lack of climate change action, environment protection and regulation. Whilst there are tools within the Victoria Planning Provisions that enable local environmental outcomes to be considered, these are consistently overlooked in favour of the objectives of the Act to facilitate development, as the environmental outcomes at the micro scale are often insignificant, allowing this to be overlooked or given lesser weight.⁵⁸

CASBE pointed to problems with ad-hoc recognition in individual planning schemes of issues that spanned more than one municipality:

Habitat corridors are recognised as a key component in building resilience of the natural environment in the face of climate change. Work has been undertaken in identifying key habitat corridors, at both a local and regional scale. However, these rarely find their way into Planning Schemes, other than on an ad-hoc basis at a municipal scale. This is not compatible with the delivery of such linkages which generally extend beyond a municipal scale and require overall connectivity to achieve their intended purpose⁵⁹

Jesuit Social Services suggested:

One pathway to improving decision-making processes and outcomes is to strengthen the alignment between planning and climate change legislation. Despite specific clauses in the Victorian Planning Provisions that require the consideration of climate

55 Ibid., p. 7.

56 Victorian Greenhouse Alliances and Council Alliance for a Sustainable Built Environment, *Submission 276*, p. 1.

57 Nillumbik Shire Council, *Submission 10*, p. 13.

58 Bayside City Council, *Submission 134*, p. 11.

59 Council Alliance for a Sustainable Built Environment, *Submission 272*, p. 3.

change, amending the Climate Change Act 2017 (Vic), to include the Planning and Environment Act 1987 as a Schedule 1 listed statute is an important step in strengthening decision-making.⁶⁰

3.3.1 Urban heat island effect

Submissions to the Inquiry argued the urban heat island effect has become an emergency issue in urban environments. Urban heat island effects were said to pose ‘considerable heat-related health risks for residents, combined with increased energy costs (for example, air conditioning), and water consumption.’⁶¹

Moreland City Council described the experience of a high urban heat island effect in its municipality:

Detailed analysis of Moreland’s UHIE [urban heat island effect] vulnerability has found that there is a high number of extremely hot areas and with very few cool places, where during heatwaves most parts of Moreland can be four to seven degrees warmer than surrounding areas. The analysis highlighted that Moreland has a community that is vulnerable to this heat due to the increased amount of hard surfaces that absorb and radiate heat, limited vegetation to shade and cool, heat production from machines and activities and air pollution creating local greenhouse effects.⁶²

It suggested:

There is a need for the planning system to better ensure protection of vegetation and elevate the importance of existing and new vegetation in residential development. This should form part of any review of ResCode.⁶³

Some stakeholders highlighted practices that exacerbated the urban heat island effect, such as:

- replacement of detached houses with multiple occupancy dwellings
- loss of gardens due to allowance of tiny amounts of private open space under planning and building codes
- an imbalance of expansive built form and healthy green vegetation
- thermal inequality arising from disproportionate outer suburban developments compared to inner suburbs.⁶⁴

⁶⁰ Jesus Social Service, 204, p. 3.

⁶¹ Jeanne Nel, *Submission 194*, p. 10.

⁶² Moreland City Council, *Submission 150*, p. 12.

⁶³ *Ibid*, p. 12.

⁶⁴ Alison Pridham, *Submission 189*, p. 1; Ruskin Park Residents Action Group, *Submission 122*, p. 6; 3068 Group, *Submission 278*, p. 10.

Many community members believed planning schemes failed to mitigate urban heat islands effect. Scale It Down: Protect Brunswick Parks highlighted the discretionary and ambiguous nature of planning scheme controls:

Aside from apartment development 'landscaping' there is no specific urban heat policy or standards that address the underlying causes of this heating.⁶⁵

Walk in St Kilda Road and Environs linked the urban heat problem with inadequate tree protection. It argued green infrastructure, including trees, canopy, grass, bush and nature played an important role in mitigating the urban heat island effect, but this has not been adequately acknowledged and implemented.⁶⁶

Scale It Down – Protect Brunswick Parks suggested 'developing effective policies and planning standards to address the build form's contribution to the urban heat island effect' and using mitigation strategies 'such as selection of tree species and building materials, orientation choices, a greater proportion of permeable land to built form, and appropriate colour palette to minimise heat load should be implemented.'⁶⁷ It explained:

Landscaping, in this context, is not just aesthetic but serves a critical function that includes the retention of existing trees and careful placement of new canopy trees, thereby increasing urban forest to mitigate urban heat island effects.⁶⁸

Local councils likewise indicated strong support for future changes to planning policy to address the issue. For example, the City of Kingston stated:

Council supports any future changes to the [Victoria Planning Provisions] that would contribute to urban cooling, increased protection of existing canopy trees and an increase in new tree canopy provided this does not limit Council's ability to introduce more ambitious targets and objectives through new Local Planning Policy in the future.⁶⁹

3.3.2 Rising sea level

Stakeholders also called for the planning framework to better respond to rising sea levels. Infrastructure Victoria pointed out the need to plan for and respond to the risks facing Victoria's coastline. It submitted:

land use and infrastructure planning is necessary to prepare for increased flooding and erosion as a result of sea level rise and storm surges.

Victoria's planning schemes has an important role to protect communities by ensuring development does not occur in places facing extreme risk of coastal hazards. Victoria's coastal planning framework should be supported by climate scenarios. These scenarios may show some coastal areas face serious challenges supporting future habitation.

⁶⁵ Scale It Down - Protect Brunswick Parks, *Submission 271*, p. 5 (with sources).

⁶⁶ Walk in St Kilda Road and Environs, *Submission 286*, pp. 24-25 (with sources).

⁶⁷ Scale It Down - Protect Brunswick Parks, *Submission 271*, p. 5 (with sources).

⁶⁸ Ibid., p.5 (with sources).

⁶⁹ Kingston City Council, *Submission 280*, p. 4.

Under these conditions, land use and infrastructure planning for Victoria's coasts should provide clear guidance on when to invest in engineered or environmental infrastructure solutions, or when to plan for retreat.⁷⁰

Mornington Peninsula Shire noted its partnership with the Department of Environment, Land, Water and Planning (DELWP) on a study into the impacts and management of predicted sea level rise. It has adopted the *Western Port Coastal Villages and Surrounding Settlements Strategy*, prepared by Ethos Urban in 2019, which 'provides a framework with associated implementation actions to respond to coastal climate change impacts (specifically inundation and erosion) whilst protecting and enhancing township character in response to pressures for change.'⁷¹ Mornington Peninsula Shire argued this example highlights the need for leadership and/or appropriate funding, resourcing and support from the State Government to pursue more long-term, rigorous adaptation plans to respond to the challenges of the sea level rise.⁷²

Questions for consideration by a future inquiry

1. Are key risks associated with climate change adequately identified and addressed within the planning framework?
2. Are there sufficient measures and controls to mitigate the risks of climate change and to facilitate adaptation to it within the planning framework?
3. Are the issue of urban heat island effects and rising sea levels adequately addressed within the current planning framework?

3.4 Pursuing best value in development

Many submissions addressed the question of how the balance between development and environmental sustainability is dealt with under the Planning and Environment Act. There was a dominant view that planning provisions prioritised development over environmental considerations to a disproportionate extent.

The Planning Institute of Australia (PIA) Victoria told the Committee that 'the 'sustainability' of development is frequently not given sufficient weight when balanced with other objectives of the planning system in Victoria.'⁷³

The National Trust's Mornington Peninsula branch noted:

In practice, in the face of pressure to allow development, the concept to preserve and protect older trees that offer fauna habitat, seems to be poorly accepted by government, both local and state.⁷⁴

⁷⁰ Infrastructure Victoria, *Submission 126*, pp. 4–5.

⁷¹ Mornington Peninsula Shire, *Submission 273*, p. 10.

⁷² *Ibid.*, pp. 10–11.

⁷³ Planning Institute of Australia (Victoria), *Submission 169*, p. 4.

⁷⁴ National Trust of Australia (Mornington Peninsula Branch), *Submission 52*, p. 3.

Nillumbik Shire Council said that facilitating development compromised the objectives of the Planning and Environment Act:

Development, particularly in Nillumbik, is often as-of-right so there is limited opportunity for the application of the objectives of the P&E Act including providing for sustainable development; providing for the protection of natural and man-made resources; and maintenance of ecological processes and genetic diversity.⁷⁵

One submitter argued that the planning framework subordinated environmental issues in favour of development:

Despite policy good intentions, environmental sustainability remains a subordinate consideration that is often disregarded. The triple bottom line, that is, economic, social and ecological “balance”, an arbitrary concept borrowed from business accounting, is an hierarchical proposition: never a level playing field. The VPPs priority is to facilitate development of “land”... the “conservation of land” as defined in the Act privileges human activities over environmental sustainability. and, as even a cursory analysis of planning permit approvals shows, ecological assets are generally sacrificed.⁷⁶

The Mornington Peninsula National Trust also pointed out that biodiversity protection was subordinated to development in different aspects of the planning process:

it appears that the protection of finite natural heritage: indigenous flora, biodiversity and significant landscape, is of little importance, (especially when offsets are available), in comparison with fire management regulations, farm management plans and often very large dwelling proposals.⁷⁷

It further argued that VCAT failed to provide a layer of protection because it was where ‘local regulations are discounted’ and in many cases, communities had to rely on volunteer groups to protect environmental values.⁷⁸

Another stakeholder observed that the environment was not given equal priority in planning practice, through the composition of Panels Victoria, VCAT, and the Great Ocean Road Regional Standing Committee (GORRSAC) whose members ‘appear to be mostly planners, architects and engineers, with rare mentions of environmental qualifications.’⁷⁹

One submitter considered local government authorities were also more likely to prioritise development over environmental considerations:

Often planning appears to be informed by the financial position of the local government or the political makeup of the elected councillors. Do they want to encourage development to increase their ratepayer base or discourage development? ...

⁷⁵ Nillumbik Shire Council, *Submission 10*, p. 11

⁷⁶ Jane Hildebrant, *Submission 26*, p. 5.

⁷⁷ National Trust of Australia (Mornington Peninsula Branch), *Submission 52*, p. 4.

⁷⁸ *Ibid.*, p. 5.

⁷⁹ Name withheld, *Submission 68*, p. 1

Some councils have a tendency to prioritise high density development, particularly for infill, without considering the other planning and larger environmental issues.⁸⁰

The Defenders of the South East Green Wedge pointed out:

Developers and their customers argue that projects bring desirable employment and economic benefits, but their cost-benefit calculations never consider, let alone factor in, the significant net loss of benefits to the natural environment and the community. Melbourne's increasing urban sprawl, losses of tree cover and climate change will further negatively impact on the health of the community with consequent costs that have never been considered.⁸¹

The Baw Baw Ratepayers Association suggested that how the principle of housing affordability was dealt with in the planning system provided cover for developers to ignore environmental concerns:

Developers have championed the ideal of housing affordability and the access to housing for first home buyers. This ideal is to the detriment of any environmentally sustainable design directives that are clearly absent in the Victorian Planning Provisions. This has resulted in Estates being developed in a manner which takes little account of the topography, does not value the landscape and vistas, and fails to retain or maintain the local natural environment.⁸²

However, the HIA noted that achieving a balance between affordable housing and minimising environmental impact was a challenging task:

Achieving a sensible balance between the need to construct and renovate homes at an affordable cost and in an efficient manner, whilst minimising the impact on the environment, is an ongoing challenge for the residential construction industry.

HIA is mindful that aggressive canopy cover targets such as "a minimum 30%" across Metropolitan Melbourne with the "majority" to come from private land, will undermine the city's capacity to house an estimated 9 million people by 2056.

Planning policy should prioritise the supply of diverse and affordable housing with reasonable consideration to minimising the environmental impact and urban heat reduction. Regulatory reform should not overcompensate for new canopy trees on private land via planning permits that restricts full development potential allowable⁸³

Other submitters argued:

- there should be a hierarchy that prioritises the environment and communities over detrimental impacts of development
- over-emphasising development of units and high-rise buildings had led to huge loss of trees and vegetation

⁸⁰ Vanessa Whitem, *Submission 186*, p. 6.

⁸¹ Defenders of the South East Green Wedge, *Submission 195*, p. 2.

⁸² Baw Baw Ratepayers Association, *Submission 59*, p. 4

⁸³ The Housing Industry Australia, *Submission 11*, pp. 11–12.

- planning policies supporting medium density housing have contributed to the erosion of the liveability of Melbourne suburbs.⁸⁴

The Brunswick Resident's Network considered that failing to resolve the conflict between supporting development and minimising environmental impact generated frustration in the community and caused uncertainty, delay and extra costs to building industry, resulting in economic and social costs to the economy as a whole.⁸⁵

Questions for consideration by a future inquiry

1. Does the planning framework strike the right balance between development and environmental considerations?
2. How is 'best value' in development currently determined?
 - a. Should this be reviewed?

3.5 Environmentally Sustainable Development/Design (ESD) standards

Planning controls currently under development include new policies and standards to be introduced to the VPP and planning schemes to improve the sustainability of building and subdivision developments in Victoria through the use of ESD standards. To strengthen the requirement of sustainable development, DELWP has set out key areas for ESD reform in its 2020 *Environmentally sustainable development of buildings and subdivision: A roadmap for Victoria*.

Among other things, submitters noted the roadmap acknowledges the significance of green infrastructure (parks, gardens, trees, backyards, green roofs and walls and rain gardens). It also aims to minimise the detrimental impact of development on the natural environment through improving the environmental performance and design of buildings.⁸⁶

However, according to the Scale It Down - Protect Brunswick Parks, these objectives are difficult to implement in practice due to the discretionary and ambiguous nature of planning scheme controls. They argued this should be fixed with stronger protections in planning schemes, including:

Consistent Environmentally Sustainable Design (ESD) measures assessed and implemented with rigour in new developments to provide sustainability into the future.⁸⁷

⁸⁴ Name withheld, *Submission 68*, p. 1; Name withheld, *Submission 253*, p. 1; Chris Sutton, *Submission 173*, p. 2.

⁸⁵ Brunswick Residents Network, *Submission 60*, p. 3.

⁸⁶ Council Alliance for a Sustainable Built Environment, *Submission 272*, p. 2; Mornington Peninsula Shire, *Submission 273*, p. 8; Walk in St Kilda Road and Environs, *Submission 286*, p. 7.

⁸⁷ Scale It Down - Protect Brunswick Parks, *Submission 271*, p. 5.

According to Scale It Down - Protect Brunswick Parks, ESD standards are largely voluntary and self-assessed in the current planning framework. The Nationwide House Energy Rating Scheme (NatHERS) and the National Australian Built Environment Rating System (NABERS) are the only two mandatory compliances done through energy rating and applied only to building envelopes.⁸⁸

Furthermore, the planning provisions were said to lack some key concepts essential to pursue sustainable development. Australian Planners submitted:

The Act does not define 'net community benefit' nor is it defined within the VPPs – but it is a key decision criteria for planning decisions. Climate, biodiversity, health, equity should be strongly valued in a new definition of net community benefit. Defining this is an opportunity for the current system to align with United Nations Sustainable Development Goals.⁸⁹

Environmental protection measures set out in planning permits are also not necessarily reflected in building permits. Moreland City Council pointed to a 2020 research that looked at how endorsed ESD measures are transferred from planning permit documentation through to building permit documentation and into construction stage. It found that:

In total 952 endorsed Planning Permits, associated plans and ESD [environmentally sustainable design] documents were assessed against relative building permit documentation received between December 2018 and September 2020. It was found that approximately 55% of ESD features in the Planning Permit were non-compliant in the Building Permit documentation, due to excluded ESD features (this was the biggest contributor, accounting for 76.1% of the ESD non-compliances), reduced or down-graded ESD features or missing details.⁹⁰

In addition, there was lack of effective post-approval monitoring of developer compliance with planning permit conditions. For example, the Darebin Appropriate Development Association told the Committee:

Council, to some extent, relies on neighbours to notify and request an enforcement officer to inspect completed developments to ensure the completed development complies with the approved proposal. Relying on private building inspectors to enforce approved building and development requirements has been a massive failure in ensuring appropriate oversight of the building and development industry and adequately protecting consumers and residents from poor livability (sic) outcomes.⁹¹

⁸⁸ Ibid., p. 5.

⁸⁹ Australian Planners Declare, *Submission 172*, p. 3.

⁹⁰ Moreland City Council, *Submission 150*, p. 9.

⁹¹ Darebin Appropriate Development Association, *Submission 88*, p. 2.

Action 80 of *Plan Melbourne 2017–2050* to review planning and building systems to support environmentally sustainable development outcomes for new buildings received strong support from local councils,⁹² while PIA Victoria submitted:

PIA supports the implementation of Environmentally Sustainable Design (ESD) in the Victorian planning system. We believe that many of the objectives and strategies required to underpin the delivery of ESD in Victoria are already embedded in the PPF, providing a strong foundation.⁹³

However, some councils were concerned that introduction of ESD standards at the state level had been delayed. The MAV stated:

While we understand that DELWP is progressing the ESD Roadmap, this has been delayed and early consultation material from this project indicates that new state-wide standards may not meet many councils' adopted positions and targets for ESD. In this case, councils will still need to pursue their own planning scheme amendments to elevate the ESD requirements. We urge the government to pursue ambitious ESD standards in the planning system.⁹⁴

Given this delay, some councils had taken action at a local level. Moreland City Council told the Committee that since 2018, several councils across Victoria 'have sought to improve the current ESD outcomes and requirements detailed in their relevant Planning Scheme' and that it, along with 30 other councils, was pursuing a joint Planning Scheme Amendment in 2022 to 'seek to pursue embedding the necessary changes to improve ESD outcomes and progress zero carbon development within the built environment.'⁹⁵ Other councils submitted that they were also developing an ESD policy at the local level with the support of CASBE.⁹⁶

Monash City Council noted:

Limited action by the State Government to implement ESD policy into the Victorian planning system has led to individual Councils developing a process and introducing their own planning provisions that although similar vary slightly between municipalities.⁹⁷

While Bayside City Council stated:

Council has been advised by DELWP that it is best to prepare its own local policy position as there is not clarity on how long it may take for a state approach to be implemented- this is an extremely poor outcome that requires immediate resolution. It is frankly unacceptable that there is not yet state action in this space.⁹⁸

⁹² See for example Maribynong City Council, *Submission 18*, p. 4; Whitehorse City Council, *Submission 171*, p. 2.

⁹³ Planning Institute of Australia (Victoria), *Submission 169*, p. 4.

⁹⁴ Municipal Association of Victoria, *Submission 268*, p. 7.

⁹⁵ Moreland City Council, *Submission 150*, p. 10.

⁹⁶ For example, Boroondara City Council, *Submission 53*; Mitchell Shire Council, *Submission 73*; Stonnington City Council, *Submission 131*.

⁹⁷ Monash City Council, *Submission 71*, p. 3.

⁹⁸ Bayside City Council, *Submission 134*, p. 12.

Several councils strongly urged the introduction of the ESD standards at the state level as integrating standards into the VPP would save every council from having to amend its own planning scheme.⁹⁹ Monash City Council said that:

A consistent approach would provide greater certainty for the development industry and community, and better economies of scale reducing costs in both ESD assessment, and in development. ESD measures are needed to support a low carbon, low impact approach to development.¹⁰⁰

Councils also pointed out problems of implementing ESD standards at a local level, including limited resources and expertise of individual councils¹⁰¹ and inconsistent application of ESD policies across the State.¹⁰² Whitehorse City Council also said:

To date, the introduction of ESD standard in planning schemes has largely been the responsibility of local councils, which considering the scale of the issue it is attempting to mitigate, is inadequate and an unreasonable impost on councils.¹⁰³

CASBE called for strong State Government leadership in implementing the ESD requirements:

CASBE councils have worked for many years to introduce Environmentally Sustainable Development (ESD) requirements in planning through local policy. While this has successfully resulted in changes to the built environment, ESD requirements in the Planning Scheme need strong state government leadership.¹⁰⁴

[...]

We note that early consultation with the State Government suggests that targets being proposed in the ESD Roadmap may not meet the targets being proposed by our leading-edge research. We call on the State Government to implement a strong baseline of Environmentally Sustainable Development (ESD) through the planning system, while maintaining the ability for communities to continue to innovate to advance best practice in their own planning schemes.¹⁰⁵

The HIA raised concerns that introduction of ESD requirements into planning approvals was not suitable for several reasons:

- ESD requirements involve building fabric, stormwater management, energy usage, greenhouse gas emissions etc., which are often not settled and therefore not able to be assessed at the planning stage.
- Statutory planners are not trained to properly assess ESD issues.

⁹⁹ Maribynong City Council, *Submission 18*, p. 4; Stonnington City Council, *Submission 131*, p. 5; Bayside City Council, *Submission 134*, p. 12.

¹⁰⁰ Monash City Council, *Submission 71*, p. 3.

¹⁰¹ Municipal Association of Victoria, *Submission 268*, p. 7.

¹⁰² Mornington Peninsula Shire, *Submission 273*, p. 8.

¹⁰³ Whitehorse City Council, *Submission 171*, p. 2.

¹⁰⁴ Council Alliance for a Sustainable Built Environment, *Submission 272*, p. 2.

¹⁰⁵ Municipal Association of Victoria, *Submission 268*, p. 7; Council Alliance for a Sustainable Built Environment, *Submission 272*, p. 2.

- Many of these aspects are regulated by the National Construction Code, therefore subject to a separate review, including them in planning schemes causes duplication and wastage.¹⁰⁶

Rather, the HIA argued:

In considering the role ESD and canopy trees play in mitigating against the urban heat island effect, planning policy should not compromise the supply of diverse and affordable housing that must safely co-exist with canopy trees for the long term. The NCC and not the planning system is the preeminent tool to determine ESD built form outcomes.¹⁰⁷

Questions for consideration by a future inquiry

1. How can consistent ESD standards be most effectively embedded in the current planning framework?
 - a. What is the implementation timeline for implementation of proposed standards to the VPP?
2. Where ESD standards overlap with the National Construction Code, how can this best be managed?

3.6 Other issues

3.6.1 Protecting open space, especially public open space

The role of public open space as a factor of liveability was raised in numerous submissions. Stakeholders acknowledged the role of open space in contributing to quality of life, well-being and social connection. For example, VicHealth stated:

Proximity to open space, such as being within walking distance of open space and sports and recreation facilities, increases use of these spaces and fosters better social connection with the community through repeated use. Physical activity opportunities, such as access to open space, can have beneficial effects on anxiety, depression and self-esteem. Group-based physical activity programs and sport can also foster social connection.¹⁰⁸

This was echoed by Jesuit Social Services:

At the individual level, green and open public spaces are important for a host of reasons, for socialising, physical activity and countless other forms of rest, fitness and recreation that promote health and well-being. Green spaces and increased vegetation are critical

¹⁰⁶ Housing Industry Association, *Submission 11*, pp. 13-14.

¹⁰⁷ *Ibid.*, p. 4.

¹⁰⁸ VicHealth, *Submission 142*, p. 4 (with sources).

to enhance and protect biodiversity, keep cities cool in an era of intensifying heat, and reduce environmental risks, such as air pollution.¹⁰⁹

Submitters considered that open space had become more valuable in the face of population growth and development. Infrastructure Victoria noted that public open space provides open space and vegetation for cooling and greening, which are increasingly significant when population growth and development are reducing private open space.¹¹⁰

Monash City Council said:

The population of Melbourne is growing, and there is a shift to higher density living. Higher density development needs to be balanced with green open space (public, communal and private) and enhancements for the benefit of residents in the long term, and to keep the city cool and green, and support our urban biodiversity.¹¹¹

However, the Surrey Hills and Mont Albert Progress Association expressed concern that public open space was often sacrificed for infrastructure projects:

Public open space continues to be an easy casualty for the government to advance infrastructure projects.

Even with the Suburban Rail Loop (SRL East) that is primarily an underground orbital rail link, there is a heavy loss of public open space, including significant trees.¹¹²

Darebin Appropriate Development Association pointed out that public open space was facing decrease both in quantity and quality:

Both quantity and quality of open space, whether private or shared, have not been adequately provided in development in Darebin. Council's own research has shown that in the future 18% of new developments need to provide open space to make up for the lack across the local government area.¹¹³

In addition, the Committee heard about unequal access to public open space. For example, VicHealth noted:

Public open spaces in neighbourhoods with high socioeconomic advantage tend to be of higher quality than those in more disadvantaged neighbourhoods in terms of amenities and aesthetics (such as picnic areas, availability of shade, water features and walking and cycling paths). In addition, more disadvantaged areas are less likely to have well-maintained sports facilities or a volunteer base to run or support sports programs or clubs.¹¹⁴

¹⁰⁹ Jesuit Social Services, *Submission 204*, pp. 2–3.

¹¹⁰ Infrastructure Victoria, *Submission 126*, p. 3.

¹¹¹ Monash City Council, *Submission 71*, p. 3.

¹¹² Surrey Hills and Mont Albert Progress Association, *Submission 135*, p. 2.

¹¹³ Darebin Appropriate Development Association, *Submission 88*, p. 3 (with sources).

¹¹⁴ VicHealth, *Submission 142*, p. 4 (with sources).

Stakeholders attributed the decrease in quantity and quality of public open spaces to the unclear and uncommitted open space strategy in the planning framework.

To develop public open space, local councils rely on developers' open space contribution. However, Infrastructure Victoria noted that regulation in this area was outdated and in need of review:

Currently, planning laws allow local councils to specify open space contributions when developers subdivide land, to compensate for reduced private open space in subsequent residential densification. These were adopted in 1966, but have never been reviewed by the Victorian Government. A 2008 Victorian Government Parliamentary Inquiry recommended developing more effective, enforceable and transparent developer open space contributions, and ensuring cash-in-lieu contributions are used to both buy and improve open space.¹¹⁵

And in practice, local government authorities are struggling to secure adequate open space in their areas. Kingston City Council was concerned about 'the tension it sees between retaining areas of open space and accommodating its share of population increase'.¹¹⁶ While Darebin City Council stated:

Darebin Council, like a number of other LGA's, has struggled to gain approval for an 18% open space levy in the proposed planning scheme amendment. Planning Panels of the Department of Environment, Land, Water and Planning have so far rejected any LGA that asks for more than 5% open space requirement in planning proposals. This will result in an inability to make up already lost open space capacity and loss of livability and further degradation of some northern suburbs.¹¹⁷

The VNPA noted the significance of open space is acknowledged in the Victorian Government's *Plan Melbourne* strategy that, under Action 93 sets out the task of preparing 'an open space strategy that enhances recreation, amenity, health and wellbeing, species diversity, sustainable water management and urban cooling across Melbourne.' However, it noted 'Even though Plan Melbourne has been in place for six years, there is still no comprehensive open space strategy for Metropolitan Melbourne'. The VNPA submitted:

The park or open space plan in Plan Melbourne (see Map 20), provides no real differentiation between open space for active or passive recreation use and is in some instance plainly wrong—for example classifying large areas of the Yarra Ranges as simply public open space, when most of it is a closed water catchment (for water quality purposes) with no public access.¹¹⁸

¹¹⁵ Infrastructure Victoria, *Submission 126*, p. 4 (with sources).

¹¹⁶ Kingston City Council, *Submission 280*, p. 7.

¹¹⁷ Darebin Appropriate Development Association, *Submission 88*, p. 3 (with sources).

¹¹⁸ Victorian National Parks Association, *Submission 165*, pp. 43–44 (with sources).

Questions for consideration by a future inquiry

1. Does planning policy provide suitable targets for public open space?
 - a. Are adequate standards for public open spaces (e.g. tree canopy percentage, amenities, accessibility) included in the planning framework?
2. Is the retention of public open space adequately prioritised within the planning framework, especially in relation to public infrastructure, commercial and residential developments?
3. Do current funding mechanisms ensure sufficient resources for developing public open space?
4. How is the principle equal access to public open space recognised and implemented under the planning framework?
 - a. How can access to public open space be ensured for communities that experience disadvantage in this area?
5. What measures to enhance private open space should be incorporated in the planning framework?
6. Do the planning provisions set out clear and appropriate measures for the Victorian Government, local councils and developers to enhance public open space?

3.6.2 Protecting agricultural land and food security

Stakeholders told the Committee that agricultural land and the associated issue of food security was another issue subject to unequal treatment in the current planning framework. The Victorian Farmers Federation (VFF) pointed out how planning approaches have shifted focus:

Over the decades the focus of the planning system has become increasingly urban. Even the terminology used has changed from *town and country* planning, to *urban* planning.

Ten years ago, the planning system was changed significantly without consultation or discussion in the amendment documentation. Agriculture was taken out of industry/economic development and placed in natural resources with water. This has had significant repercussions regarding the operation of planning and matters that are taken into consideration, even to the point of tourism being given preference in the Farming Zone at VCAT at the expense of agriculture, due to the fact tourism is considered an economic development good.¹¹⁹

¹¹⁹ Victorian Farmers Federation, *Submission 158*, p. 3.

The VFF were of the view that landscape overlays/controls are used to exert unintended consequences on agricultural land. By way of example it noted that following Yarra Ranges Council introduction of landscape overlays, the VFF had to seek changes to the VPP. It argued:

Poorly drafted landscape controls can lead to unnecessary planning controls, such as permits for ploughing or making it difficult to develop a machinery shed. Location and size can be restricted due to visual concerns, and design features are required which make the cost prohibitive.¹²⁰

It further argued:

The covid era has highlighted how critical local agriculture is to our state economy, its resilience and our food security. For too long planning has seen agriculture as vacant land waiting for a better use. Controls designed for urban areas are applied, making it difficult to continue existing use. There is no guidance on how to promote agriculture or consider land use conflict, despite the rural/ farming zones being the predominant land use in Victoria.¹²¹

The VFF urged that ‘the administration of planning and heritage return to an equitable focus on urban and rural issues’ and emphasised a need to protect agricultural land:

It is critical changes are made to the planning system to support the retention and growth of agriculture in Victoria. Repeated failures to address or consider these matters, in response to consultation or in preparation of documents such as this, reinforces industry belief that there is an urban bias in the planning system that sees farming land as vacant or awaiting an urban use, or providing amenity and ecosystem services for towns.¹²²

The Green Wedge Coalition was of a similar view, stating ‘The importance of protecting agricultural land has been undermined in a range of planning applications’. It submitted:

Our Coalition also supports the need to protect sustainable agricultural land, as proposed in the Planning for Melbourne’s Green Wedges and Agricultural Land project. We note that farmers often keep a bush block for its biodiversity value and that they find this enhances productivity.¹²³

120 Ibid., p. 10.

121 Ibid., p. 11.

122 Victorian Farmers Federation, *Submission 158*, pp. 2, 3–4.

123 Green Wedges Coalition, *Submission 127*, pp. 4, 15.

Questions for consideration by a future inquiry

1. Do provisions in the planning framework treat land use for agriculture unequally in comparison to other types of land use?
2. Is the use of land for agriculture appropriately supported in planning schemes?
3. How is the sustainable development of agriculture addressed under planning schemes in relation to climate change mitigation and adaptation?

3.6.3 Water management

The need to better address water management in the planning system was addressed by a number of local councils.

Kingston City Council identified the need to make ‘changes to the VPP which strengthen or elevate water management considerations in planning decisions’.¹²⁴ Port Phillip City Council stated that protecting the health of waterways is an important aspect of environmental protection.¹²⁵ While Moreland City Council emphasised the importance of protecting waterways:

Many of Victoria’s waterways are shared resources. They traverse multiple municipalities and are managed by a range of public authorities. The fauna and flora occupying the creek valleys and the people enjoying them value the area as a whole.

The valleys are important from an environmental, recreational, scenic and stormwater management perspective.¹²⁶

Moreland City Council further stated ‘there is no planning scheme control which adequately addresses this range of issues.’ It called for a unified waterway corridor control with the State Government taking leadership:

We believe that a waterway corridor control which includes objectives in relation to each of these aspects would benefit Victoria’s waterways. In addition, a unified control has more benefit than a range of disparate ones. The new Yarra (Birrarung) River Corridor planning controls also reflect this approach.

We ask that the State Government take a leadership role in developing a control and applying it to key waterways.¹²⁷

¹²⁴ Kingston City Council, *Submission 280*, p. 4.

¹²⁵ Port Phillip City Council, *Submission 136*, p. 3.

¹²⁶ Moreland City Council, *Submission 150*, p. 12.

¹²⁷ *Ibid.*, p. 12.

City of Port Phillip identified key factors that are required to secure successful protection of waterways, including:

- the ability for Council to retain local Water Sensitive Urban Design policies in the long term
- a need to extend stormwater management planning requirements beyond local governments to other authorities with stormwater responsibilities (such as VicRoads and VicTrack)
- enhancement of integrated water management policy to enable better flood management in the private realm, including techniques to improve permeability and onsite detention.¹²⁸

Another submitter raised the issue of inadequate surveillance and regulation relating to the impact of developments on ground water:

The loss of permeable land may well impact on our ground water. Why is no one researching the impact of basements (often 2- 3 storeys deep) across the suburbs? Many towns are built on marshes and heaths with water tables quite close to the ground surface. Local Council says the ground water is not their responsibility. Melbourne Water says it's not their responsibility (they only look after the drains). Is our ground water impacted by boundary to boundary basements along many streets? Is our ground water becoming more saline? Some residents with bores suggest there is a problem.¹²⁹

Questions for consideration by a future inquiry

1. Does the planning framework adequately address the issue of water management?
 - a. Are there sufficient controls in place to protect the water, including waterways and groundwater?
2. Does the planning framework effectively impose appropriate responsibilities and obligations and on land holders, land users, relevant authorities and other relevant stakeholders in relation to water management?

3.6.4 Rubbish dumping from development activities

Several stakeholders raised the lack of planning controls over dumping of soil and other rubbish.

The Baw Baw Ratepayers Association described impacts that resulted from the removal or dumping of soil:

the loss of vegetation, construction of new artificial wetlands/water-ways following removal or dumping of soil, etc. is of major concern to the community. There are now

¹²⁸ Port Phillip City Council, *Submission 136*, p. 3.

¹²⁹ Bernadette Pierce, *Submission 118*, p. 1.

instances of where natural water courses, springs, etc. are being filled in with soil being brought in from other developments, or simply building over natural springs.¹³⁰

Nillumbik Shire Council outlined the negative consequences of illegal soil dumping on green wedge land:

Nillumbik Shire is being impacted increasingly by the practice of soil dumping in our significant Green Wedge areas. Without proper control and/or the ability to carefully consider this activity, the dumping may result in irreversible damage and/or time consuming and costly rectification exercises, which affect our green wedge values. Of particular concern is the risk of potential damage being made to existing and future land used for food production, waterways and ecosystems. Nillumbik's proximity to the Northern Region Growth Corridor and future expansion of such compounds the issue of illegal soil dumping where ease of access makes the Green Wedge attractive when disposing of site fill from proximate growth areas.¹³¹

One submitter was concerned that large scale demolition added significant amounts of waste to landfills:

No government body seems to be looking at the sheer wastefulness of mountains of bricks and plaster - not to mention trees and gardens all in the same skip - going to landfill, only to be replaced by ugly concrete boxes surrounded by a narrow strip of cement paving.¹³²

Another stakeholder pointed out that uncontrolled dumping of waste polluted waterways and damaged wildlife habitats:

High gross pollutant loads (general rubbish) are typically associated within retail and hospitality areas as was evident by the type of litter visible within the wetlands, dominated by drink bottles, snack food and take away containers. Based on this high load and the evident exceeded capacity of the gross pollutant traps, the clean out frequency on these assets needs to be increased. Whilst there are a number of further wetlands in series from the point to the Karaaf Wetlands, even small quantities within the Karaaf Wetlands could cause significant hardship and or death of valuable and threatened mammal and bird species. Plastic within this system is of increasing concern with microplastics pollution having been recently reported in the Thompson Creek.¹³³

Others called for the addition of further controls in the planning framework to address the issues of soil and rubbish dumping.¹³⁴

¹³⁰ Baw Baw Ratepayers Association, *Submission 59*, p. 6.

¹³¹ Nillumbik Shire Council, *Submission 10*, p. 18.

¹³² Pamela Lloyd, *Submission 40*, p. 1.

¹³³ Name withheld, *Submission 32*, Attachment 1.

¹³⁴ Nillumbik Shire Council, *Submission 10*, p. 18; Name withheld, *Submission 74*, p. 4.

Questions for consideration by a future inquiry

1. Do planning provisions take full account of the environmental impact of dumping of rubbish from development activities?
 - a. What controls are in place to address this issue?
 - b. What other measures should be implemented to more effectively deal with the issue?

3.6.5 Ensuring environmental justice

A need to ensure environmental justice within the planning framework was raised by Jesuit Social Services, which noted that disadvantaged communities were often more vulnerable to the impacts of climate change and other issues:

communities that experience persistent disadvantage often also experience disproportionate environmental injustice, represented by factors such as air pollution, heat stress, and less green open spaces resulting in fewer natural features such as trees, flora and fauna.¹³⁵

It also called for improved access to public open spaces for marginalised communities that had limited space, particularly in newer developments and on the urban fringe.¹³⁶

Question for consideration by a future inquiry

1. Is the principle of environmental justice adequately embedded throughout the planning framework?

3.6.6 Acknowledgment of Country and its Traditional Owners

Several submitters argued for the need for a proper Acknowledgement of Country and recognition of Traditional Owners in the planning framework.

The 3068 Group argued the planning system fails to respect Country and the role of Traditional Owners. Rather, it ‘remains a colonial construct rooted in early New South Wales land management decrees from Sydney and London, traceable to the fiction of *terra nullius*’. It illustrated this with the example of the former Fitzroy Gas Works:

Respect for Country requires respect for wildlife, flora, biodiversity, ecosystems and aboriginal heritage such as burial sites, songlines and sacred trees. In the case of the Former Fitzroy Gas Works, there was no specific consultation with traditional

¹³⁵ Jesuit Social Services, *Submission 204*, p. 2 (with sources).

¹³⁶ *Ibid.*, p. 3.

owners as to the future use of their land. There are many records well into at least the mid 19th century of aboriginal occupation and use of the environs. This failure to sit down with Elders is hypocritical, and perpetuates a long history of disenfranchisement and disempowerment. It was also a terrible loss of an opportunity to honour First Peoples in the use of the land which could have benefitted from their advice in a way that would have honoured and advanced our understanding of a history going back 60,000 years.¹³⁷

The 3068 Group recommended Aboriginal elders be specifically notified of, and take part in, planning proposals for the use of State-owned property on ancestral lands.¹³⁸

Australian Planners Declare suggested the planning system should better consider and act on Traditional Owners Country Plans and Indigenous cultural heritage:

With many traditional owner groups preparing country plans with visions for land-use, inclusive economic development, environmental protection and traditional owner voices; and the Victorian Government and traditional owners working towards Treaties - it's important that the Planning and Environment Act and planning schemes are updated to facilitate this in a meaningful way.¹³⁹

Park Victoria noted the Victoria Planning Provisions (VPP) did not reflect the current practice of engaging Traditional Owners in the management of public land through joint management arrangements established under the *Traditional Owner Settlement Act 2010* (Vic). It called for the VPP to be updated to address these changes in public land management.¹⁴⁰

The Glen Eira Climate Action Group submitted:

How best can Traditional Owner Country Plans, indigenous cultural heritage, ecosystem knowledge and participation be recognised and prioritised in the act and planning system? This is essential if the Victorian Government and communities are to succeed in reconciliation and treaty negotiations; and also essential if our colonial legacy land-use planning system is to include indigenous people and knowledge vital for planning how we can live in this place forever.¹⁴¹

¹³⁷ The 3068 Group, *Submission 278*, pp. 8–9.

¹³⁸ *Ibid.*, p. 9.

¹³⁹ Australian Planners Declare, *Submission 172*, p. 4.

¹⁴⁰ Parks Victoria, *Submission 61*, pp. 2–3.

¹⁴¹ Glen Eira Climate Action Group, *Submission 152*, p. 3.

Questions for consideration by a future inquiry

1. How can the planning framework better recognise and engage Traditional Owners in a meaningful way?
2. How should Aboriginal heritage, culture and knowledge be incorporated into planning considerations?
3. What measures should be in place to afford active and meaningful participation and ensure agency of First Nations people in planning decisions?

3.6.7 Promoting the role of the community

A large number of stakeholders argued that communities most impacted by planning schemes and planning decisions should have a stronger voice within the planning framework. Further, more could be done to facilitate more active involvement of people in relation to issues that directly affect, and are affected by, them.

The Surf Coast Energy Group (SCEG) submitted:

There are many instances where communities would relish the opportunity to play a much greater role in the custodianship of nature in their collective back yard. For state government the time has come to tap into that untapped enthusiasm.¹⁴²

SCEG noted, in relation to vegetation protection on private land for example, the community should be actively encouraged to get involved as key change agents.¹⁴³

One submitter considered communities were unfairly impacted by the current trend of development and it was important to enhance their voice planning processes:

In the surge of possibly sub standard construction developments I see a lack of fairness to the community, who has to bear the burden of loss of tree cover, often mature contributors to atmospheric cooling with hard to quantify healing & beauty sacrificed.¹⁴⁴

SCEG said in its submission that 'Fewer opportunities to contribute to conservation exist for communities in regional townships and in urban and peri-urban landscapes. They are largely left out of the equation.' It called for past models of community participation should be reinstated:

In 1986 we saw the Victorian Premier Joan Kirner launch **Landcare**. In the early 1990s the Victorian Government also introduced **Coast Care**. Now in 2020 when clearly things are not going well for nature it's time to consider urban conservation (**Urban Care**) using

¹⁴² Surf Coast Energy Group (SCEG), *Submission 22*, p. 8.

¹⁴³ *Ibid.*, p. 7

¹⁴⁴ Sally Clarke, *Submission 141*, p. 1.

a suite of measures headed by Community Land Trusts to achieve the aim. In doing so it gives strong permission for all Victorians to actively support the State Government's 'Biodiversity 2037' goals to reverse biodiversity decline in Victoria.¹⁴⁵

Questions for consideration by a future inquiry

1. Is there scope for community involvement/actions to be formally recognised in planning processes?
2. How can community participation in environmental protection be better facilitated under the planning framework, both in relation to private and public land?
3. How does the planning framework promote the role of communities in raising awareness and creating behavioural change for the purpose of environmental protection and sustainable development?

3.6.8 Environment Effects Statements

Under the *Environment Effects Act 1978* (Vic), an Environment Effect Statement (EES) (also known as Environment Impact Statement or EIS) is required to assess the potential environmental effects of a proposed public works project and provides measures to avoid, minimise or manage environmental effects as well as a program to monitor and manage environmental effects during project implementation.¹⁴⁶

Submissions to the Inquiry considered the role of the EES process in mitigating the environmental impact of development should be strengthened within the planning framework.

One submitter argued for an EES requirement to apply to all planning applications, with a nuanced approach to small domestic developments under a certain size, density or budget.¹⁴⁷

Another stakeholder was concerned the current EES process was not effective in preventing environmental effects from development, referring to their experience of the dust, noise pollution and blasting from the operation of a quarry proximate to their residence. They submitted that their reports to council were consistently met with responses that nothing could be done because the quarry was operating in compliance.¹⁴⁸

¹⁴⁵ Surf Coast Energy Group (SCEG), *Submission 22*, pp. 7, 10.

¹⁴⁶ Department of Environment, Land, Water and Planning, *Planning: Environmental assessment*, 2021, <[https://www.planning.vic.gov.au/environment-assessment/what-is-the-ees-process-in-victoria#:~:text=An%20Environment%20Effects%20Statement%20\(EES\)%20usually%20contains%3A,environment%20that%20may%20be%20affected](https://www.planning.vic.gov.au/environment-assessment/what-is-the-ees-process-in-victoria#:~:text=An%20Environment%20Effects%20Statement%20(EES)%20usually%20contains%3A,environment%20that%20may%20be%20affected)> accessed 5 May 2022.

¹⁴⁷ Scale It Down - Protect Brunswick Parks, *Submission 271*, p. 4.

¹⁴⁸ Giselle Esparon, *Submission 269*, pp. 3-4.

Sustainable Population Australia cited a submission to a 2010 parliamentary inquiry into the EES process that identified a number of shortcomings in the EES assessment process, notably that:

- the current EES criteria for risk assessments are not standardised and proponents can change the criteria to suit their needs
- unknowns and uncertainties are hidden because risk assessments are heavily assumption based
- there is no ‘data deficient’ or ‘unknown’ option in risk assessments.¹⁴⁹

Sustainable Population Australia also pointed out a number of factors that deprive the EES of scientific quality:

The scientific studies completed on behalf of the proponent are presented at the EES, and we and the Inquiry panel are expected to believe the studies. Effectively however, proponents purchase and direct the science and, as has been our observations, exert pressure on their paid experts to ensure that the expert’s recommendations are framed to their liking. In what way is this open, transparent and fair planning? In what way can this ensure protection of our environmental, social and heritage assets?¹⁵⁰

Sustainable Population Australia also argued that concerned citizens were disadvantaged in preparing cases against development proposals:

[many] struggled in vain to match the “purchasing power” and influence of proponents and developers, or find an expert witness who has not already been “engaged” by the proponent so as to be unavailable to advise concerned citizens preparing their cases against a proposal.¹⁵¹

The VNPA noted the EES process had a limited ability to effectively address issues in specialised areas:

There is also a recent tendency to use planning scheme and EES processes as a one size fit all approach, which become problematic when dealing with highly protected areas, such as national parks.¹⁵²

Questions for consideration by a future inquiry

1. How can the quality and evidence base of an EES be better ensured in the context of planning decisions?
2. Is there any evidence of systemic misuse or abuse of the EES process within the planning framework?
3. Do current EES processes adequately address contemporary development issues?

¹⁴⁹ Sustainable Population Australia (Victoria/Tasmania Branch), *Submission 160*, pp. 14–15 (with sources).

¹⁵⁰ *Ibid.*, pp. 15–16.

¹⁵¹ *Ibid.*, p. 15.

¹⁵² Victorian National Parks Association, *Submission 165*, p. 22.

3.6.9 Overlays

Several types of overlays existing within current planning provisions are used to enable specific types of controls and regulation in relation to certain land areas. Stakeholders pointed out the designation and application of some overlays were in need of review in the context of their impact on environmental protection in planning processes. Of particular concern were bushfire management overlays and environmental management overlays.

Bushfire Management Overlays (BMOs)

Following the 2009 Black Saturday bushfires, rules were introduced to ‘allow landowners, in locations identified as Bushfire Prone Areas and where a Bushfire Management Overlay applies, to remove vegetation as-of-right so residents can make their properties safer in the event of a bushfire.’¹⁵³ This rule allows vegetation removal to occur without the need for a planning permit, ostensibly prioritising the protection of human life by providing landowners with an easier way to manage their land.

The Committee was told that vegetation protection was compromised by the existence of BMOs, which led to detrimental impacts on local vegetation, biodiversity and neighbourhood character.

Nillumbik Shire Council submitted:

there is unintended consequences of applying planning permit exemptions for tree removal for bushfire mitigation in an essentially urban area further contributing to biodiversity loss.¹⁵⁴

Mornington Peninsula Shire Council stated:

existing Bushfire Planning Protection Provisions (including vegetation removal exemptions) may be resulting, albeit unintentionally, in unnecessary vegetation loss.¹⁵⁵

The Nepean Conservation Group expressed a similar view:

statewide bushfire planning rules driven by the legitimate policy of reducing bushfire risk, have had a major unintended negative local impact, such that local flora and fauna, biodiversity, habitat and neighbourhood character are the victims.¹⁵⁶

Stakeholders argued that bushfire legislation should be considered in a holistic way that benefited not only humans but all other species. One submitter called for a more flexible approach to planning that lets in local nuance ‘to meet local requirements, and give local authorities, and communities the power to protect and preserve the natural environment.’¹⁵⁷

¹⁵³ Nillumbik Shire Council, *Submission 10*, p. 11.

¹⁵⁴ *Ibid.*, p. 12.

¹⁵⁵ Mornington Peninsula Shire, *Submission 273*, p. 11.

¹⁵⁶ Nepean Conservation Group, *Submission 267*, p. 4.

¹⁵⁷ *Ibid.*, p. 4.

Mornington Peninsula Shire suggested an inter-agency taskforce (with DELWP, the Country Fire Authority (CFA), the MAV and other interested councils) be established to collegiately investigate a range of potential refinements to various bushfire provisions (including exemptions).¹⁵⁸

Environmental management overlays

In addition to BMOs, overlays can provide control over land development processes for the purpose of environmental protection, including:

- **Environmental Significance Overlay (ESO):** the purpose of this overlay is to identify areas where the development of land may be affected by environmental constraints and to ensure that development is compatible with identified environmental values.
- **Vegetation Protection Overlay (VPO):** the purpose of this overlay includes:
 - protection of areas of significant vegetation to ensure that development minimises vegetation loss
 - preservation of existing trees and other vegetation
 - recognition of vegetation protection areas as locations of special significance, natural beauty, interest and importance
 - maintenance and enhancement of habitat and habitat corridors for indigenous fauna
 - encouragement of native vegetation regeneration.
- **Significant Landscape Overlay (SLO):** the purpose of this overlay is to identify significant landscapes and to conserve and enhance the character of significant landscapes.¹⁵⁹

Nillumbik Shire Council, commented that the introduction of these overlays was a 'positive part of the Victorian Planning Framework' as they provide local protection of local environment.¹⁶⁰

The Whitehorse City Council said that it 'has been successful in implementing a municipal wide Significant Landscape Overlay (SLO) for its residential areas'.¹⁶¹

Community groups including Friends of Drouin's Trees similarly emphasised the vital role of overlays, stating that 'motherhood statements and even the vision of a whole community are NOT enough in the face of absent overlays and policies which can be challenged at VCAT'.¹⁶²

¹⁵⁸ Mornington Peninsula Shire, *Submission 273*, p. 12.

¹⁵⁹ Vicsmart Guide, (n.d.) <<https://vicsmartguide.com.au/vicsmart-planning-permit/application-forms-checklists/examples-of-overlays-and-vicsmart-applications>> accessed 16 June 2022.

¹⁶⁰ Nillumbik Shire Council, *Submission 10*, p. 12.

¹⁶¹ Whitehorse City Council, *Submission 171*, p. 2.

¹⁶² Friends of Drouin's Trees, *Submission 37*, p. 5.

However, the Committee heard evidence that overlays were not always effective. For example, the Blackburn and District Tree Preservation Society said that despite the City of Whitehorse having nine SLOs¹⁶³ in place there were examples of illegal tree removals and the relevant developments continued while the compliance activities dragged due to procedural issues.¹⁶⁴

One submitter pointed out that overlays failed to prevent developers from destroying trees:

Despite the vegetation protection objectives and of the VPO and SLO I have watched both medium density and single developments inexorably destroy our valued vegetated environment. The VPO and SLO have proven to be largely impotent achieving meaningful protection of our valued vegetated environment.¹⁶⁵

Mornington Peninsula Shire Council raised the issue of problems caused by overlapping overlays. It noted many properties can be affected by one or more overlays, requiring multiple permit applications for vegetation removal. While the scope and application of these overlays is supported, the process should be reviewed so to ensure that more time is allocated to high value trees (such as in the case of reducing tree canopy cover) and streamlining the more routine approvals.¹⁶⁶

Nillumbik Shire Council argued that overlays had become increasingly complex and their justification and application could sometimes be cost prohibitive, especially for councils with a small rate-base:

there is an increased level of complexity behind developing and adopting bespoke ESOs within the Planning Scheme to protect vegetation, habitats or threatened species, as they are costly and difficult to apply or update.¹⁶⁷

Nillumbik also identified issues relating to areas over 0.4 ha in size:

without local overlays, there is very little remaining in the Planning Framework to allow for the consideration and protection of native vegetation in blocks smaller than this size. Anecdotally the cumulative impact of (at times substantial) vegetation removal from individual properties poses a significant threat to the highly valued 'treed' character of Nillumbik Shire's activity centres as well as the integrity of Nillumbik Shire's biodiversity, including native flora and fauna.¹⁶⁸

The VNPA argued that designation of current overlays was essentially backward looking:

zones and overlays do not specifically contemplate designation of areas for future habitat restoration, something which is acknowledged as critical given the legacy of

¹⁶³ The Blackburn and District Tree Preservation Society, *Submission 263*, p. 3.

¹⁶⁴ *Ibid.*, p. 6.

¹⁶⁵ Chris Sutton, *Submission 173*, p. 2.

¹⁶⁶ Mornington Peninsula Shire, *Submission 273*, p. 16.

¹⁶⁷ Nillumbik Shire Council, *Submission 10*, pp. 11-12.

¹⁶⁸ *Ibid.*

past losses and the impact of climate change. In contrast to other areas of development activity where the future focus of planning schemes is prominent, when it comes to our natural environment planning are essentially backward looking and seek only to maintain existing values and attributes.¹⁶⁹

The National Trust suggested:

Further work should be undertaken as a matter of priority to assess the effectiveness of these controls, the adequacy of guidance around their implementation, the adequacy of penalties for the illegal removal of significant trees and vegetation, and how the application of these controls can contribute to strategic aims such as climate change mitigation. Champions must also be identified within DELWP and other government agencies to support the consistent and effective implementation of these controls.¹⁷⁰

From a development perspective, the HIA expressed concern that multiple overlays tended to repeat requirements, causing duplication and negatively impacting housing yield, cost and delivery time:

It is important for the State Government to monitor the number and extent of Overlays, the permit triggers of the Overlay and whether they are essential. Overlays capture more types of development, bringing some into the planning permit system that is unnecessary. Some matters could be adequately addressed via the building permit system.¹⁷¹

The HIA was also concerned that overlays may cause overlap of environmental controls at the state and national levels:

Overlays relating to protection of the environment or environmental risk, should only relate to land availability and subdivision design layout and not the construction elements of homes built on that land ...

Matters relating to environmental constraints that are addressed through building design and construction solutions should be exempt from overlay planning requirements and dealt with through the NCC.¹⁷²

¹⁶⁹ Victorian National Parks Association, *Submission 165*, p. 22.

¹⁷⁰ National Trust of Australia (Victoria), *Submission 129*, p. 24.

¹⁷¹ The Housing Industry Australia, *Submission 11*, p. 4.

¹⁷² *Ibid.*, p. 12.

Questions for consideration by a future inquiry

1. Do exemptions provided under bushfire management overlays lead to unnecessary loss of vegetation and biodiversity?
2. How can overlays be structured to better streamline processes relating to areas of overlap?
3. Does the current system of overlays provide councils with an adequate ability to update mechanisms as needed?
4. Should areas of under 0.4 ha be subject to an overlay for the purpose of native vegetation protection?

3.6.10 Environmental offsetting

Environmental offsetting policies allow for developers to plant new trees to compensate for trees cleared in the course of a development project. The overall objective is to ensure no net loss of tree cover. However, a number of submissions identified significant risks and failings of the policy.

Nillumbik Shire Council warned that the policy ‘may lead to a continuation in the decline of biodiversity, particularly threatened species or communities.’ It submitted:

Trading the protection of a species or ecological community for its removal elsewhere will not halt the decline of that species or community, but if it is done with rigor and costed correctly, it will hopefully slow that decline and avoid total loss.¹⁷³

The Council argued:

Environmental offsetting should only be used as a last resort with genuine effort made by a proponent to avoid or mitigate impacts as a matter of priority. If residual impacts cannot be avoided or mitigated, approval should only be given once a suitable offset has been identified and secured prior to an impact occurring.¹⁷⁴

Friends of Drouin’s Trees said that ‘The Vegetation Protection Act of Avoid, Minimise and Offset is simply a licence for developers to plant somewhere else for the trees they remove to maximise their yield.’¹⁷⁵ The group added that the current offsetting policy was not suitable as tree offsetting in one place cannot account for those lost in another place.¹⁷⁶

¹⁷³ Nillumbik Shire Council, *Submission 10*, p. 10.

¹⁷⁴ Ibid.

¹⁷⁵ Friends of Drouin’s Trees, *Submission 37*, p. 4.

¹⁷⁶ Ibid., p. 4.

The Green Wedges Coalition shared this view, stating ‘It is also a concern that trading the protection of a species or ecological community for off-sets elsewhere will not halt the decline of that species or community.’¹⁷⁷

Another submitter argued that ‘planting new trees cannot replace the biodiversity, habitat and shading qualities of established trees.’¹⁷⁸

MAV echoed this, citing draft findings of the Victorian Auditor General’s Office audit of ‘Offsetting native vegetation loss on private land’ that:

there is no way to currently determine if the goal of no net loss is being achieved.¹⁷⁹

Australian Planners Declare told the Committee:

the native vegetation offset system appears to be an insufficient planning practice; with observed continued vegetation loss and failure to protect and promote equitable urban greening in cities for people’s wellbeing, carbon sequestration, and biodiversity regeneration.¹⁸⁰

The Glen Eira Climate Action Group said:

The native vegetation offset system seems to be failing with ongoing vegetation loss and doesn’t protect nature near people in cities for people’s well-being – Glen Eira has so little remnant or restored natural areas in parks we have ‘Nature Deficit Disorder’.¹⁸¹

In addition, the Grassy Plains Network argued that ‘Offsetting is supposed to follow the three steps of avoid, minimise and offset. In practice, avoidance is rare, minimising minimised, and offsetting promoted.’¹⁸²

The Planning Institute of Australia (Victoria) suggested that key native vegetation offset areas should be identified through greater strategic work:

PIA supports greater strategic work to identify strategically significant vegetation and key native vegetation offset areas. This work could be used to inform settlement planning decisions, particularly in peri-urban and regional areas where there are often competing demand for new housing, vegetation protection and mitigation of environmental hazards.¹⁸³

Furthermore, there was debate whether this policy should be ‘offsetting’ or ‘on-setting’ and whether the objective should be ‘net gain’ or ‘no net loss’. The Green Wedges Coalition pointed out that approaches to offsetting policy are inconsistent in the current planning framework. For example, *Plan Melbourne* refers to ‘net gain in the quantity and

¹⁷⁷ Green Wedges Coalition, *Submission 127*, p. 4.

¹⁷⁸ Annette Cooper, *Submission 13*, p. 1.

¹⁷⁹ Municipal Association of Victoria, *Submission 268*, p. 8.

¹⁸⁰ Australian Planners Declare, *Submission 172*, pp. 3–4.

¹⁸¹ Glen Eira Climate Action Group, *Submission 152*, p. 2.

¹⁸² Grassy Plains Network, *Submission 148*, p. 5.

¹⁸³ Planning Institute of Australia (Victoria), *Submission 169*, p 5.

quality of native vegetation’ as a desired outcome while clause 52.17 of the VPP has an objective of ‘no net loss’ of native vegetation. The Coalition advocated for adopting a ‘net gain’ approach:

The application of the ‘no net loss’ policy is at odds with the need to increase vegetation cover in response to climate change and is in fact contributing to the continuing net loss of native vegetation.¹⁸⁴

The Green Wedges Coalition also contended that developers should be required to improve remaining green space as a form of on-setting. It submitted that ‘such on-setting should be required as well as a refined, more rigorous form of off-setting.’¹⁸⁵

Questions for consideration by a future inquiry

1. Do offsetting measures adequately address risks of accelerating vegetation and biodiversity decline?
 - a. How can offsetting better mitigate such risks?
 - b. Should on-setting obligations be imposed in addition to offsetting?
2. Should offsetting policy be based on a ‘net-gain’ approach rather than the current ‘no net loss’ principle?

3.6.11 Public land and land use definitions

Parks Victoria raised the issue of the definitions for key terms in the Planning and Environment Act and the VPPs.

Parks Victoria noted definitions in s 3 of the Act were relevant and applicable to all planning schemes and also in need of review:

Parks Victoria suggests a review of these definitions is timely. A good example of one that could be modernised is “Road”.

“road” includes highway, street, lane, footway, square, court, alley or right of way, whether a thoroughfare or not and whether accessible to the public generally or not.

In relation to land that is zoned Public Park and Recreation Zone (PPRZ) or Public Conservation and Resource Zone (PCRZ) it is understood that walking trails would fit within the definition of “Road” as footway, but this is not always common practice among planning practitioners.¹⁸⁶

¹⁸⁴ Green Wedges Coalition, *Submission 127*, p. 4.

¹⁸⁵ *Ibid.*, p. 5.

¹⁸⁶ Parks Victoria, *Submission 61*, pp. 5–6.

Parks Victoria also submitted that including a definition of 'public land use' would be beneficial:

At present there is no definition in the Planning and Environment Act 1987 nor the VPP. The effect of this is that the VCAT case *Teasdale v Surf Coast SC* [20016] VCAT 1224 (22 July 2016) had to give consideration to what 'Public land use' meant. The result was that a commercial pop-up tavern on PPRZ land was permitted, not prohibited.

There would also be benefits to reviewing the range of land use terms to support contemporary visitor economy, recreation and tourism uses on public land. For example, the term 'Informal Outdoor Recreation' is characterised by non-paying users rather than the nature of the activity itself or its impact on the land. Parks Victoria notes that there are many forms of outdoor recreation – formal/organised, passive, active, intensive – which can be managed on public land without detriment to other values, irrespective of whether a fee applies to its use. In some cases, applying a fee is an appropriate mechanism to manage demand and ensure environmental values can be adequately protected.¹⁸⁷

3.6.12 Habitat corridors

CASBE called for habitat corridors to be included in regional planning schemes:

Habitat corridors are recognised as a key component in building resilience of the natural environment in the face of climate change. Work has been undertaken in identifying key habitat corridors, at a both local and regional scale. However, these rarely find their way into regional Planning Schemes, other on an ad-hoc basis at a municipal scale. This is not compatible with the delivery of such linkages which generally extend beyond a municipal scale and require overall connectivity to achieve their original purpose.¹⁸⁸

¹⁸⁷ Ibid., p. 6.

¹⁸⁸ Council Alliance for a Sustainable Built Environment, *Submission 272*, attachment 1, p. 51.

4 Fairness in planning decisions

4.1 Introduction

This Chapter provides a summary of stakeholder evidence received regarding term of reference (3)—delivering certainty and fairness in planning decisions for communities. This includes evidence on:

- the introduction of mandatory controls, including mandatory height limits and minimum apartment sizes
- protecting the Green Wedges and the urban growth boundary
- community concerns about Victorian Civil and Administrative Tribunal (VCAT) appeal processes
- protecting third party appeal rights
- the role of ministerial call-ins.

4.2 Mandatory controls

4.2.1 Mandatory height limits

The Committee received a number of submissions discussing mandatory height limits. These discussed the way that mandatory height limits:

- apply differently, if at all, depending on the planning zone and planning scheme in question¹
- can be used to preserve town character and landscape, particularly for low-laying coastal areas²
- help to protect heritage buildings and precincts³
- help to provide certainty for residents and developers.⁴

1 See, for example, Bayside City Council, *Submission 134*, pp. 13–14, which discusses mandatory controls for neighbourhood and residential zoning versus Major Activity Zones.

2 Friends of the Queen Victoria Market Inc., *Submission 151*, p. 3; Ibid.; Glen Eira Historical Society, *Submission 156*, p. 1; Yarra Planning Coalition, *Submission 270*, p. 13.

3 National Trust of Australia Victoria, *Submission 129*, p. 14; Friends of the Queen Victoria Market Inc., *Submission 151*, p. 3; Glen Eira Historical Society, *Submission 156*, p. 1; Yarra Planning Coalition, *Submission 270*, p. 13.

4 Bayside City Council, *Submission 134*, p. 14; Port Phillip Council, *Submission 136*, p. 3; Maribyrnong City Council, *Submission 18*, p. 5; Name withheld, *Submission 16*, p. 3.

Stakeholders raised concerns about discretionary height limits that currently apply. This is due to the inconsistent positions taken by local government, state government, planning panels and VCAT on their use, creating uncertainty. City of Stonnington explained:

Mandatory height limits offer a way of providing certainty and fairness to planning decisions for communities and developers. This is particularly the case in structure planning where new and often increased height limits are introduced. Council officers and the community are generally supportive of the concept although it is generally not supported by the State Government and therefore not implemented in local Planning Schemes. The State Government preference is for discretionary height limits based around a recommended height. Mandatory height limits also provide a level of certainty in the plan itself. The variation in height can be significant where discretionary heights are implemented.⁵

Royal Historical Society of Victoria Inc said:

At present, DELWP [Department of Environment, Land, Water and Planning] is very reluctant to support mandatory controls, and pushes instead for 'preferred' building heights. Preferred controls enable developers to obtain greater heights, especially from VCAT and from ministerial call-ins, as at Moonee Ponds, Box Hill and GMH Fishermans Bend. In our view, if height and built form controls can be justified, they should be mandatory.⁶

Bayside City Council also found a disconnect between State Government and VCAT positions. It said:

It appears that the position taken by Planning Panels and DELWP when considering the application of mandatory controls differs from how VCAT apply discretion when considering mandatory controls.

Practice Note 60: Height and setback controls for activity centres provides that:

Height and setback controls can be appropriate so long as they are not aimed at restricting the built form, but at facilitating good design outcomes. Proposed height and setback controls must be soundly based on the outcomes of strategic research and background analysis that demonstrates consistency with state and regional policy and includes a comprehensive built form analysis.

Council submits that this is out of step with community sentiment, where greater clarity on the maximum outcomes in suburban activity centres is sought. Residents are repeatedly attending VCAT hearings where applicants have proposed to push the boundaries and seek building heights well in excess of discretionary controls.

Where discretionary height controls have been justified and included in a Planning Scheme, there is recognised merit that any application to exceed that height must present an extraordinary outcome in order to justify the departure from policy.

5 City of Stonnington, *Submission 131*, p. 11.

6 Royal Historical Society of Victoria Inc., *Submission 146*, pp. 10-11.

Planning Panels have consistently found that ‘Preferred maximum heights are not to be exceeded unless the proposal provides an exemplary response to the site, its context, design objectives and other policy in the planning scheme.’⁷

Whitehorse City Council told the Committee that it has found the introduction of mandatory heights or setback controls ‘very difficult’ with DELWP ‘in some instances requiring the removal of mandatory controls as a condition of authorisation for an amendment.’⁸

However, some stakeholders suggested that discretionary controls still serve a purpose, even where mandatory controls are used. Nillumbik Shire Council told the Committee new structure plans for activity centres contain both preferred heights and mandatory height limits. It said this was important to reflect that zones may have different needs:

The ability to apply mandatory controls, particularly within areas with unique environmental or character elements is crucial in ensuring the most effective outcomes in planning. A ‘one-size-fits-all’ approach is not considered suitable.⁹

Moreland City Council likewise explained:

The Moreland Planning Scheme includes mandatory height limits in some local activity centres. There are also mandatory height limits in most of the residential zones. These limits serve to create a hierarchy of built form that directs taller development to our larger activity centres. It is Council’s submission that this is an appropriate use of mandatory height limits. More widespread use of mandatory heights, particularly in higher order activity centres, should, if used, be subject to regular monitoring and review.¹⁰

Maribyrnong City Council suggested mandatory controls could provide benefits, but that blunt height controls may not be the answer:

Regarding mandatory height limits, there is some benefit in providing mandatory height limits in that it provides certainty to both local communities and developers. The current situation in most activity centres, whereby heights as expressed as ‘preferred’ or ‘discretionary’ encourages land speculation. The approach adopted in the Melbourne CBD (Hoddle Grid) or plot ratios may provide a better outcome and should be investigated as a replacement to blunt height controls.¹¹

Instead of introducing mandatory controls, the Victorian Local Governance Association (VLGA) submitted that the Victorian planning provisions be updated to restrict the instances in which ‘discretion’ can be exercised in discretionary height limit matters.¹²

⁷ Bayside City Council, *Submission 134*, p. 13.

⁸ Whitehorse City Council, *Submission 171*, pp. 2–3.

⁹ Nillumbik Shire Council, *Submission 10*, p. 17.

¹⁰ Moreland City Council, *Submission 150*, p. 13.

¹¹ Maribyrnong City Council, *Submission 18*, p. 5.

¹² Victorian Local Governance Association, *Submission 63*, pp. 3–4.

Glen Eira City Council also called for clearer guidance to be provided for the exercise of discretion in such matters, particularly where mandatory controls do not exist. However, unlike VLGA, the Council supported amendments to the *Planning and Environment Act* (Vic) (Planning and Environment Act) and planning framework to introduce mandatory controls.¹³

Submitters raised other issues for consideration regarding mandatory height limits. These included:

- the inconsistent application of mandatory height controls through Melbourne¹⁴
- the disconnect between mandatory height limits in planning and building regulations¹⁵
- the impact of minimal mandatory residential height controls on heritage and land price¹⁶
- existing height limit clauses that are unclear or vague, leading to varied interpretations¹⁷
- whether mandatory height limits will contribute to the high cost of housing.¹⁸

Stakeholders widely supported mandatory height limits remaining or being further introduced.¹⁹ Suggestions to introduce or improve mandatory controls include that:

- mandatory controls be incorporated in law²⁰
 - specifically in place of discretionary/preferred limits within the planning scheme²¹
- there be a greater allowance to achieve mandatory height controls²²
 - particularly by Councils (following strategic analysis)²³
- mandatory height control clauses are crafted consistently and clearly to provide certainty and clarity²⁴

¹³ Glen Eira City Council, *Submission 207*, p. 8.

¹⁴ Cardinia Shire Council, *Submission 206*, p. 4.

¹⁵ Mornington Shire Council, *Submission 273*, p. 16.

¹⁶ Professor Michael Buxton, Emeritus Professor Environment and Planning, RMIT University, *Submission 93*, pp. 7–8.

¹⁷ Name withheld, *Submission 16*, p. 3; Brimbank City Council, *Submission 54*, p. 10.

¹⁸ Maribyrnong City Council, *Submission 18*, p. 4.

¹⁹ Nillumbik Shire Council, *Submission 10*, p. 17; Ms Kaye Oddie, *Submission 83*, p. 2; Mr Geoff Langford, *Submission 105*, p. 1; Mr Ross and Mrs Lyn Campbell, *Submission 130*, p. 3; Mr Brendan and Mrs Beverly Dillon, *Submission 132*, p. 1; Ms Annette Cooper, *Submission 13*, p. 1; Blackburn Village Residents Group, *Submission 184*, pp. 7–8; Ms Rosetta Manaszewicz, *Submission 45*, p. 3; Ms Sally Vivian, *Submission 216*, p. 1; Kingston Residents Association, *Submission 221*, p. 9; Scale It Down Protect Brunswick Parks, *Submission 271*, pp. 12–13; The 3068 Group, *Submission 278*, p. 6; Walk in St Kilda Rd & Environs, *Submission 286*, p. 24.

²⁰ Municipal Association of Victoria, *Submission 268*, p. 8; Streets Alive Yarra Inc., *Submission 234*, p. 12.

²¹ Royal Historical Society of Victoria Inc., *Submission 146*, pp. 3, 10–11.

²² Bayside City Council, *Submission 134*, p. 14.

²³ National Trust of Australia Victoria, *Submission 129*, p. 15; Combined Residents of Whitehorse Action Group Inc., *Submission 180*, p. 6; Blackburn Village Residents Group, *Submission 184*, p. 11.

²⁴ Brimbank City Council, *Submission 54*, p. 10; Ballarat Heritage Watch Inc., *Submission 64*, p. 7.

- exemptions to mandatory controls be allowed if a community benefit can be proven.²⁵

Questions for consideration by a future inquiry

1. What are the advantages and disadvantages of mandatory height controls, with consideration to the needs of planning zones, municipalities, and planning system stakeholders?
2. What amendments are required to the planning system to facilitate mandatory height controls?

4.2.2 Minimum apartment sizes

A number of submitters were in favour of the introduction of minimum apartment standards,²⁶ with several stakeholders discussing whether such could address issues of liveability and amenity in Victoria's apartments. For example, Moreland City Council said:

A persistent issue with liveability of apartments in Victoria is their small overall size. Minimum room dimensions were introduced in 2017. This has not addressed the issue however. Better outcomes would be achieved if both minimum apartment sizes and room dimensions were specified. Any specified minimums should:

- Have regard to the impact of the change on construction cost (housing affordability).
- Not override consideration of design quality, context, internal amenity and off-site impacts.²⁷

Yarra City Council told the Committee it thought that the minimum room dimensions introduced in 2017 (via Clause 55 of the Victoria Planning Provisions (VPP)) 'significantly improved the amenity of apartments'²⁸ but advocated for more to be done. This 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

²⁵ Ms Kaye Oddie, *Submission 83*, p. 2. Note that Bayside City Council, *Submission 134*, p. 14 also made this suggestion for discretionary controls.

²⁶ Blackburn Village Residents Group, *Submission 184*, p. 6; Cardinia Shire Council, *Submission 206*, p. 4; Kingston Residents Association, *Submission 221*, p. 9; Scale It Down – Protect Brunswick Parks, *Submission 271*, p. 23; City of Greater Bendigo, *Submission 284*, p. 4.

²⁷ Moreland City Council, *Submission 150*, p. 13.

²⁸ Yarra City Council, *Submission 259*, p. 8.

- Introduce minimum apartment floor areas, particularly for studio apartments.²⁹

Yarra City Council added that it supported the proposal to introduce minimum bedroom sizes via the *Better Apartments Design Standards* (BADS) and noted that minimum floor areas exist in New South Wales and London planning guidelines.³⁰

City of Port Phillip also referred to minimum apartment sizes in other jurisdictions when discussing options for governments to ensure apartment liveability. It said:

Council believes that the size and layout of an apartment is fundamental to achieving a high standard of amenity. Apartments need to be of sufficient size and good layout to provide usable and comfortable spaces while accommodating basic furniture, providing sufficient circulation and adequate storage. Currently there are no mechanisms to ensure apartments are of sufficient size to do this, nor is there sufficient guidance from government as to what apartment size and layouts constitute a minimum acceptable standard for healthy human habitation.

As a consequence, Council has previously supported the introduction of minimum apartment sizes in its submission on the Better Apartments Design Discussion Paper in July 2015 and through its participation in the Local Government Working Group. While Council acknowledges that small apartments can be cleverly and sensitively designed, its own recent experience has seen many examples of small apartments where a significant proportion of the apartment is devoted to hallway or has inappropriately shaped rooms that create unusable spaces. In other comparable cities, such as Sydney, Adelaide and London, (Page 66 –Future Living, City of Melbourne, 2014), minimum apartment sizes are mandated without great detriment to the development industry.

However, if the Government continues to exclude apartment size from the standards, it needs to commit to continuing to monitor this issue and if the trend for poorly sized or configured apartments continues, it should consider a mandatory minimum size provision.³¹

Brimbank City Council said it would support the idea of minimum apartment sizes if ‘articulated through planning schemes’ in a way that supports high-quality and affordable residential development. The submission said:

evidence-based design solutions that can support sustainable apartment development for a diverse range of people is encouraged. Both numerical standards and mandatory requirements can be used to meet amenity objectives, depending on cost and location.³²

²⁹ Ibid.

³⁰ Ibid.

³¹ Port Phillip Council, *Submission 136*, p. 3.

³² Brimbank City Council, *Submission 54*, pp. 11-12.

Furthermore, submitters³³ outlined how perhaps minimum internal amenity standards should be considered. Glen Eira City Council said:

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.³⁴

The effect of minimum apartment sizes on housing affordability was also raised by Maribyrnong City Council. The Council said:

Measures such as mandatory height limits and minimum apartment sizes might be welcomed by some in the community but are likely to add to the high cost of housing, which is the Committee's first area of concern.³⁵

The Committee also notes other suggestions raised by stakeholders in discussion of this issue, such as that:

- the power to set mandatory standards, including minimum apartment sizes, should be vested in Council³⁶
- mandatory minimum sizes should be considered for other dwellings, such as rooming houses³⁷
- in general, planning and building provisions need to align to ensure accessibility and liveability.³⁸

The Committee notes the Environment and Planning Committee of the Legislative Assembly is currently undertaking an *Inquiry into Apartment Design Standards* due for tabling by 31 August 2022. The Committee looks forward to this report and how this could inform a further terms of reference for this Committee in a subsequent inquiry.

³³ Also see: The 3068 Group, *Submission 278*, p. 15.

³⁴ Glen Eira City Council, *Submission 207*, p. 10.

³⁵ Maribyrnong City Council, *Submission 18*, p. 4.

³⁶ Planning Democracy Group, *Submission 28*, p. 4; Brunswick Residents Network, *Submission 60*, p. 6; Combined Residents of Whitehorse Action Group Inc., *Submission 180*, p. 4.

³⁷ City of Kingston, *Submission 280*, p. 5; Latrobe City Council, *Submission 217*, p. 7.

³⁸ City of Whittlesea, *Submission 202*, p. 2.

Questions for consideration by a future inquiry

1. On minimum apartment sizes, what needs are trying to be met and what are the most appropriate ways to meet this? For example, liveability and amenity may mandate minimum apartment sizes, but housing provision and affordability may not be.
2. What amendments are required to the planning system to introduce mandatory minimum apartment sizes?
3. How would mandatory controls impact housing affordability?
4. How do mandatory controls impact land-banking?
 - a. What other actions within the framework are required to prohibit developers from spending extensive time sitting on purchased land?

4.3 Green wedges and the urban growth boundary

The urban growth boundary (UGB) limits urban development in metropolitan Melbourne. Non-urban areas beyond the UGB are called green wedges, and consist of:

- public land—for example, national parks, other parks and reserves
- agriculture and food growing
- low-density activity sites, such as:
 - airports
 - water treatment facilities
 - quarries
 - cultural heritage sites
 - biodiversity conservation areas
 - water catchments.³⁹

Figure 4.1 shows the location of Melbourne's green wedges.

³⁹ Department of Environment, Land, Water and Planning, *Policies and Initiatives: Green wedges*, 2021, <<https://www.planning.vic.gov.au/policy-and-strategy/green-wedges>> accessed 14 June 2022.

Figure 4.1 Location of Melbourne's green wedges



Source: Department of Environment, Land, Water and Planning, *Policies and Initiatives: Green wedges*, 2021, <<https://www.planning.vic.gov.au/policy-and-strategy/green-wedges>> accessed 14 June 2022.

The Committee heard that the UGB and green wedge policy was a positive planning development⁴⁰ and that a number of 'key' planning mechanisms exist to continue to manage green wedge land. Nillumbik Shire Council provided a helpful oversight of this regulatory framework in voicing its support for green wedge preservation:

Council support Direction 4.5 of Plan Melbourne '*Plan for Melbourne's green wedges and peri-urban areas*' particularly policy at 4.5.1 to '*strengthen protection and management of green wedge land*' and particularly identify the importance of the continued use of key planning tools that manage Green Wedge land specifically:

- a. regulations requiring ratification by both Houses of Parliament for planning scheme amendments that alter the urban growth boundary or green wedge subdivision controls;
- b. Core Planning Provisions for Metropolitan Green Wedge Land (Clause 57), which set out prohibited land uses and subdivision provisions;

⁴⁰ Planning Democracy Group, *Submission 28*, p. 10; Name withheld, *Submission 48*, p. 1; Green Wedges Coalition, *Submission 127*, p. 15.

- c. green wedge zones, which primarily include the Green Wedge Zone, the Green Wedge A Zone and the Rural Conservation Zone; and
- d. Green Wedge Management Plans, which are council-adopted strategies that identify a vision, objectives and actions for the sustainable use and development of each green wedge.⁴¹

Evidence received by the Committee said that green wedge land must be protected⁴² due to the benefits of the land. This includes:

- liveability, such as:
 - for the health and wellbeing of residents⁴³
 - for recreational and leisure uses⁴⁴
- biodiversity and vegetation⁴⁵
- climate change⁴⁶
- supply chain length minimisation⁴⁷
- agriculture and food security.⁴⁸

The Committee heard that green wedge land is threatened by Melbourne’s growing population and the urban creep⁴⁹ which can be facilitated by current planning frameworks. For example, Emeritus Professor Michael Buxton submitted:

The two main threats to the future of green wedges are further expansions to the UGB and the incremental approval of urban related uses and developments in the green wedge and broader rural zones. The UGB seeks to confine urban development to the area inside the boundary. But allowing urban related uses and developments outside the UGB is an expansion of the urban growth boundary by stealth.⁵⁰

⁴¹ Nillumbik Shire Council, *Submission 10*, pp. 17–18. Submissions that also discussed frameworks and policies include Name withheld, *Submission 179*, pp. 3–6; Professor Michael Buxton, Emeritus Professor Environment and Planning, RMIT University, *Submission 93*, p. 9; Green Wedges Coalition, *Submission 127*, p. 4.

⁴² Mr Frank Simpson, *Submission 12*, p. 1; Ms Annette Cooper, *Submission 13*, p. 2; Greater Torquay Alliance Inc., *Submission 187*; Mr Ian Moran, *Submission 245*, p. 1; Protectors of Public Lands Victoria Inc., *Submission 213*, p. 7; Municipal Association of Victoria, *Submission 268*, p. 9; Bayside City Council, *Submission 134*, p. 14; Combined Residents of Whitehorse Action Group Inc., *Submission 180*, p. 6; Mrs Nina Earl, *Submission 190*, p. 1.

⁴³ Mr Peter and Mrs Rita Fellows, *Submission 14*, p. 2; Name withheld, *Submission 16*, p. 4; Dingley Village Community Association, *Submission 75*, p. 2.

⁴⁴ Name withheld, *Submission 16*, p. 4; Heatheron R.A.I.D., *Submission 79*, p. 4; Ms Janice Davies, *Submission 85*, p. 2.

⁴⁵ Nillumbik Shire Council, *Submission 10*, p. 17; Name withheld, *Submission 240*, p. 1; Name withheld, *Submission 16*, p. 4.

⁴⁶ Heatheron R.A.I.D., *Submission 79*, p. 2; Nillumbik Shire Council, *Submission 10*, p. 17.

⁴⁷ Nillumbik Shire Council, *Submission 10*, p. 17.

⁴⁸ Name withheld, *Submission 16*, p. 4; Narre Warren East Residents Group, *Submission 209*, p. 3.

⁴⁹ Ms Annette Cooper, *Submission 13*, p. 2; Narre Warren East Residents Group, *Submission 209*, p. 3; Green Wedges Coalition, *Submission 127*, p. 16; Name withheld, *Submission 16*, p. 4; Bayside City Council, *Submission 134*, p. 14; Ms Valerie Polley OAM, *Submission 92*, p. 2.

⁵⁰ Professor Michael Buxton, *Submission 93*, p. 10.

Planning Democracy Group stated that:

Governments have allowed various incursions into the Green Wedges. It is said that the approved land uses, such as Churches and Schools, are worthy uses. However, that is not the point. If they are permitted on Green Wedge land, it ceases to serve any purposes as a Green Wedge.⁵¹

City of Kingston was also concerned about approved land uses in the planning framework and its impact on green wedge land. Its submission to the State Government's *Planning Melbourne's Green Wedges and Agricultural Land* paper⁵² read:

Council reiterates its concerns in relation the extent to which such policy changes may lead to a potential proliferation and surge in market interest for the establishment of schools and places of worship adjacent the UGB. Such an outcome would, over time, lead to a blurring of the UGB as opposed to the desired separation between 'Green Wedge' uses and uses which are required to service the 'urban population'. It is also noted that Council has received a significant number of planning applications for schools and places in the green wedge in the past.⁵³

Narre Warren East Residents Group told the Committee that:

Places of Worship and Schools must be prohibited uses in the Green Wedge. Places of worship and schools need to be removed from Clause 35.04-1 Table of Uses, and the Planning Practice Notes (PPN) 42 & 62, which currently allow for them. Places of worship and schools are urban uses, and must be located behind the Urban Growth Boundary, or within township boundaries.⁵⁴

Also see Ms Elsa Neal's discussion in *Submission 100* for a similar discussion regarding nursing home construction and the Green Wedges Coalition's breakdown of 'excessive built form' exceptions.⁵⁵

Australian Food Sovereignty Alliance (AFSA) agreed that green wedges need to be preserved, particularly in the face of population growth, as agricultural land in green wedges will contribute to future food security. It submitted:

AFSA implores to the Committee to ensure that no housing development is ever permitted in Victoria's zones associated with farming – ie our Farm Zones, Rural Conservation Zones, Rural Living Zones – but also in our Green Wedge areas and peri-urban areas as these are of critical importance to the Victorian community. These areas comprise Melbourne's foodbowl.

AFSA submitted in 2021 that the pressures of a growing population must be dealt with in the 4 residential suite of zones, not in Farming, Green Wedge, Rural Conservation nor Rural Lifestyle Zones. This is especially critical in the face of the negative impacts of

⁵¹ Planning Democracy Group, *Submission 28*, p. 10.

⁵² Provided as Attachment 3 to the City of Kingston's submission to this Inquiry: City of Kingston, *Submission 280 [Attachment 3]*.

⁵³ *Ibid.*, p. 5.

⁵⁴ Narre Warren East Residents Group, *Submission 209*, p. 4.

⁵⁵ Ms Elsa Neal, *Submission 100*, pp. 4-5; Green Wedges Coalition, *Submission 127*, p. 7.

climate change on Australia's capacity to grow food on the limited arable land we have, most of which is concentrated around cities (and indeed is the very reason cities were settled where they were).⁵⁶

Nillumbik Shire Council agreed, suggesting food security be elevated to the Victorian Planning Provisions. It submitted:

It is considered food security is a very important issue in regard to Green Wedge planning that has not been elevated within the VPP's. Nillumbik's draft Health and Wellbeing Plan, the draft Climate Action Plan as well as the Green Wedge Management Plan recognise the importance of strengthening the food system and the need for sustainable food production locally (e.g. regenerative agriculture).⁵⁷

The security of Melbourne's food bowl was also discussed by the City of Kingston.⁵⁸

Stakeholders questioned whether current UGB policy is sufficient to meet practices of land speculation and land banking. Green Wedges Coalition said:

Even Plan Melbourne's commitment to a permanent Urban Growth Boundary has not stopped land speculation and the resultant land banking. This distorts the property market by increasing land values for land in the Green Wedges.⁵⁹

City of Whittlesea said:

A clear UGB provides long term certainty and clear strategic direction about where housing and other urban uses should be located. The current UGB has not been applied consistently and has resulted in a sense of uncertainty within the local community and some land use speculation/land banking around the perimeter of the Township. This has resulted in increasing pressure to extend the Township boundary to support additional residential development.⁶⁰

The effect of land banking in the planning system was also discussed by other stakeholders to this Inquiry.⁶¹

To better facilitate the protection of Victoria's green wedges, stakeholders called for:

- the urban growth boundary to stay as is currently located⁶²
- the use of infill development in urban areas to address housing supply or population growth concerns⁶³

⁵⁶ Australian Food Sovereignty Alliance, *Submission 43*, p. 5.

⁵⁷ Nillumbik Shire Council, *Submission 10*, p. 18.

⁵⁸ City of Kingston, *Submission 280 [Attachment 3]*, p. 3.

⁵⁹ Green Wedges Coalition, *Submission 127*, p. 17.

⁶⁰ City of Whittlesea, *Submission 202*, p. 12.

⁶¹ Booroondara Heritage Group for Advocacy and Protection, *Submission 196*, p. 6; 3228 Residents Association, *Submission 199*, p. 4; Protect Fitzroy North, *Submission 274*, p. 1; Maribyrnong City Council, *Submission 18*, p. 8; Australian Food Sovereignty Alliance, *Submission 43*, p. 5; Brunswick Residents Network, *Submission 60*, p. 4.

⁶² Cardinia Shire Council, *Submission 206*, p. 4; Glen Eira City Council, *Submission 207*, p. 10; Municipal Association of Victoria, *Submission 268*; Name withheld, *Submission 159*, p. 1.

⁶³ Cardinia Shire Council, *Submission 206*, p. 4; Bayside City Council, *Submission 134*, p. 14.

- stronger planning laws,⁶⁴ including:
 - updating green wedge policies to ensure they are clear, current and more prescriptive⁶⁵
 - that planning laws prevent urban use developments in green wedges⁶⁶
 - requiring any built form application in green wedge areas to have a Land Management Plan⁶⁷
- allocating more green wedge land⁶⁸
 - including beyond metropolitan Melbourne⁶⁹
- incentivising landowners to protect green wedge land,⁷⁰ including through regenerative agriculture⁷¹
- creating statutory offices to oversee green wedge land management, such as:
 - a Commissioner that variously ensures green wedge legislative objectives are being met and undertakes monitoring, advocating and reporting functions⁷²
 - independent advisors to assist Council regarding strategies and policies to protect green wedge land⁷³
 - a dedicated Tribunal⁷⁴
- Councils be empowered to protect and manage green wedges.⁷⁵

The Green Wedges Coalition called for the Victorian Government to implement the ‘welcome commitments’ made before the 2018 election to ‘better protect’ green wedges. These undertakings included:

- a. ‘to tighten controls to better protect Melbourne’s Green Wedges from overdevelopment’
- b. ‘to protect the environment, landscape, agriculture, and rural industry of each area, and put a cap on the size of developments.’⁷⁶

In contrast, the Committee did receive evidence that suggested green wedge policy needs to be re-assessed. For example, a submitter outlined a planning mistake made for

⁶⁴ Ms Janice Davies, *Submission 85*, p. 3; Green Wedges Coalition, *Submission 127*, pp. 4, 15–6; City of Whittlesea, *Submission 202*, p. 2.

⁶⁵ Narre Warren East Residents Group, *Submission 209*, p. 4.

⁶⁶ Ibid.; Nillumbik Shire Council, *Submission 10*, p. 17; Ruskin Park Residents Action Group, *Submission 122*, p. 6.

⁶⁷ Green Wedges Coalition, *Submission 127*, p. 8.

⁶⁸ Name withheld, *Submission 219*, p. 3.

⁶⁹ Name withheld, *Submission 159*, p. 1.

⁷⁰ Ms Janice Davies, *Submission 85*, p. 3.

⁷¹ Australian Food Sovereignty Alliance, *Submission 43*, p. 7.

⁷² Warrandyte Community Association, *Submission 101*, p. 2.

⁷³ Ms Janice Davies, *Submission 85*, p. 3.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Green Wedges Coalition, *Submission 127*, p. 10.

Nillumbik-based land in 2000 or 2001 that resulted in land being incorrectly zoned as green wedge. The submitter argued that this land is wrongly classified and could indeed be used for residential development to alleviate population growth constraints.⁷⁷

The Housing Industry Association (HIA) told the Committee that expanding the UGB may be one way to increase housing affordability as it results in new land supply. It said that demand for title ready land has ‘exceeded expectation’ and that a ‘full scale review’ of the UGB—including available land and population modelling—‘should be considered’.⁷⁸

Few other stakeholders called for the UGB to reach far beyond current.⁷⁹

Questions for consideration by a future inquiry

1. Is the urban growth boundary adequate to protect green wedge zones and to contain urban sprawl? Look at this in relation to approved land uses and population growth.
2. How is the practice of land-banking impacting the urban growth boundary and green wedge zones?
 - a. Should this be regulated?
3. How can the planning framework be amended to best protect the urban growth boundary and green wedge zones from land-banking practices?

4.4 Suburban character

A common theme in submissions was that the current planning framework does not protect suburban or town character, and that there is a risk that the unique or specific character of neighbourhoods will be lost.

What is meant by suburban or neighbourhood character may be, to some extent, subjective. It can sometimes be seen as simply related to a preponderance of a particular architectural style, such as referred to in the term ‘character homes’. This is only one element of the character of a suburb or neighbourhood.

An attachment to the submission from the Toorak Residents Group cited a Stonnington Council-sponsored report from 2016 as defining neighbourhood character as:

the qualitative interplay of built form, vegetation and topographic characteristics, in both the private and public domains that make one place different from another.⁸⁰

⁷⁷ Name withheld, *Submission 49 Attachment 1*, p. 4.

⁷⁸ Housing Industry Australia, *Submission 11*, pp. 30–31.

⁷⁹ Mr Greg and Mrs Linda Jones, *Submission 218*, p. 3; Save Kingswood Inc., *Submission 145*, p. 8.

⁸⁰ Toorak Residents Group 2020, *Submission 96 Attachment 1*, p. 10.

Further to this, the attachment referred to the State Government’s Planning Practice Note 43, which states that:

- describing neighbourhood character requires a qualitative assessment and the exercise of judgement about which features and characteristics determine the neighbourhood character of an area
- describing the character of an area will also depend on the extent of neighbourhood character analysis already undertaken by the relevant council and the particular characteristics of the neighbourhood in question, and that
- matters to be considered in describing neighbourhood character include:
 - The pattern of development of the neighbourhood (where more than one dwelling on a lot is proposed)
 - The built form, scale and character of surrounding development including front fencing
 - architectural and roof styles
 - Any other notable features or characteristics of the neighbourhood.⁸¹

However, while acknowledging the useful context these definitions provide, the formal definitions that constitute the formal guidelines for applicants, designers and Council planners are found in the Statements of Preferred Neighbourhood Character and the accompanying Design Guidelines for each Precinct, as set out in clause 22.23 of the Planning Scheme. These identify specific character features of specific precincts within a Council area.⁸²

As an example, the Stonnington Statements of Preferred Character cover three precincts, and each has different character features. The submission from the Toorak Resident’s Group (Attachment 1) states that:

These three Statements provide guidance for the design of new developments and against which such proposals should be assessed. Taken in conjunction with the Objectives and Guidelines set out in the Tables in Clause 22.23 and, in particular, the list of design elements that are to be avoided, they represent the benchmarks to be used in the design process and by Council officers in assessing whether a proposal should be approved for the issue of a Planning Permit.⁸³

One of the key elements of the guidelines covering the suburban or neighbourhood character of a location or community is responsiveness to the community. While there is unlikely to be universal agreement in a community about what constitutes appropriate development, it can usually be assumed that the general character of a suburb or neighbourhood is attractive and desirable to those that live there.

⁸¹ Ibid., p. 11.

⁸² Ibid., p. 12.

⁸³ Ibid.

The Planning Democracy Group told the Committee in its submission that:

residents are entitled to a say in the character of their street, their neighbourhood, their community. They have to live there. Developers typically don't.⁸⁴

In discussing her small town, one submitter told the Committee that 'the neighbourhood character and natural environment is exceptional but generally ignored by VCAT when making their final Order.'⁸⁵ This is despite local government having 'Planning Departments to appropriately plan their Shire with a view to respecting the neighbourhood character and preserving the natural environment; and liveability of towns.'⁸⁶

The submission said that 'small towns are being seriously eroded of their character and natural beauty when local government planning is overruled by VCAT'. Further, it suggested that 'Local planning schemes developed specifically to retain the character of towns is defenceless against the powers of VCAT.'⁸⁷ Further discussion of the impact of VCAT processes and decisions appears in Section 4.5.

The submitter said that 'a few years of this uncontrolled development will totally trash rural and regional towns with trees felled and the neighbourhood character disregarded.' To protect the character of communities, the submission suggested, 'control of planning must remain in the hands of local government and citizens.'⁸⁸

Mr Gary Vines told the Committee that multi-unit developments are having a substantial detrimental impact on suburbs. He said that a 'free-for-all in residential multiunit development is not an efficient planning system' and that:

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.⁸⁹

A discussion paper published by DELWP provided a new assessment model aimed at improving the operation of ResCode. The Paper proposes that the new model be applied to residential development planning permit applications, by replacing the ResCode assessment requirements based on objectives, standards and decision guidelines with a new Performance Assessment Module (PAM).⁹⁰

It was the Department's intention to consider community and stakeholder feedback received during the consultation process as it refines the options for improving the new assessment model. The Department will collate and analyse feedback received during

⁸⁴ Planning Democracy Group, *Submission 28*, p. 6.

⁸⁵ Name withheld, *Submission 31*, p. 3.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Gary Vines, *Submission 34*, p. 4.

⁹⁰ Engage Victoria, Improving the operation of ResCode: Have your say on a proposed new assessment model for residential development in Victoria, (n.d), <<https://engage.vic.gov.au/improving-operation-rescode>> accessed 14 June 2022.

the consultation period in the coming months, and this will inform decisions about implementation. At the time of preparing this Report, this process was ongoing and there was no final decision on the proposed changes. The Committee expects that a full inquiry in 2023, as recommended in Chapter 1, will be able to reach some conclusions about proposed changes.

The Building 4.0 Cooperative Research Centre (Building 4.0 CRC), an industry-led research initiative co-funded by the Australian Government,⁹¹ addressed some of the issues raised in DELWP's discussion paper in its submission to this Inquiry. The submission drew from its own reports, including *the E-Planning and E-Approvals Project: Technical and Legal Assessment*. These reports relied on interviews with a number of stakeholders and there were a number of differing views expressed.

In its submission, Building 4.0 CRC discussed the qualitative criteria that currently exists in the Victorian Residential Code. It suggested that 'it is with respect to the application of qualitative or subjective decision-making criteria that much of the uncertainty and disputation found in the system exists.'⁹² As an example, the submission cited Clause 54.02 (Neighbourhood Character) of the Victorian Residential Code that provides '[t]he design response must be appropriate to the neighbourhood and the site' and 'must respect the existing or preferred neighbourhood character and respond to the features of the site'.⁹³ The submission said that this is an 'inherently subjective factor that can have multiple interpretations and about which reasonable minds will differ'.⁹⁴

The submission contrasted this subjective criteria to the quantitative assessment criteria such as Building Height. It cited Clause 54.03-2 (Building Height) that provides that:

if no maximum height is specified in a zone or overlay, 'the maximum building height should not exceed 9 metres, unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the maximum building height should not exceed 10 metres'.⁹⁵

The submission stated that while some stakeholders supported the quantification of assessment criteria that provided an objective and therefore less uncertain criteria, others expressed concerns about the quantification of assessments. It said that some stakeholders expressed the need for caution about a:

predominantly quantitative system placing emphasis on meeting individual requirements foremost without consideration of the cumulative effect of requirements considered together and experienced in the building as a whole.⁹⁶

Concerns were also expressed about the potential improved certainty and clarity from a quantitative system could 'fuel calls for the reduction or removal of qualitative

⁹¹ Building 4.0 Cooperative Research Centre, *Welcome to Building 4.0 CRC*, 2020, <<https://building4pointzero.org>> accessed 27 June 2022.

⁹² Building 4.0 Cooperative Research Centre, *Submission 42*, p. 5.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

assessment methods completely without understanding their purpose in design quality'.⁹⁷

Maribyrnong City Council's submission echoed these concerns. The Council stated in its submission to the DELWP's Discussion Paper—as part of the Maribyrnong ResCode review—that the Council was concerned about the proposal to confine assessment of neighbourhood character and design details to quantifiable standards.⁹⁸

The Discussion Paper suggested that most of the standards in ResCode that are considered to define neighbourhood character are quantitative standards—such as:

- street
- side and rear setbacks
- site coverage
- walls on boundaries
- front fences
- height
- landscape and gardens, and
- built form.⁹⁹

According to the submission, the Discussion Paper infers that neighbourhood character policies in planning schemes would be better replaced by a small selection of quantified standards in residential zones as the local policies are hard to use and not transparent.¹⁰⁰

The Council's submission suggested that qualitative standards based on well-founded neighbourhood character studies have been very effective in reaching negotiated outcomes with developers for sympathetic, context-responsive infill housing.¹⁰¹

Further, the submission said that:

If the neighbourhood character and detailed design standards were totally quantified and compliance with the quantified standard was deemed to meet the objective, there would be no scope for third party input unless the numerical standards were not met.¹⁰²

The Council therefore told the Committee that the 'qualitative standards must be retained, to assess neighbourhood character and design detail.'¹⁰³ This view was

⁹⁷ Ibid.

⁹⁸ Maribyrnong City Council, *Submission 18*, p. 35.

⁹⁹ Ibid., p. 50.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., p. 35.

¹⁰² Ibid., p. 45.

¹⁰³ Ibid., p. 47.

supported by the City of Boroondara submission, which stated in its response to the Discussion Paper that:

... Council considers the proposed model is not suitable to apply to all of the current ResCode standards. Critically, Council is of the view the proposal could in fact result in a weakening of local planning policies and limit Council's ability to undertake qualitative assessments of proposed developments based on neighbourhood character outcomes.¹⁰⁴

Boroondara's submission suggested that the proposed changes would require substantial work, including a 'significant planning scheme amendment to update our local neighbourhood character controls in response to these changes.'¹⁰⁵

As stated in Chapter 1, the issue of ongoing, long-term planning reforms makes any firm recommendations on the current assessment processes for the protection of neighbourhood character difficult. As Brimbank City Council told the Committee in its submission, 'Long-term strategic planning for housing and neighbourhood character in Brimbank has been severely impacted by ongoing State-led planning reforms.'¹⁰⁶ This is true for a number of Councils and further complicates the Committee's task.

Another issue raised in submissions was that of the default position for planning decisions. According to Protect Fitzroy North, the default planning settings are more-or-less that everything not expressly prohibited is permitted—or at least arguably, as permitted. The submission said that if the default planning settings were instead altered so that:

large changes in built form or neighbourhood character are not able to occur without a suitable Planning Amendment and planning controls, then the onus would be on councils wishing to benefit from development, and for applicants alike, to ensure that a timely and productive planning amendment process takes place.¹⁰⁷

The issue of the protection of vegetation is discussed in more detail in Chapter 3. However, a number of submissions discussed the issue of vegetation specifically as it related to the character of a suburb or neighbourhood.

The Nillumbik Shire raised concerns about the removal of vegetation from individual properties, suggesting that this 'poses a significant threat to the highly valued 'treed' character of Nillumbik Shire's activity centres ...'¹⁰⁸ The submission said that:

Canopy trees are a particularly important contributing element to the preferred character for both the Eltham and Diamond Creek Activity Centres, one which reflects both areas' landscape and heritage.¹⁰⁹

¹⁰⁴ City of Boroondara, *Submission 53, Attachment 1, p.3*

¹⁰⁵ Ibid.

¹⁰⁶ Brimbank City Council, *Submission 54, p. 3.*

¹⁰⁷ Protect Fitzroy North, *Submission 274, p. 4.*

¹⁰⁸ Nillumbik Shire Council, *Submission 10, p. 10.*

¹⁰⁹ Ibid., p. 19.

While one of the ways that the removal of vegetation from a location are managed is by the application of offsets—the planting of equivalent vegetation in a different location—this was not seen as a viable alternative to protecting existing vegetation. Ms Jane Hildebrandt said in her submission that:

Offsets cannot produce Net Gain because they can never replicate mature vegetation lost, especially old trees. Offsets do not replace vegetation in the same place, so the ecological character of that area is compromised, often obliterated, especially in urbanised areas.¹¹⁰

Similarly, the issue of heritage is considered in more detail in Chapter 5. However, there were submissions that discussed heritage in the context of its impact on a suburb's character. Many of the submissions received addressed local and specific planning issues which personally impacted the submitter. As stated in the introduction to this report, it is not the Committee's practice to focus on specific cases, except to use them as examples of a broader issue. However, there were a number of submissions that talked about the character of suburbs in general terms.

Nillumbik Shire told the Committee in its submission that heritage is a major contributor to Victoria's identity and provides many community benefits (social, environmental and economic). It stressed that these benefits cannot all be quantified in dollar terms, and many contribute to neighbourhood character and a sense of belonging. The submission stated:

the maintenance and conservation of heritage buildings helps to achieve sustainable urban environments, where maintenance and conservation of existing buildings significantly reduce demolition and new construction waste¹¹¹

The issue of local identity and character is often seen in local terms, where people's concerns are understandably focussed on their own suburb or environment. According to the National Trust of Australia (Victoria):

members of the community do not always value heritage places for their architectural or aesthetic "intactness", but care more about protecting the history, character and identity of where they live.¹¹²

As an example of the local focus for many communities, the Heritage Council of Victoria told the Committee in its submission that the Yarra City Council responded to residents' demands by communicating the messages that heritage contributes to 'what makes Yarra unique, and that protecting and promoting heritage can preserve its identity, as well as help develop a richer understanding of various layers of its history'. The submission stated that:

¹¹⁰ Ms Jane Hildebrandt, *Submission 26*, p. 9.

¹¹¹ Nillumbik Shire Council, *Submission 10*, p. 14.

¹¹² National Trust of Australia Victoria, *Submission 129*, p. 16.

The Council focused its land-use policies on protecting the valued heritage character of these neighbourhoods, while accommodating growth and change in strategic redevelopment sites and precincts.¹¹³

More generally, there was discussion about the overall impact of the character of Melbourne or Victoria. For example, the Fellows Family said:

Tragically, in Melbourne our generation is leaving the next generation worse off in regard to, among other things, housing ownership and urban design, the maintenance of precious heritage buildings and character of Melbourne, and achieving some major and urgent environmental objectives.¹¹⁴

However, most discussion about character was at a local or suburban level.

A substantial number of the submissions that addressed the issue of suburban or neighbourhood character were concerned with the aesthetics of developments and how a suburb might visually change as the result of particular developments. Annette Cooper told the Committee that aesthetic considerations should be mandated. She said:

I understand the UK government has stated that ‘beauty’ needs to be factored into any new development. Equivalent legislature needs to be introduced here if we are to avoid the continual erosion of our streetscape character.¹¹⁵

The impact on the style of buildings on the character of a suburb was the subject of a research project in Toorak. Ilona Komesaroff told the Committee that in April 2020 residents commissioned urban planner and architect Jim Holdsworth to carry out an extensive Neighbourhood Character Research Project.¹¹⁶ According to the submission, the Project found that over recent years there has been significant demolition of older dwellings and loss of private gardens and landscaping, as well as the construction of redevelopments and new buildings that are inappropriate and insensitive to the character of the suburb.¹¹⁷

According to this submission, while Stonnington Council has assessed and refused some applications for developments that it deemed to be inappropriate in terms of the neighbourhood character, and contesting them in support of opposing residents in VCAT, the VCAT enabled these developments to go ahead almost without exception.¹¹⁸

The importance of local character was further emphasised by the Brunswick Residents Network. In its submission, it told the Committee that ‘protecting neighbourhood character and amenity is crucial and is often ignored by developers’. It further suggested that any changes to the Planning and Environment Act must take into

¹¹³ Heritage Council of Victoria, *Submission 9*, p. 30.

¹¹⁴ Fellows Family, *Submission 14*, p. 1.

¹¹⁵ Ms Annette Cooper, *Submission 13*, p. 2.

¹¹⁶ Ms Ilona Komesaroff, *Submission 21*, p. 1.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

account a broader agenda, recognising the need for sustainable environments in urban as well as rural settings.¹¹⁹

Height limits can also impact on the character of a suburb or locale. The issue is covered in more detail in Section 4.2.1, but specifically in relation to the effect it has on suburban character is considered here.

VLGA told the Committee in its submission that councils are increasingly confronted by planning permit applications that exceed discretionary planning scheme controls (such as height) by significant amounts. The submission suggested that:

These then evolve a variety of ways (i.e., whether granted by the council, directed by VCAT to be granted, or granted by the Minister following call-in) that re-set area character and are then used as a precedent for transformation of area character, all without proper strategic planning steps (such as planning scheme amendments and planning panel hearings) taking place.¹²⁰

The lack of protection on this issue within the planning scheme was also emphasised by the Ballarat Heritage Watch. Ballarat Heritage Watch told the Committee that:

the Ballarat planning scheme currently provides very little protection for this low scale character of the city. The planning scheme does have numerous references to heights in various planning zones or overlays, however very few actually specify a mandatory limit.¹²¹

According to Manningham City Council's submission, the introduction of mandatory building heights would:

ensure the protection of neighbourhood character, require developments to be site responsive in their design, eliminate precedence issues, and generally satisfy the expectations of the community and Council.¹²²

The submission also suggested that third party appeals to VCAT would also be simplified under mandatory controls.¹²³

119 Brunswick Residents Network, *Submission 60*, p. 3.

120 Victorian Local Governance Association, *Submission 63*, p. 3.

121 Ballarat Heritage Watch Inc., *Submission 64*, p. 6.

122 Manningham City Council, *Submission 138*, p. 4.

123 Ibid.

Questions for consideration by a future inquiry

1. Does the planning framework provide a consistent definition of what is meant by suburban or neighbourhood character?
2. To what extent is the impact on suburban character taken into account in planning decisions and how is this measured?
3. To what extent is 'character' measurable and how much of it is subjective and a matter of opinion?

4.5 Victorian Civil and Administrative Tribunal appeal processes

The Planning and Environment Act provides for VCAT to undertake reviews of certain planning decisions. If a planning permit application is refused, or an applicant is unhappy with conditions placed on their permit, they may lodge an application for review of the decision (appeal) to VCAT. Objectors to an application may also lodge an application for review with VCAT against a Council decision to grant a permit.

Common VCAT appeals include reviews of:

- a decision by a council to refuse a planning
- conditions imposed on a planning permit issued by a council
- a decision by a council to grant a planning permit (brought by an objector to the original application)
- a failure by Council to issue a decision on a planning application within the 60-day statutory timeframe.

When reviewing a planning decision, VCAT will only consider issues that are related to the reason for which the planning permit is required.

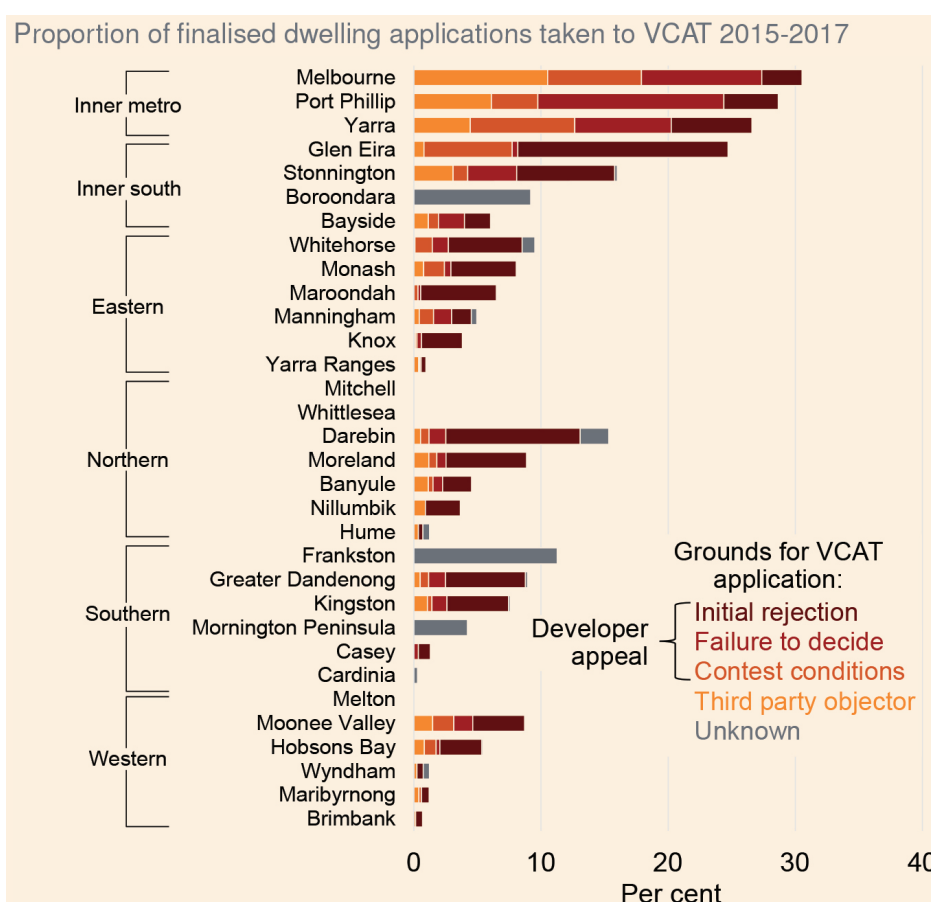
In its 2018 report, *Housing Affordability: re-imagining the Australian Dream* (provided to this Inquiry as part of its submission), the Grattan Institute noted:

- Victoria's planning system is more open to third party reviews and a higher proportion of planning decisions are reviewed compared to other jurisdictions.
- Development applications in inner city areas are more likely than outer suburban applications to be reviewed by VCAT.
- Applications that are reviewed typically take much longer to be finalised.

- Almost a third of all local council assessed dwelling applications go to VCAT in Melbourne, Port Phillip and Yarra councils. By contrast, less than five per cent go to VCAT in growth area councils (see Figure 4.2).
 - These applications are not frivolous: in both Port Phillip and Yarra, the majority ultimately receive development approval.
- The delay involved in applying to VCAT increases costs and uncertainty for developers, which are often passed on to purchasers. A slower supply of new dwellings also increases prices.¹²⁴

4

Figure 4.2 Dwelling development applications are more likely to go to VCAT in inner and middle ring council areas



Source: John Daley and Brendan Coates, *Housing Affordability: Re-imagining the Australia Dream*, report for the Grattan Institute, Melbourne, 2018, p. 68

A significant number of submissions to the Inquiry expressed concerns about the role and conduct of VCAT in appeal processes. A variety of recurring issues indicated there was a strong view in some parts of the community that VCAT was failing to promote and uphold good planning policy in favour of developers and property owners. The Committee notes that regardless of whether these concerns were reflective of actual or

¹²⁴ John Daley and Brendan Coates, *Housing Affordability: Re-imagining the Australian dream*, report for Grattan Institute, Melbourne, 2018, p. 68.

perceived failings in the VCAT appeals process, they highlighted there was a concerning lack of confidence in the system held by some people.

Concerns regarding VCAT's role in the appeals process covered a range of issues. Of particular note:

- Bringing a case to VCAT is cost prohibitive for community members and groups, particularly given the practical requirement for legal representation. In contrast, the resources of major developers to engage legal representation and expert witnesses, as well as fund appeals give them a significant and unfair advantage.¹²⁵
- Not enough weight is given to planning schemes, local planning policy and community views in VCAT decisions. There is a perception of entrenched bias in favour of property owners and developers.¹²⁶
- There is a lack of diversity in the backgrounds and expertise of VCAT members.¹²⁷
- VCAT is increasingly legalistic and its systems and processes are complex and often inaccessible or difficult to navigate for lay people and can deter greater community participation in VCAT processes.¹²⁸

Building 4.0 CRC drew the Committee's attention to interviews it conducted as part of its *E-Planning and E-Approvals Project*. The interviews revealed:

Participants also criticised the ease of the process by which objections are gathered, and the role of councillors in the process that can turn evidence based assessments into political assessments. Some participants described developers gaming the system to bypass the objection stage and to have matters proceed straight to VCAT where they believe evidence based assessments prevail.

These stakeholder concerns are supported by research that indicates Council officers and VCAT look at decisions in a broadly similar manner compared to councillors who are more inclined to refuse applications. The literature also identifies a number of problems associated with the third party objection and VCAT appeals processes in addition to the delay, uncertainty and gaming mentioned above, including issues of perceived bias and legitimacy, democratic accountability and corruption, and costs and community access.¹²⁹

¹²⁵ Yarra City Council, *Submission 259*, p. 9; Mr Kenneth Gomez, *Submission 275*, pp. 2–3; Mr Kevin Widmann, *Submission 242*, p. 2; Moonee Valley Heritage Action, *Submission 197*, p. 11; Ms Sheila Newman, *Submission 214*, p. 13; Save Our Suburbs Inc (Vic), *Submission 281*, p. 12; Brunswick Residents Network, *Submission 60*, pp. 7–8; Defenders of the South East Green Wedge Inc., *Submission 195*, p. 3; Mrs Nina Earl, *Submission 190*, p. 1; Name Withheld, *Submission 78*, p. 1; Ms Sandra Alexander, *Submission 77*, p. 1; Name withheld, *Submission 68*, p. 1; Mansfield Matters Group Inc., *Submission 41*, p. 6.

¹²⁶ Moonee Valley Heritage Action, *Submission 197*, p. 11; Mr Peter Hengstberger, *Submission 256*, p. 3; Name withheld, *Submission 253*, p. 1; Mr Kevin Widmann, *Submission 242*, p. 2; Yarra City Council, *Submission 259*, p. 9; Save Our Suburbs Inc (Vic), *Submission 281*, p. 10; Ms Sheila Newman, *Submission 214*, p. 13; Mornington Peninsula Shire, *Submission 273*, pp. 3, 22; Professor Michael Buxton, *Submission 93*, p. 15; Brunswick Residents Network, *Submission 60*, pp. 7–8; Defenders of the South East Green Wedge Inc., *Submission 195*, p. 3; Name Withheld, *Submission 78*, p. 1; Name withheld, *Submission 31*, p. 3; Ms Annette Cooper, *Submission 13*, p. 13.

¹²⁷ Moonee Valley Heritage Action, *Submission 197*, p. 11; Name Withheld, *Submission 78*, p. 1; Ms Sandra Alexander, *Submission 77*, p. 1; Mr Peter McPhee, *Submission 80*, p. 1; Name withheld, *Submission 68*, p. 1.

¹²⁸ Yarra City Council, *Submission 259*, p. 9; Mornington Shire Council, *Submission 273*, p. 22; Professor Michael Buxton, *Submission 93*, p. 15; Brunswick Residents Network, *Submission 60*, p. 7; Name withheld, *Submission 16*, p. 5.

¹²⁹ Building 4.0 Cooperative Research Centre, *Submission 42*, p. 5.

Brunswick Residents' Network argued there was a need for significant reform of VCAT to address the imbalance between developers, local residents and affected neighbours. It said:

Tribunals like VCAT are supposed to be different to courts. In most cases, tribunals have been established to create greater access to and equity in the justice system. They are intended to be cheaper, quicker, less formal and more efficient than the courts. This is clearly stated in VCAT's mandate: "VCAT's purpose is to provide Victorians with a low cost, accessible, efficient and independent tribunal delivering high quality dispute resolution."¹³⁰

City of Yarra contended that the use of expert witnesses in VCAT planning hearings was problematic and in need of 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 ... 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.¹³¹

City of Yarra also noted the introduction of compulsory conferences (replacing mediation) at VCAT had been very successful for settling planning disputes:

It is a 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.¹³²

Baw Baw Shire Ratepayers Association argued that the appeals process should be about protecting, hearing and considering the concerns and views of communities and individuals, but had instead become a battle of the experts, and cost prohibitive for many people.¹³³ While Moonee Valley Heritage Action called for legal aid to be available to community groups to enable their full participation in VCAT appeals.¹³⁴

Cardinia Shire Council said that VCAT generally supported local policy in its decision making. It told the Committee that because Cardinia Shire dealt with a relatively small number of appeals each year (10 to 15), VCAT did not play a large role in the decision

¹³⁰ Brunswick Residents' Network, p. 7.

¹³¹ Yarra City Council, *Submission 259*, p. 9.

¹³² *Ibid.*, pp. 9-10.

¹³³ Baw Baw Shire Ratepayers Association, *Submission 59*, p. 6.

¹³⁴ Moonee Valley Heritage Action, *Submission 197*, p. 11.

making process. Accordingly, Council did not generally receive many complaints about VCAT decisions. Notwithstanding this, Cardinia Shire considered there was some room for improvement:

VCAT procedures and processes are complicated and often hard for the community to understand, the hearing process is very formal, much more formal than the Planning Panels process, and not as accommodating for lay persons.

Accessibility could be improved in order to be open and transparent. For example: VCAT has become less accessible in online hearings given participants have to be ready to attend the hearing from the beginning and cannot leave as it is unlikely the member will them back into the virtual meeting. This does not allow for technical issues, or individuals who simply do not have the time to be present from start to end of the hearing. Previous to online hearings, individuals were able to enter the VCAT hearing room at any time.¹³⁵

The Surveying and Spatial Sciences Institute (Victorian Region Committee) was of the view that councils sometimes made decisions to overturn local policy-based assessments, making a decision based on a specific policy element without sound justification. This results in additional expense to Council, the applicant and VCAT. It argued:

Some elements of the community who are not technically literate feel hard done by some of the VCAT Appeal processes. However, 80–90% of cases have a predictable outcome based on existing planning principles, and the Tribunal is required to document the reasons for their decision. VCAT is an essential component of Victoria's planning system. The ultimate test is to satisfy the public interest rather than special interest groups.¹³⁶

In its submission, Mornington Peninsula Shire observed:

- There have been 36 VCAT reviews of Council decisions in relation to planning applications for the year to date. Of these, VCAT upheld the Council's decision in 27 cases.
- Despite anecdotal reports that VCAT favours applicant appeals at the expense of objector appeals, and that community concerns are not adequately considered, data shows there is not a definitive skew that favours either the applicant or objector.
- Statistics for appeal decisions become somewhat blurred when mediation and amended plans are included. For example, an appeal against a refusal may be upheld ('the applicant won, the objectors lost'), however there may have been compromise on key issues. This could include changes to plans and conditions imposed on the final permit that satisfied or partially satisfied objector and/or Council concerns.

¹³⁵ Cardinia Shire Council, *Submission 206*, pp. 4–5.

¹³⁶ Surveying and Spatial Sciences Institute, *Submission 198*, p. 2.

- The rate of failure to grant appeals is directly linked to consistently high application numbers. Many of the failure to grant appeals are for very large projects where the Shire has not had sufficient time to prepare the required technical reports. Sometimes these applicants are getting in the queue for VCAT.
- There is a lack of consideration and weight given to overarching policy in the approved Localised Planning Statement (LPS) in the Mornington Peninsula Planning Scheme (aimed at recognising distinctive areas and landscapes and protect the identified values of those areas). Rather, VCAT appears to rely on neighbourhood character issues rather than the LPS policy framework so that applications are assessed without due regard for directions regarding limits on future housing growth.¹³⁷

Questions for consideration by a future inquiry

1. How do VCAT appeals affect timelines for planning approvals
2. Should limits be placed on the use of expert witnesses by parties to a review?
 - a. Should there be provision for independent witnesses to be utilised?
3. How can cost and other access barriers to VCAT be reduced for community members and groups?
4. What are the statistics of VCAT review decisions in recent years?
5. Is there empirical evidence on the extent to which VCAT review decisions are inconsistent with planning schemes?
6. Should the Planning and Environment Act be amended to change how and what factors VCAT gives weight to when undertaking a review?

4.6 Consultation processes and third party appeal rights

A key concern raised in submissions has been the perceived diminution of third party appeal rights. This is effectively the capacity of people not directly involved in the planning decision to have a say in planning outcomes. An example of this would be neighbours or community members who may be indirectly affected by a planning decision.

Some submissions suggested that third party appeal processes should be extended beyond those directly affected. Ms Janice Davies suggested that the right to object should go beyond the limited number of directly impacted residents. She said in her submission:

¹³⁷ Mornington Peninsula Shire, *Submission 273*, pp. 22–23.

Those directly impacted by a proposed development or changed land use are important objectors. However, regarding them as the only valid objectors is taking a very narrow short-term view. Green Wedge Bushland and Yarra River environs have high biodiversity value and are important to all current and future residents of Melbourne. They should have the right to object to a proposed development or changed land use. For example, because I hike up Mt Lofty (in the Green Wedge) only once a year, does not mean that I don't have a valid view regarding its protection, or that I am not a stakeholder.¹³⁸

While the Committee accepts that there are many sites in Victoria that are of importance to the whole community (or at least a large number of community members), for the purposes of this section third party consultation and appeal rights means those with a local interest in a planning decision. The scope of the third party notification and appeals process is an issue that should be examined in further detail in the full inquiry.

The Municipal Association of Victoria saw third party appeal rights as an important element of the planning assessment process. They said that they should be preserved as they help to 'protect the social license of the planning system by requiring genuine consultation with communities on high impact projects'.¹³⁹

The importance of third party appeal rights (and notification rights) was stressed by a number of submissions. Brimbank City Council told the Committee that:

Third party appeal rights are a fundamental component of the Victorian Planning System. These rights provides the opportunity for communities to be involved in the development of their neighbourhoods, and supports transparent decision making processes. Council supports the rights of affected parties to be informed, and seek review of planning decisions that impact the environment they live and work in.¹⁴⁰

This view was echoed by City of Stonnington, which said in its submission that it:

supports the need for third party appeal rights and the inclusion of local communities in the shaping of their city as one of the key principles of our planning system. There is concern for any reform that attempts to remove local Councils or the community from decision making processes, and by extension, third party appeal rights.¹⁴¹

The Committee also heard that the third party appeal process is an important element of a democratic planning system:

These rights are absolutely essential in a democratic framework and to counterbalance the domination of the development and property interests, who are largely profit driven.¹⁴²

¹³⁸ Ms Janice Davies, *Submission 85*, p. 3.

¹³⁹ Municipal Association of Victoria, *Submission 268*, p. 9.

¹⁴⁰ Brimbank City Council, *Submission 54*, p. 13.

¹⁴¹ City of Stonnington, *Submission 131*, p. 10.

¹⁴² Name Withheld, *Submission 15*, p. 11.

The transparency necessary in any democratic process was an issue for a number of submitters. Whitehorse City Council told the Committee that:

Removing third party appeal rights from certain application types or shifting approvals into a State ‘significant development’ stream will not provide the level of certainty or scrutiny required for transparent decision making with appropriate opportunities for community involvement and engagement.¹⁴³

This view was echoed by Ian Warren, who told the Committee that:

it should never be assumed that all third parties who are interested and entitled to be aware of an application and who may wish to object have been properly notified and consulted.¹⁴⁴

Mr Warren further suggested that heritage permit appeals are so narrowly constrained under current legislation that they are ‘all but impossible for any third party to carry through and likely meaningless in any outcome’.¹⁴⁵

The importance of democracy in planning decisions was also discussed in the submission from Save Our Suburbs. Save Our Suburbs said that:

a condition of dispersed power is public participation, through non-governmental and community based organisations orientated to the public interest. That alone is a strong recommendation for increasing third party objection and appeal rights (TPOAR).¹⁴⁶

The submission further stated that:

scrutiny and transparency discourage corruption and incompetence and thus improve planning outcomes. Consequently, as long as planning controls are performance-based, notice and appeal rights should exist for all development applications.¹⁴⁷

The Victorian Planning and Environmental Law Association also suggested that third party appeal rights are key to protecting the planning system against corruption and said it ‘encourage[s] a far more nuanced approach to site responsive design and often lead to better development outcomes.’ It stated such rights should be protected.¹⁴⁸

This view was echoed by Sally Vivian, who stated in her submission that:

Third party appeal rights are an important democratic tool, allowing people to participate in matters that impact their lives through changes to their environment. They should be upheld (despite any perceived shortcomings of the system).¹⁴⁹

¹⁴³ Whitehorse City Council, *Submission 171*, p. 3.

¹⁴⁴ Mr Ian Warren, *Submission 175*, p. 6.

¹⁴⁵ *Ibid.*, p. 7.

¹⁴⁶ Save Our Suburbs Inc. (Vic), *Submission 281*, p. 4.

¹⁴⁷ *Ibid.*, p. 14.

¹⁴⁸ Victorian Planning & Environmental Law Association, *Submission 215*, p. 5.

¹⁴⁹ Ms Sally Vivian, *Submission 216*, p. 6.

Banyule City Council noted, with significant concern, that a number of amendments have been made by the State Government to Victorian Planning Schemes ‘without consultation with councils.’ The submission said:

Of most serious concern to Banyule Council are VC170, VC194, and VC198. The changes remove:

- Council permit requirements,
- Public Consultation
- Consultation with local government, and
- Third party rights of residents.¹⁵⁰

It further submitted that:

meaningful consultation with the community and with local government on any reform proposals must occur before reforms are considered or introduced; Community consultation must remain an integral consideration for planning decisions; Community consultation must be a core part of major planning decisions and is critical for ensuring a transparent planning system.¹⁵¹

Two different submissions, from Scale it Down – Protect Brunswick Parks and from Save Our Suburbs Inc., quoted the former President of VCAT, Justice Stuart Morris. Justice Morris wrote an article strongly supporting third party rights. In this published paper presented at a conference on “Environmental Sustainability, the Community and Legal Advocacy” conducted by Victoria University, Melbourne on 4 March 2005, Justice Morris identified the fundamental value of third party appeals. He said:

The case for third party appeal rights comes down to three basics. First, the existence of third party appeal rights tends to improve the quality of governance. Good governance is not just about end results, it is also about the process of making decisions. Citizens derive satisfaction from having their say in decisions which affect them. Further, neighbouring landowners often have a very legitimate interest in whether development occurs and the form of that development.

Second, third party rights often lead to better planning decisions. It is true that it is comparatively rare for an objector to completely succeed in overturning a decision of a council in favour of development. But in more than half the matters brought before the tribunal, objectors are at least partly successful, in that the form of the development is changed or additional conditions imposed. Third party appeals do enable development proposals to be evaluated in more detail and, although this comes at a cost, the most common outcome is a refinement of the development.

Third, the existence of third party appeal rights discourages corrupt behaviour between developers and local government. When local government is charged with making a

¹⁵⁰ Banyule City Council, *Submission 201*, p. 2.

¹⁵¹ *Ibid.*

final decision on development issues there is a temptation for collusive behaviour; but this is pointless if objectors can exercise a right to appeal to an independent tribunal.¹⁵²

There have been concerns raised that these rights will be affected by changes to assessment criteria, which will render third party appeals somewhat obsolete.

In the ResCode review discussion paper, there has been a suggestion that providing more quantitative measures in the assessment of planning applications would remove some of the ambiguity and uncertainty that is a feature of many planning decisions. It has been argued in a number of submissions, however, that the removal of qualitative assessment criteria and an increasing emphasis on quantitative measures, such as height limits, setbacks from the street etc, will also limit the capacity of community members to exercise any third party appeal rights.

This was of concern to a number of submitters. Maribyrnong City Council told the Committee that:

if the neighbourhood character and detailed design standards were totally quantified and compliance with the quantified standard was deemed to meet the objective, there would be no scope for third party input unless the numerical standards were not met.¹⁵³

For this reason the Council said that ‘qualitative standards must be retained, to assess neighbourhood character and design detail’.¹⁵⁴

The Committee was told that recent changes—proposed and actual—may reduce the opportunity for communities to have a say in planning decisions. According to Brimbank City Council, recent amendments to Planning Schemes aimed at facilitating streamlined decision making for State significant projects, economic recovery and affordable housing developments have ‘reduced opportunities for communities to inform themselves of and be involved in projects that may have significant impacts on their neighbourhoods.’ The submission offered examples of a number of amendments that all provide for exemptions from third-party appeal rights.¹⁵⁵

Of these changes, the Council said:

This inconsistent approach to community consultation through the planning system creates confusion and uncertainty, and places pressure on Council and council officers to explain these changes.¹⁵⁶

The Committee heard that changes to processes are already reducing access to third party appeal rights. The 3068 Group said that in 2017, the State Government, as owner of the 4.6ha Former Fitzroy Gasworks, entered into a public consultation process. This was to be the last opportunity for the public to ‘have a say’ before a Development

¹⁵² Save Our Suburbs Inc.(Vic), *Submission 281*, p. 14.

¹⁵³ Maribyrnong City Council, *Submission 18*, p. 45.

¹⁵⁴ *Ibid.*, p. 47.

¹⁵⁵ Brimbank City Council, *Submission 54*, p. 13.

¹⁵⁶ *Ibid.*

Plan Overlay would remove third party rights of notice and objection. Yet, before the consultation had even commenced, all the important parameters had been fixed.¹⁵⁷ The submission stated that:

The DPO has now extinguished third party appeal rights for the largest site in Fitzroy North. While councils are responsible for setting zones, overlays and some local controls, the process has been completely usurped by the State planning apparatus.¹⁵⁸

Concerns about reforms that may reduce opportunities for community input were also raised by Boroondara City Council. It told the Committee that it has reservations about the composition of advisory and reference groups, given that they do not comprise members of the local communities that will also be affected by any reforms. The submission said that ‘this is a major failure of the reform process and of great concern to Council’. The submission stated that:

The exclusion of local communities from these groups and any further consultation means that one of the key stakeholders that will directly feel the effects of the reforms will not be able to have a say on the details of the reforms. This is particularly concerning in the context of future expansions of VicSmart application process (past expansion have involved very limited consultation) or the introduction of a code-assess assessment pathway which would further limit or remove third party notice and appeal rights.¹⁵⁹

Monash City Council also supported the protection of third party appeal rights, telling the Committee that the cost of appeals may also be an issue for third party appellants. It submitted that it:

supports the open planning system that exists, ensuring those detrimentally affected by development are able to engage in the process. We note that changes to VCAT in particular fees and charges, have substantially increased the costs for objectors to appeal a decision, removing the ability for some parties with genuine concerns from being able to object. While fees need to reflect the substantial cost of administering an appeal to discourage frivolous appeals, the cost needs to be accessible to neighbours experiencing substantial change.¹⁶⁰

These costs were seen by one submitter as a deliberate disincentive for those who might wish to appeal a decision:

Also in the legalisation of the VCAT appeal process, objectors (non-Council) are now essentially priced out of the process, costing around \$1000 to lodge an appeal with the additional threat of bearing large legal costs of the applicant and responsible authority. This is designed to deter objectors from appealing a planning decision – in effect denying objectors justice in planning.¹⁶¹

¹⁵⁷ The 3068 Group, *Submission 278*, p. 18.

¹⁵⁸ *Ibid.*, p. 19.

¹⁵⁹ City of Boroondara, *Submission 53, Attachment 1*, p. 78.

¹⁶⁰ City of Monash, *Submission 71*, p. 5.

¹⁶¹ Ms Kaye Oddie, *Submission 83*, p. 3.

Moreland City Council suggested that the response to the COVID-19 pandemic provided something of a blueprint for reducing the costs and therefore protecting third party and other appeal rights. It told the Committee that ‘the Act enshrines third party appeal rights for the majority of planning applications. It is Council’s view that retention of an independent appeal body is appropriate.’ It further stated:

The COVID-19 pandemic has changed the way that decision making bodies work and how they hear the views of affected parties. It is suggested that retention of some pandemic-instigated changes be considered in the longer term. For example specifying that some planning appeals be ‘heard’ based on written submissions, or there be no expert witnesses for particular types of appeals.

This would make appeals more accessible and cost-effective for a range of parties.¹⁶²

Further, it has been suggested that the removal or reduction in third party appeal rights has been both a goal and consequence of the perceived need to streamline or speed up the application/approval process.

Darebin Appropriate Development Association said that they felt the third party appeal rights have been completely undermined by the ‘fast track’ process where ‘significant sites are listed for development approval by the state government and not able to be considered by the local council or local residents.’¹⁶³ The Association suggested in its submission that:

This erosion of third party appeal rights at the local council level is aimed to prevent VCAT cases and to shorten decisions time. In Darebin it has resulted in an abundance of poor quality buildings and housing that does not meet community expectations or provide adequate housing.¹⁶⁴

City of Stonnington did not see a more streamlined system being necessarily incompatible with third party appeal rights, which it described as being ‘one of the core principles of the Victorian planning system’. It stated that it is:

supportive of a more streamlined and efficient process where it can be achieved without impacting the quality of local planning outcomes, and advocates for the retention of community input and third party appeal rights.¹⁶⁵

Bayside City Council also considered third party appeal rights to be essential, and that such rights are being eroded. It told the Committee that:

The community has a strong role to play in planning decisions and Council supports the need to protect and retain appeal rights for third parties. Council has observed an increasing trend to facilitate development outcomes by removing the opportunity for third party appeals – Council considers that this is not in the interests of fairness and

¹⁶² Moreland City Council, *Submission 150*, p. 13.

¹⁶³ Darebin Appropriate Development Association, *Submission 88*, p. 11.

¹⁶⁴ Ibid.

¹⁶⁵ City of Stonnington, *Submission 131*, p. 10.

transparency and that third party appeals are a critical piece of the planning framework that must be preserved.¹⁶⁶

City of Port Phillip and Manningham City Council also supported the enshrining of third party appeal rights into the planning framework.¹⁶⁷

Access to third party appeal rights may also be dependent on the type or scope of a project. In the opinion of the Green Wedges Coalition, while this might be acceptable in one setting, it might be completely inappropriate in another. Its submission stated:

In the Green Wedges it is not appropriate for the construction of a building or works with an estimated value of up to \$250,000 to not be subject to notice and third party objection rights. It is entirely unclear why the value of up to \$250,000 was chosen. In an urban situation, given the high cost of residential construction it may be appropriate. In a rural context a structure costing up to \$250,000 is likely to be a large and intrusive built form.¹⁶⁸

There has been a number of submissions that have commented on alternative planning decision processes—such as Ministerial decision making—that have undermined transparency in planning decisions and have eroded appeals processes, including third party appeals. Sustainable Population Australia said in its submission that:

A notable and shameful example of removal of third party appeal rights, and other questionable amendments to the P&E Act’s jurisdiction is the creation and implementation of the Major Transport Facilitation Act 2009, intended to “streamline” planning of projects deemed critical to the state.¹⁶⁹

The submission further suggests that:

This stealthy re-arrangement of governance around projects deemed “critical” by one person (Planning Minister) is extremely concerning. It invites corruption of the decision making process, and facilitates “fast tracking” of so many projects where community concerns might be expected, and where the previous level of transparency and appeal rights might have derailed this pet project.¹⁷⁰

While many submissions emphasised the importance of protecting third party appeal rights, there has also been some support for some limitations to be applied to such rights, including their removal in certain circumstances. A key issue is the time that planning decisions take to make, and that the appeal process can add to this time. City of Greater Bendigo told the Committee:

Third party appeal rights are an important part of Victoria’s planning framework and allow residents the ability to review impacts of proximate planning permit applications. While third party appeal rights are important, the timeframe involved in the appeals

¹⁶⁶ Bayside City Council, *Submission 134*, p. 15.

¹⁶⁷ Port Phillip Council, *Submission 136*, p. 4; Manningham City Council, *Submission 138*, pp. 4–5.

¹⁶⁸ Green Wedges Coalition, *Submission 127*, p. 19.

¹⁶⁹ Sustainable Population Australia, Victoria/Tasmania branch, *Submission 160*, p. 11.

¹⁷⁰ *Ibid.*, p. 12.

process is extensive and excessive, and can result in unnecessary uncertainty for community members, businesses and developers.¹⁷¹

Building 4.0 CRC told the Committee that one of the issues that arose out of its consultations with stakeholders was the view that ‘third party appeal rights were the greatest source of delay and uncertainty in the process.’¹⁷² The submission stated that:

Participants reported that third party appeals rights and its inherent high risk of design change acts as a disincentive to developers of projects in established areas investing in detailed project documentation at the design stage.¹⁷³

Similar concerns were raised by AFSA, which supported third party appeal rights but identified some concerns, particularly in relation to vexatious appeals. It told the Committee that ‘As for third party appeal rights, we agree they need to be protected’, however:

on the flip side we would also maintain that the third party needs to demonstrate standing – that they have a private right or special interest at risk – before it can appeal a planning application or decision. We have had experience of what could be termed vexatious third party interference in planning permits, for example some of our pastured poultry and pig farmers have had neighbours make unreasonable objections to planning applications purely because they don’t want to live next door to an animal farm. While such appeals are usually unsuccessful, they do take a lot of time and resources to deal with them.¹⁷⁴

The Surveying and Spatial Sciences Institute echoed the caution about who has access to appeals, telling the Committee that ‘there needs to be some sort of test introduced into legislation to remove frivolous and irrelevant objections’.¹⁷⁵

Even some local government councils, while generally very supportive of third party appeal rights and community consultation, saw some risks in blanket access to these rights. City of Port Phillip told the Committee that its officers are generally supportive of protecting third party appeal rights, as a key pillar of natural justice and fair governance and that, in general, ‘local stakeholder scrutiny produces a better, more responsive and context appropriate decision’. However, it suggested that there should be some limits. It said:

officers are supportive of using VicSmart provisions within the Planning Scheme (which remove third party appeal rights) where applications are of a minor/ limited nature and would have no notable off-site amenity impacts.¹⁷⁶

Another submission that supported more fine-grained or case-by-case access to third party appeal rights was from Cardinia Shire Council. In its submission, the Council said

¹⁷¹ City of Greater Bendigo, *Submission 284*, p. 4.

¹⁷² Building 4.0 Cooperative Research Centre, *Submission 42*, p. 6.

¹⁷³ Ibid.

¹⁷⁴ Australian Food Sovereignty Alliance, *Submission 43*, p. 8.

¹⁷⁵ Surveying and Spatial Sciences Institute, *Submission 198*, p. 3.

¹⁷⁶ Port Phillip Council, *Submission 136*, p. 4.

that third party appeal rights should vary depending on what kind of application it is, and Council supports the current arrangements. It was supportive of maintaining applications where a Precinct Structure Plan (PSP) has been approved as being exempt from third party appeal rights. It stated that the PSP goes through a public exhibition process as part of the planning scheme amendment process to incorporate it into the relevant planning scheme and including third party appeal rights would remove efficiencies that are part of the purpose of the PSP process.¹⁷⁷ In particular, the Council suggested that:

Social and affordable housing becomes very hard to deliver when the community becomes involved and should be exempt from third party appeal rights.¹⁷⁸

Glen Eira City Council also saw some areas where the removal of third party appeal rights could be appropriate. It said that while 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 VPP to further identify types of minor applications that could be exempt from notice such as two lot subdivisions where there is an approved development and the display of signs in commercial and industrial areas. However, the submission cautioned that third party appeal rights remained essential in other areas. It stated that:

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.¹⁷⁹

Concerns raised about the impact of third party appeal rights on the efficiency of planning decision processes were not considered credible by some submitters. For example, Brunswick Residents Network told the Committee that:

ordinary members of the public deserve to have a real say in their own planning system. This should include a legislated right to object to planning permit applications and to appeal planning permit decisions.¹⁸⁰

It raised concerns about its Council trialling proposals that seek to progressively remove a range of resident third party rights in the planning process, as a way of improving development outcomes. It said in its submission:

There is a “trade-off” culture that does not sit well: a culture of always seeking ways to incentivise developers at residents’ expense, and by taking away clarity and adding confusion to residents’ understanding of how planning works.¹⁸¹

¹⁷⁷ Cardinia Shire Council, *Submission 206*, p. 5.

¹⁷⁸ *Ibid.*

¹⁷⁹ Glen Eira City Council, *Submission 207*, p. 11.

¹⁸⁰ Brunswick Residents Network, *Submission 60*, p. 2.

¹⁸¹ *Ibid.*, p. 5.

It is interesting to note that despite concerns raised in submissions about the erosion of third party appeal rights in Victoria, according to the Grattan Institute ‘Victoria’s planning system is more open to third party reviews than other jurisdictions, and so a higher proportion of planning decisions are reviewed than in NSW.’¹⁸²

More specifically, the Grattan Institute’s submission said that:

39 per cent of all Victorian permit applications received were advertised to third parties and 4 per cent were reviewed by VCAT in 2014–15. In NSW, third party objectors must have a ‘relevant interest’ in the development. In 2014–15, less than 1 per cent, of the 106,077 permit applications received were reviewed or appealed.¹⁸³

Questions for consideration by a future inquiry

1. What current or recent reforms have affected third party appeal rights?
2. If access to third party appeal rights has been restricted by any reforms, is there empirical evidence about whether or not there has been a measurable impact on planning decision process efficiency?
3. How do third party appeals actually affect timelines for planning approvals?
4. Have third party appeals increased or decreased in recent years and have they become more or less successful?

4.7 Ministerial call-ins

A ministerial call-in is when the Minister for Planning intervenes in—calls-in—a permit application under the following provisions, effectively taking over responsibility for granting or refusing the permit:

- s 97B of the Planning and Environment
- schedule 1, clause 58 of the *Victorian and Civil Administrative Tribunal Act 1998* (Vic).

The Minister can exercise their call-in power under the following circumstances:

- In relation to a planning appeal under review by VCAT’s Planning Division, if the Minister considers:
 - the proceeding raises a major issue of policy
 - the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

¹⁸² Grattan Institute, *Submission 178, Attachment 1*, p. 68.

¹⁸³ *Ibid.*

- In relation to a permit application being considered by a responsible authority (usually a local council) if the Minister considers:
 - it raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement or development of planning objectives
 - the decision on the application has been unreasonably delayed to the disadvantage of the applicant.

In both cases, the Minister may appoint an advisory panel or committee to consider the objections and submissions received in respect of an application.

The effect of a call-in is to enable the Minister take over responsibility for the permit application/review in order to grant the permit (with or without conditions) or refuse to grant it on any grounds the Minister considers fit.¹⁸⁴

The Minister can also exercise a call-in power under section 109 of the *Heritage Act 2017* (Vic) in relation to a permit determination that is under review by the Heritage Council of Victoria.

A number of stakeholders provided submissions that raised concerns and other issues associated with the use of ministerial call-in powers. The key concerns were that:

- call-ins centralised power at a state level at the expense of local councils and affected communities¹⁸⁵
- affected communities and other third parties are excluded from planning processes¹⁸⁶
- call-ins failed to give due consideration to local planning policies and residents' concerns¹⁸⁷
- call-ins were not subject to appeal rights¹⁸⁸
- call-ins lacked transparency and could be used to circumvent proper strategic planning¹⁸⁹
- call-ins created uncertainty and raised questions around fairness of process.¹⁹⁰

¹⁸⁴ Department of Environment, Land, Water and Planning, *Permits and applications: Ministerial permits: Ministerial interventions for permit applications*, 2021, <<https://www.planning.vic.gov.au/permits-and-applications/ministerial-permits/ministerial-interventions-in-permit-applications>> accessed 20 June 2022.

¹⁸⁵ Professor Michael Buxton, *Submission 93*, p. 13.

¹⁸⁶ Baw Baw Shire Ratepayers Association, *Submission 59*, p. 1; Brunswick Residents Network, *Submission 60*, p. 7; Yarra City Council, *Submission 259*, p. 10.

¹⁸⁷ Brunswick Residents Network, *Submission 60*, p. 7; Protectors of Public Lands Victoria Inc., *Submission 213*, p. 3; Kingston Residents Association, *Submission 221*, p. 9; Mornington Peninsula Shire, *Submission 273*, p. 24.

¹⁸⁸ Brunswick Residents Network, *Submission 60*, p. 7.

¹⁸⁹ Victorian Local Governance Association, *Submission 63*, p. 3; Yarra City Council, *Submission 259*, p. 10.

¹⁹⁰ Ms Yolande Leonardi, *Submission 200*, p. 1.

Emeritus Professor Michael Buxton observed that since the Kennett Government increased ministerial powers in the early 1990s, subsequent governments have chosen not to reinstate earlier limitations on ministerial powers, but generally exercised them with some restraint. However, in more recent years, there has been a fundamental shift of power to the Minister and centralised authorities at the expense of local council and public participation.¹⁹¹

Professor Buxton argued that ministerial interventions were used extensively to approve amendments without notice, and deny the public the right to make submissions or for these submissions to be independently assessed by a panel and further considered by local councils. He submitted:

The minister is subverting the decisions of councils and planning panels, and excluding third parties from participation in decisions on an unprecedented scale. Ministerial powers are being used extensively to ‘fast track’ and exempt developments from planning processes and sometimes from requirements. These powers are sometimes being justified by the need to promote development because of the COVID pandemic. This justification is spurious. For example, the government is ‘fast tracking’ 100,000 new outer urban dwellings despite the rate of development exceeding the government’s own plan, *Plan Melbourne*, by almost 90 per cent. Similarly, high rise and other multi unit approvals remain high without such government removal of normal planning processes.¹⁹²

Cardinia Shire Council informed the Committee it had encountered problems with the use of call-in powers in the past:

Cardinia Shire has had concerns in the past with Ministerial call-ins. For example, both Kaufland and Masters have proven to be bad decisions, with a lot of time and resources spent by Councils trying to highlight that this particular project is at odds with the Planning Scheme.

Council believes that Ministerial call-ins are inconsistent, that Council’s need to be involved at an early stage and have the opportunity to obtain expert advice and that the costs involved should not be put on Council. Council spent a significant amount of money defending its position to not support a proposed Kaufland site, only to have them pull out of the proposal.¹⁹³

City of Maribyrnong was of the understanding that the State Government had plans to review call-in powers and processes as part of its current planning reforms. Maribyrnong Council told the Committee it would support measures that made call-in process as transparent as possible to enhance accountability to affected communities and to ensure local communities had the opportunity to be heard during Ministerial consideration of a matter.¹⁹⁴

¹⁹¹ Professor Michael Buxton, *Submission 93*, p. 13.

¹⁹² Ibid.

¹⁹³ Cardinia Shire Council, *Submission 206*, p. 5.

¹⁹⁴ Maribyrnong City Council, *Submission 18*, p. 5.

In relation to heritage call-ins, Moonee Valley Heritage Action argued:

the effect of every single ministerial intervention in a heritage project in recent memory has been a negative heritage outcome ... [fast-tracking new developments] should not be done at the expense of what would otherwise be critical planning or heritage hurdles that the proposal would not otherwise meet.

[...]

The approvals of the Eliza Tinsley building and Caulfield Racecourse redevelopment under this process exemplify a pattern of impeccably documented heritage studies being thrown out with no community input whatsoever. This is very obviously not scientific, systematic nor professional.¹⁹⁵

Similarly, a respondent to a National Trust survey¹⁹⁶ stated:

A review of Ministerial calls-ins is warranted and how their decision making relates to the advice provided by the Heritage Council and others. Some call-ins appear to be foreshadowing a predetermined decision such as the call-in of the 1 Spring Street heritage permit refusal appeal, which appears to be circumventing the established and open appeal process.¹⁹⁷

Australia ICOMOS submitted that the 'current trend ... to 'call in' decisions at both local and state level is extremely disturbing from a heritage perspective'. It expressed particular concern where call-ins occurred without a public forum or the input of heritage experts at local and state levels. It argued:

We would like to see the Minister receive the best possible input into decision-making, including from his own appointed Victorian Heritage Council, and believe the current trend and process weakens the system where decisions do not allow for systemic review.

This trend should also be seen in a wider context, where Ministers in other states are also using call-in powers which appear to undermine the standard and expert heritage processes for development/heritage approvals. There is a perception that such powers are being used more often, and that an increasingly lower threshold for special treatment is being applied.¹⁹⁸

Brunswick Resident's Network was concerned at the increased use of call-ins for projects that did not have an exceptional character for the State. It argued:

Criteria for calling in projects should be clarified and codified and subject to a legislated process that allows proper consideration of social, economic and environmental impacts; as well as guaranteeing appropriate public participation. We also believe that there should be appeal rights regarding the Minister's decisions, and that planning panels should be required to have regard to local government policies.¹⁹⁹

¹⁹⁵ Moonee Valley Heritage Action, p. 13; Moonee Valley Heritage Action, *Submission 197*, p. 13.

¹⁹⁶ National Trust of Australia Victoria, *Submission 129*, p. 10—Independent survey conducted by Australia ICOMOS on behalf of the National Trust to inform its submission to this Inquiry. See Chapter 5 for more detail.

¹⁹⁷ *Ibid.*

¹⁹⁸ Australia ICOMOS, *Submission 170*, p. 3.

¹⁹⁹ Brunswick Residents Network, *Submission 60*, p. 7.

Interestingly, the Committee notes that the Defenders of the South East Green Wedge had a positive view on the use of call-ins. The group told the Committee that in its experience a ministerial call-in could provide a more equitable opportunity than VCAT for all parties to be heard to resolve appeals on contentious and inappropriate developments.²⁰⁰

While the Kingston Residents Association told the Inquiry:

in principle we support Ministerial call-ins in preference (sic) to appealing Council decisions to VCAT, as the expensive VCAT fees ... put this option beyond the resources of a community group like ours whereas submitters can submit and present to a ministerial Advisory committee for a relatively low cost ... However this can be a risky course unless we are confident that the Minister will act consistently with the planning scheme. The present Minister seems inclined to support big developers, even when the application is for a prohibited use as it was for the Alex Fraser concrete crusher extension.²⁰¹

HIA was in favour of the call-in power as a means, where necessary, arguing it provided another avenue to determination of a permit outcome that allowed for impartial assessment by expert advisory committees/panels and did not restrict the community from participating in the process.²⁰²

The Committee also heard that related concerns were held by some stakeholders in relation to the significant new ministerial powers implemented as part of the Government's 'Smart Planning Reforms' and Victorian Big Build program.

The City of Nillumbik expanded on this issue in its submission. It explained that, since the introduction of Smart Planning Reforms, and the subsequent introduction of the Victorian Big Build, a series of amendments were made to the Victoria Planning Provisions (VPP's) and Planning Schemes to streamline the planning process and support economic recovery through the creation of jobs and the delivery of social and affordable housing (see Chapter 2 for further discussion of this program). Nillumbik Council noted:

- Amendments such as VC187 and VC190 (to VPPs) have created a separate permit process for the development of housing projects by the Director of Housing and a planning permit exemption for projects funded under the Big Housing Build program.
- These are among a series of other amendments to Planning Schemes to facilitate State government building and infrastructure spending initiatives, for example Amendment VC194 sets out a new and significantly streamlined approvals pathway for public projects, to allow the Minister for Planning to exempt defined infrastructure projects from planning scheme requirements and enable councils to progress projects under \$10 million without a planning permit.

²⁰⁰ Defenders of the South East Green Wedge Inc., *Submission 195*, p. 3.

²⁰¹ Kingston Residents Association, *Submission 221*, p. 9.

²⁰² Housing Industry Australia, *Submission 11*, p. 32.

- A range of other powers have been provided to the Minister that allow for, among other things, exemption from planning permits and prohibitions on use, approval of amendments to permits, and exemptions from and waiving of public notice and community consultation requirements across various stages of certain designated projects.²⁰³

Nillumbik Council told the Committee:

The importance of community consultation and community expectations to have their views considered in planning matters has been significantly eroded by such amendments. Notwithstanding the need for larger infrastructure and building projects to avoid 'red tape', in Councils view the communities views have been effectively removed and this has created both mistrust and contempt in regard to State government projects/initiatives. This lack of consultation is in stark contrast to the requirements of local governments in regard to community consultation introduced through changes to the Victorian Local Government Act in March 2020, where it is mandatory for all councils to have a community engagement policy in place and such policy must identify a commitment to apply deliberative engagement practices as required by legislation. This in itself sets a transparent expectation by the community that they will be given adequate time for consideration of key matters (including planning matters) that may impact them.²⁰⁴

Latrobe City Council were concerned with the number of applications for which the Minister had become the Responsible Authority. It considered there was a need for greater scrutiny around what the Minister can change in the Scheme without consultation with local government and argued there should be opportunity for ministerial decisions to be reviewed.²⁰⁵

The increased ministerial powers were also addressed by Mornington Peninsula Shire, which submitted:

Many of these projects for large buildings or structures have potential local amenity impacts. The applications are referred to council for technical responses (e.g., traffic, heritage, urban design). Council officers spend time and money on assessments which may not be reflected in the conditions or final approval.

It would be preferable if the local council was made a recommending authority for these Ministerial amendments.

The Act should have a new part listing what classes of use and development the Minister is responsible for, to improve public accountability and transparency.²⁰⁶

²⁰³ Nillumbik Shire Council, *Submission 10*, pp. 18–19.

²⁰⁴ *Ibid.*

²⁰⁵ Latrobe City Council, *Submission 217*, p. 7.

²⁰⁶ Mornington Peninsula Shire, *Submission 273*, p. 24.

Questions for consideration by a future inquiry

1. How often are Ministerial call-ins exercised?
 - a. How often do call-ins result in the original permit decision being overturned?
 - b. Is there scope to enable greater opportunity call-ins to be exercised at the request of the community/third parties?
2. Is there a need for greater transparency in the call-in process?
 - a. Should call-ins processes be required to engage in any form of consultation?
 - b. Should a more detailed criteria apply for the exercise of call-ins?
 - c. Should call-in decisions be bound by an independent evidence base?
3. Should call-ins be subject to an appeals process?
4. Where a call-in decision is inconsistent with the Planning Scheme—
 - a. Should consultation with the relevant local council be required?
 - b. Should there be provision for a review of the decision?

4.8 Other issues: integrating public health into the planning process

Some stakeholders argued integrating good public health outcomes into the planning framework was necessary to achieve fairness in planning systems.

The Victorian Healthcare Association considered that there was great opportunity to harness the principles of planning healthy and liveable cities through embedding protections and health considerations into the planning framework, for example, with the use of Health Impact Assessments:

The World Health Organization recognises the integral role Health Impact Assessments play to actively ‘prevent diseases and injury and promote health’. Further research findings that examine Victoria’s planning policy context show that integrating Health Impact Assessments of urban development proposals and policies could ensure that health is considered at a system-wide decision-making level. Health impact assessment maximise the positive impacts and minimise unintended negative effects on health at the inception of the planning process.²⁰⁷

²⁰⁷ Victorian Healthcare Association, *Submission 123*, pp. 2, 4.

The Victorian Healthcare Association made two policy recommendations:

1. Integrated healthcare service planning

Population growth and changes in disease patterns are reflected in Victoria's public healthcare system planning.

Healthcare service planning should be integrated in the planning framework to cater for needs of a growing population into the future, which will result in commensurate increase in demand for healthcare services.

Demand will be exacerbated by direct and indirect impacts of climate change on poor health outcomes.

The planning framework offers opportunity to integrate planning of essential healthcare services to ensure care is available alongside growth.

2. A systems approach to health:

Health impact assessments are embedded within the planning framework to prevent, protect and promote Victoria's public health.

A whole-of-system approach is required to prevent, protect and promote collective health of the State.

Public health frameworks such as the social determinant of health and planning principle of liveability demonstrate how the urban environment is a strong facilitator for population health and wellbeing.²⁰⁸

VicHealth told the Committee that the planning framework should reflect and build a foundation for fair, equitable and accessible infrastructure that promotes the health and wellbeing of all Victorians, regardless of their postcode, bank balance or background. It noted that:

Local governments play an important role in promoting the health of their communities. The current planning framework has failed to support local councils to effectively reject planning applications on a public health and wellbeing basis where the planned use of land is likely to have a negative impact on the health and wellbeing of their community, and a negative impact on the levels of overweight, obesity and poor diet in the community.²⁰⁹

In its submission, VicHealth set out a series of principles and actions to achieve better integration of public health into planning systems, including:

General principles to promote and support equitable and suitable infrastructure and planning mechanisms to promote healthy communities and give people a greater say in what their community looks like:

- Prioritise planning that benefits the health and wellbeing of the community.

²⁰⁸ Ibid., pp. 2-3

²⁰⁹ VicHealth, *Submission 142*, pp. 1, 6.

- A 20-minute neighbourhood approach to ensure inclusion of/access to essential services, sustainable/healthy/culturally appropriate food, physical activity and recreation and green spaces, and active transport options are available to all Victorians within 20 minutes of their homes.
- Develop consistent, evidence-informed policies and standards for dwelling density, street connectivity and access to shops, services and public open space and walkable neighbourhoods.
- Prioritise community safety through accessible infrastructure that enhances mobility and increased lighting.
- Prioritise access to social infrastructure for disadvantaged communities with the aim of providing a greater level of support to those with greater need.

Key principles to promote sustainable community environments and promote healthy/sustainable habits:

- Prioritise incorporation of high-quality open green space in new and existing developments; ensure access to open green space to all members of the Inner Metro region community.
- Support private landowners and developers to retain or provide green infrastructure.
- Ensure amenities for people working from home including active transport, local shops and services and open space.
- Prioritise creation of safe, efficient and well-connected walking, cycling and public transport networks.
- Prioritise integration of active transport opportunities in existing and new communities
- Ensure pedestrian infrastructure is accessible for people with diverse mobility needs.
- Ensure inclusion of seating along walking paths that does not crowd walkways.
- Ensure inclusion of end-of-trip bike facilities around transport nodes and activity centres.
- Prioritise pedestrians and cyclists in school zones.
- Support subsidies for renewable energy sources to create energy efficient homes and communities.

Actions to promote centring of community voices and perspectives in planning decisions:

- Ensure planning is done in consultation with First Nations peoples and CALD communities to incorporate cultural heritage, design and stories into the built environment.

- Prioritise health and wellbeing above economic benefits, and ensure assessment of benefits in planning takes long-term health and wellbeing of current and future generations into account.
- Provide consultation mechanisms for communities in the planning of local licenced venues that may cause health, social and community safety harm; these mechanisms should lower the burden of proof of harm.
- Ensure community consultation is representative of the diversity of all infrastructure users.
- Utilise planning provisions to prevent outdoor advertising of unhealthy food, drink and alcohol advertising public transport infrastructure, publicly owned and managed spaces, prioritising sporting grounds and facilities used by children.²¹⁰

The Obesity Policy Coalition similarly advocated for the inclusion of public health into planning systems. It argued:

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.

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 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.

[...]

A planning system that promotes health and wellbeing is a central part of a whole of government approach to improving the health of Victorians.²¹¹

Question for consideration by a future inquiry

1. How could public health considerations be best integrated into the planning framework to achieve equitable and positive health outcomes, especially in vulnerable populations?

²¹⁰ VicHealth, *Submission 142*, pp. 2-5.

²¹¹ Obesity Policy Coalition, *Submission 113*, pp. 2-4.

5 Heritage protection

5.1 Introduction

This Chapter addresses evidence submitted to the Inquiry under term of reference (4), the protection of heritage within the Victorian planning framework, including:

- the adequacy of current criteria and processes for heritage protection
- possible federal involvement in heritage protection
- separating heritage protection from the planning administration
- establishing a heritage tribunal to hear heritage appeals
- the appointment of independent local and state heritage advisers
- the role of Councils in heritage protection
- penalties for illegal demolitions and tree removals.

Issues raised in response to the terms of reference summarised in this Chapter will inform a future, more detailed inquiry into and evaluation of the adequacy and effectiveness of heritage planning protections within the context of Victoria's planning framework.

5.2 Overview of heritage protection in Victoria

Victoria has a rich, vibrant heritage represented by places, landscapes, stories, and people that make a vital contribution to our communities. Our heritage places contribute to our identity, creating a sense of place and representing the State's story, its people and its shared connections. Heritage is also a key economic driver for Victoria through development and tourism. From buildings to landscapes, historic routes to historic precincts, trees to shipwrecks—the heritage of Victoria is important, and is valued by communities and visitors.

National Trust of Australia Victoria, *Submission 129*, p. 3.

Heritage protection operates in Victoria across international, national, state and local frameworks:

- (1) International: Established by UNESCO,¹ the World Heritage List is a register of over 1,200 World Heritage Sites of cultural and/or natural significance to the heritage of humanity. World Heritage Sites are protected by the Convention Concerning

¹ United Nations Educational, Scientific and Cultural Organization.

the Protection of the World's Cultural and Natural Heritage, and are overseen by the UNESCO World Heritage Committee, which decides what sites should be on the List.²

- (2) National: Heritage of national significance is administered by the Commonwealth Government under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), which establishes the National Heritage List for places of national heritage significance, and the Commonwealth Heritage List for significant heritage places that are owned or managed by the Commonwealth Government. Nominations for both lists are assessed by the Australian Heritage Council; a place must demonstrate outstanding heritage value to the nation as a whole to be included.³
- (3) State-level protection: Heritage places and objects of 'State-level cultural heritage significance' are listed on the Victorian Heritage Register. These places and objects are considered to be important to understand the history and development of Victoria. Registered heritage places are legally protected and cannot be altered without a permit or permit exemption. This system is administered under the *Heritage Act 2017* (Vic) (the Heritage Act) and the *Aboriginal Heritage Act 2006* (Vic) (the Aboriginal Heritage Act).
- (4) Local heritage protection: The recognition and protection of heritage of local significance is the responsibility of local councils under the *Planning and Environment Act 1987* (Vic) (the Planning and Environment Act). Councils protect places of local significance by listing them on the Heritage Overlay to their municipal Planning Scheme.

While both international and national heritage protections apply to many significant heritage sites in Victoria, it is the two-tiered systems of state and local heritage protections that are most relevant to the scope of this Inquiry, with a particular emphasis on local heritage protection under the Planning and Environment Act. These systems, and issues raised by stakeholders regarding their effective operation, are the primary focus of this Chapter.

5.2.1 State and local heritage protection frameworks

Victoria has a relatively mature system of heritage protections which aims to ensure the appropriate identification, protection, and management of heritage places within the context of strategic and statutory planning.⁴

Heritage protection at both of state and local levels sits within the portfolio of the Minister for Planning, however the Minister is not generally involved in the day-to-day administration of, or decision making under, the Heritage Act and the Planning and

² Heritage Council Victoria, *State of Heritage Review: Local Heritage*, 2020, p. 6.

³ Ibid.

⁴ National Trust of Australia Victoria, *Submission 129*, p. 5.

Environment Act. This is typically the role of Heritage Victoria and the Heritage Council of Victoria in relation to state significant places, and local councils in relation to locally significant places.⁵

Heritage Victoria

Heritage Victoria is the State Government's principal cultural (non-First Nations Peoples) heritage agency with responsibility for implementing the Heritage Act. It sits within the Department of Environment, Land, Water and Planning (DELWP) and is administered by the Executive Director.

The primary purpose of the Heritage Act is to provide for the protection and conservation of the cultural heritage of the State. In support of this, Heritage Victoria undertakes a range of work to identify, manage and protect places, objects and archaeological sites of significance, including:

- recommending places and objects for inclusion on/exclusion from the Victorian Heritage Register and Victorian Heritage Inventory
- decision-making for permits and archaeological consents under the Heritage Act
- decision-making regarding access to shipwrecks
- enforcing the Heritage Act
- distributing grants for eligible places on the Register
- decision-making regarding changes to World Heritage and National Heritage listed properties in Victoria.⁶

Heritage Council of Victoria

The Heritage Council of Victoria is an independent statutory authority established under the Heritage Act as the primary decision-making body for the inclusion of places (including cultural landscapes, archaeological sites and shipwrecks) and objects of state significance on the Victorian Heritage Register and Victorian Heritage Inventory. It is also the appeals and review body for permit and archaeological consent decisions made by Heritage Victoria.

In addition to its primary statutory responsibilities, the Heritage Council provides advice to the Minister on the protection and conservation of Victoria's cultural heritage and to government departments and agencies and local councils on the protection and conservation of places and objects of cultural significance.⁷

⁵ Heritage Victoria, *Submission 185*, p. 7.

⁶ Ibid., p. 3; Department of Environment, Land, Water and Planning, *Planning: Policies and Initiatives, Local heritage protection*, 2022, <<https://www.planning.vic.gov.au/policy-and-strategy/local-heritage-protection>> accessed 10 June 2022.

⁷ *Heritage Act 2017* (Vic), subs 11(a), (d).

Local councils and Heritage Overlays

The majority of Victoria's cultural heritage places are protected and managed by local government under the Planning and Environment Act. Places deemed to be of value to a local community are, or may be, protected by the Heritage Overlay that is part of each local council's Planning Scheme.

A Planning Scheme Amendment is required to apply a Heritage Overlay to a place of local significance, which must be supported by a heritage study that demonstrates the place has heritage value. Councils commonly engage a qualified heritage consultant to undertake this work.

Councils are also responsible for issuing planning permits for the use and development of heritage places, including demolition or subdivision, under the Planning and Environment Act.

First Peoples' and Aboriginal cultural heritage

The Aboriginal Heritage Act provides for the protection and management of Aboriginal cultural heritage places, objects and ancestral remains in Victoria. This system is separate to heritage protections under the Heritage Act and Planning and Environment Act.

Information on Aboriginal cultural heritage places and objects is held in the Victorian Aboriginal Heritage Register. Post-contact heritage places can be protected through either the Aboriginal Heritage Act or the Heritage Act. A small number of Aboriginal cultural heritage places are included in Heritage Overlays.

There are several bodies with responsibilities under the Aboriginal Heritage Act:

- Aboriginal Heritage Council, an independent statutory body established under the Act responsible for oversight of Aboriginal ancestral remains, and advising the Minister for Aboriginal Affairs in relation to the protection of Aboriginal cultural heritage in Victoria.
- First Peoples – State Relations, a group that sits within the Department of Premier and Cabinet with responsibility for leading work with First Peoples in areas of cultural rights, self-determination, and treaty and truth.
- Registered Aboriginal Parties, traditional owner groups that are legally recognised under the Act with responsibilities for managing and protecting Aboriginal cultural heritage.⁸

⁸ *Aboriginal Heritage Act 2006* (Vic) s 132; First Peoples State Relations, *About us*, 2021, <<https://www.firstpeoplesrelations.vic.gov.au/about-first-peoples-state-relations>> accessed 20 June 2022.

While heritage protection under the Aboriginal Heritage Act is not within the scope of this Inquiry, the Committee notes the submission from the Bunurong Land Council Aboriginal Corporation, which states:

there is a clear need to position the protection and identification of the priceless and irreplaceable tangible and intangible heritage of Victoria's First People's into this discussion ... there are risks to Aboriginal Cultural Heritage where the [Aboriginal Heritage Act] is not triggered prior to, or during a planning process.

[...]

We do have ongoing concerns about protecting Aboriginal Cultural Heritage within the Victorian Planning Framework. One of them is the apparent lack of any current requirement for planning panels to advise RAPs of an inquiry, nor invite them to participate. This can result as it has, in an entire process occurring including a report to the Minister – with no involvement of Traditional Owners.

[...]

We see some value in the committee considering the processes that are part of the Victorian Planning Framework, but external to it.⁹

Australia ICOMOS¹⁰ similarly submitted that Aboriginal cultural heritage considerations could be better integrated in the existing planning system.¹¹

Parks Victoria suggested a more inclusive approach to recognise that every place in Victoria has an Aboriginal history, and to acknowledge places with a shared history, recognising that stories and memory about events and places may sometimes be divergent or conflicting. It noted that while this work has been applied to places on the Victorian Heritage Register, this work has not been applied to places on Heritage Overlays. It submitted:

Traditionally, the systems of heritage recognition and management have separated places with 'Aboriginal' and 'non-Aboriginal' values. However, [the Heritage Council of Victoria] and [Victorian Aboriginal Heritage Council] recognise that many places hold significant history to Aboriginal and non-Aboriginal people, and very often this history is a shared one. For example, places of early contact, exchange, conflict and interaction between Aboriginal and non-Aboriginal people do not fit neatly into either the Aboriginal or non-Aboriginal system.¹²

Parks Victoria also noted that land use definitions within the Victoria Planning Provisions should be addressed:

It is noted that the Aboriginal Heritage Regulations 2018 rely heavily on the land use definitions within the Victorian Planning Provisions where it defines 'high impact

⁹ Bunurong Land Council Aboriginal Corporation, *Submission 208*, p. 1.

¹⁰ The International Council on Monuments and Sites, a non-government professional organisation that promotes expertise in the conservation of cultural heritage.

¹¹ Australia ICOMOS, *Submission 170*, p. 3.

¹² Parks Victoria, *Submission 61*, p. 4.

activities' under these regulations. Terms used in sub-regulation R. 46(1)(b) & R.47(1) have the same meanings as they have in the Victorian Planning Provisions. However not all 'high impact activities' are covered in the VPP definitions. A review of the VPP terms that are generally applicable to public land use and assets would assist with clarity of terms referred to under the Aboriginal Heritage Regulations 2018.¹³

A review of land use definitions is discussed more generally in Chapter 3.

The Committee also notes comments from the 3068 Group that the planning system is rooted in a colonial structure that was not designed or inclined to listen or have regard to First Nations heritage and First Nations voices.¹⁴

The Committee suggests consideration of Indigenous heritage protections and recognition should be included in any future inquiry of the planning framework.

Questions for consideration in a future inquiry

1. How does Indigenous heritage protection under the Aboriginal Heritage Act interact with local and state level heritage protection systems?
2. How can heritage protections be better aligned to give voice and agency to First Nations people as traditional custodians of the land?
3. How can Aboriginal heritage be better, formally recognised within the planning framework, particularly at the local level under the Planning and Environment Act?
 - a. What processes can be implemented to ensure meaningful engagement with First Nations people in heritage considerations, particularly at a local level?
4. How can the reactivation of heritage buildings on public lands be facilitated where there is inconsistency in zoning and conservation requirements?

5.2.2 National Trust of Australia (Victoria)

The National Trust of Australia (Victoria) is a not-for-profit membership organisation formed in 1956 with an interest in ensuring that a wide range of natural, cultural, social and Indigenous heritage values of Victoria are protected, respected and celebrated.

The National Trust is an independent organisation that works collaboratively with government, local councils, businesses, local communities and individuals to strengthen heritage protection, increase community involvement in heritage conservation, and provide tourism and engagement experiences for diverse audiences. It is also Victoria's leading operator of historic properties and heritage attractions.

¹³ Ibid., p. 3.

¹⁴ 3068 Group, *Submission 278*, pp. 8–9.

The National Trust's submission broadly captures many of the key themes and sentiments expressed by participants to a survey seeking views on heritage protections in Victoria to inform its submission to the Inquiry. The survey was independently conducted by Australia ICOMOS from 12 to 23 January 2022 and received 250 responses. Respondents included National Trust members, heritage professionals, allied professionals (architects, planners, engineers etc.) and a significant number of community group representatives.¹⁵

The Committee considers the National Trust to be a preeminent stakeholder in relation to the heritage protection issues covered in this Inquiry and has drawn heavily from the National Trust's submission in this Chapter.

5.3 Heritage Council of Victoria's *State of Heritage Review: Local Heritage, 2020*

5

As noted above, the majority of Victoria's cultural heritage places are protected and managed by local government under the Planning and Environment Act through the application of Heritage Overlays.

While not having direct responsibility for the application and administration of Heritage Overlays, in 2018 the Heritage Council commenced a review into local cultural heritage recognition, protection and management arrangements across Victoria in line with its responsibility to advise on the protection of the cultural heritage assets of the State as a whole. Published in 2020, the *State of Heritage Review: Local Heritage*:

- provided a point-in-time stocktake of the current state of Victoria's local heritage management arrangements that can be used as a point of comparison in future years
- noted parts of the system that are working to deliver good quality heritage protection and management, and areas where improvements can be made
- recommended how state and local governments and the Heritage Council of Victoria can work to ensure local cultural heritage is protected and managed well into the future.¹⁶

The Heritage Council provided the report of its review as its substantial submission to this Inquiry. Both Heritage Victoria and the National Trust called for the Heritage Council's recommendations to be implemented as a matter of priority.¹⁷

An overview of the conduct of the Review and its key findings and recommendations appears in Box 5.1. It is also addressed variously in the following sections of this Chapter.

¹⁵ National Trust of Australia Victoria, *Submission 129*, pp. 4–5.

¹⁶ Heritage Council Victoria, *The State of Heritage Review: Local Heritage*, <<https://heritagecouncil.vic.gov.au/research-projects/the-state-of-heritage-review-local-heritage>> accessed 21 June 2022.

¹⁷ Heritage Victoria, *Submission 185*, p. 3; National Trust of Australia Victoria, *Submission 129*, p. 8.

BOX 5.1: State of Heritage Review: Local Heritage, 2020

Exercising its advisory function under the Heritage Act, the Heritage Council, in late 2018, commenced a review into local cultural heritage recognition, protection and management arrangements across Victoria, with four objectives:

1. to create a clear picture of the current arrangements for local cultural heritage for use as a point of comparison in future
2. to recommend tangible and practical opportunities to enhance and improve the way state and local governments work together to recognise, protect and manage local cultural heritage, and anticipate and prepare for future challenges
3. to improve community understanding of the benefits of local and state cultural heritage protection and demystify the current arrangements
4. to promote and encourage good heritage practice across government and the broader community by showcasing best-practice examples of local cultural heritage management.

The review was conducted in two phases. First, a survey of all 79 local government areas on current local heritage arrangements; and second, a targeted exploration of best-practice examples through a series of case study interviews and the investigation of potential solutions to common local heritage issues through a series of workshops. The final report of the review was released in 2020.

Key findings

Areas working well in the current local heritage system were identified, including a majority of local councils having completed a stage 2 heritage study to assess places of local significance. The Heritage Overlay was considered to be protecting local heritage and was considered the biggest strength of the local system. Many councils had measures in place to support local heritage property owners with advice and/or financial incentives, and many had mechanisms in place to communicate and promote their local heritage.

A number of areas were also identified for improvement:

- Local heritage is not always a primary consideration or priority within councils, often being seen as something 'extra' to the core components of planning.
- There is a need for increased direction from state government to better enable councils to both understand and effectively comply with their responsibilities to identify and protect local heritage, with participants noting:
 - a lack of guidance for consistent direction regarding obligations for protecting and managing local heritage or advice on how best to do so
 - existing guidance material was often out of date, hard to find and didn't include adequate information

(Continued)

BOX 5.1: Continued

- council planners, often operating in isolation with no background in heritage, struggle to know what best practice is, where to find correct information/guidance, or how to assess the quality of the advice from consultants.
- A base-level of heritage protection is yet to be achieved across Victoria: 4% of councils were yet to complete a stage 2 heritage study; nearly 10% were yet to translate any studies into the Heritage Overlay; and nearly 20% identified geographic gaps in their studies.

Recommendations**Strategic initiative**

The review noted that while local heritage outcomes are ultimately dependent on council action, this does not absolve responsibility at the state government level. The State Government must ensure that councils observe their responsibilities under the Planning and Environment Act and it has an ongoing leadership role in improving the local heritage system. As such, the Report recommended one major strategic initiative—to revitalise of the State's role in providing leadership in the protection and management of local heritage—supported by three principal pillars:

1. establishment of dedicated local heritage roles within DELWP to provide necessary focused leadership and direction
2. creation and maintenance of a centralised, up to date repository of clear and consistent guidance material
3. provision of direct support and assistance to ensure base-level heritage studies are completed and translated into the planning scheme.

Practical improvements

Eight smaller initiatives or 'practical improvements' were also recommended:

- development of a 'demolition by neglect' model local law
- creation of a 'Heritage 101' information pack for councils and the public
- creation of a 'Heritage 101' induction pack for new councillors
- facilitation of discussions to clarify demolition application processes
- expansion of the local government heritage forum
- clarification of the role of HERMES (Victoria's database system to manage heritage places) and the Victorian Heritage Database
- advocacy for a tertiary heritage planning subject
- promotion of the use of Heritagechat (a group chat system for local and state government heritage advisors and officers and professional heritage consultants) among planners.

(Continued)

BOX 5.1: Continued**Promotional program**

A key theme in the majority of data gathered was lack of knowledge and information on local cultural heritage among councils and the public, this was recommended to be addressed via a promotional program run by the Heritage Council with two different aspects:

- Promotional program 1—council information sessions

Information sessions conducted with both council officers and executives to build on the delivery of information through the eight recommended practical improvements to create 'Heritage 101' information and induction packs for councils and the public.

- Promotional program 2—community roadshow

Promotion of heritage to the broader community with a focus on improving understanding of the heritage systems, celebrating examples of local heritage and the benefits that heritage protection provides for local communities.

Source: Heritage Council of Victoria, *State of Heritage Review: Local Heritage*, 2020, pp. 1-2, 46-49; Heritage Council of Victoria, *The State of Heritage Review: Local Heritage*.

Questions for consideration by a future inquiry

1. What is the status of the Heritage Council's Local Heritage Review?
 - a. Have all recommendations been accepted?
 - b. Is there an implementation plan?
 - c. What measures will be in place to monitor effect and effectiveness of the changes?

5.4 Adequacy of current criteria and processes

Both the Heritage Council and Heritage Victoria were of the view that the current criteria and processes for heritage protection of state significant sites are working satisfactorily. The Heritage Council submitted that, broadly speaking, it believed the system to protect state-level heritage under the Heritage Act was working well.¹⁸ Similarly, Heritage Victoria considered the current framework was not in need of major reform,¹⁹ it submitted:

¹⁸ Heritage Council of Victoria, *Submission 9*, p. 1.

¹⁹ Heritage Victoria, *Submission 185*, p. 3.

the guidelines for applying the criteria to protect places, objects and archaeological sites of State-level significance are working satisfactorily. Since the endorsement of the guidelines Heritage Victoria has seen greater consistency in the application of the criteria, and greater alignment between Executive Director recommendations and Heritage Council decisions. The guidelines have established a robust process so that applying the criteria and testing the threshold for State-level heritage significance is an objective, rigorous and verifiable exercise. Furthermore, the guidelines have been updated twice since their endorsement to ensure they remain up to date and align with new and best practice advice. Heritage Victoria is satisfied that the application of the Heritage Council guidelines and their continual review allows for a thorough, fair and consistent approach to assessing State-level significance²⁰

The National Trust agreed that Heritage Victoria played a vital role in the identification and management of state significant heritage, however it considered Heritage Victoria's remit as the lead government heritage agency was constrained by the limitations of the Heritage Act that restrict it solely to places and objects of state significance. This had resulted in missed opportunities to ensure heritage considerations are an integral part of broader state planning policy, and that government policy on housing, building construction, and sustainability, for example, do not conflict with heritage objectives. The National Trust submitted:

There is a lack of clear leadership within the State Government with respect to heritage matters which fall outside the Heritage Act, such as state and local heritage policies, and it is unclear whether there are dedicated planning officers within DELWP with heritage experience and qualifications.²¹

Consistent with the Heritage Council's Local Heritage Review, the National Trust recommended the establishment of a dedicated heritage planning unit within DELWP to provide expertise on heritage matters that fall outside Heritage Victoria's remit.²²

The National Trust also argued there was a need for clear, consistent and more accurate guidance from state government agencies to provide more effective assistance and support across a number of local heritage protection processes, including:

- provision of detailed guidance to better inform local heritage studies and the preparation of Planning Scheme Amendments
- provision of advice and guidance to assist council officers and property owners in the assessment of places of local significance
- provision of information on issues frequently raised during the preparation and implementation of Planning Scheme Amendments, for example how to consider the social and economic effects of a Planning Scheme Amendment in relation to heritage.²³

²⁰ Ibid., p. 5.

²¹ National Trust of Australia Victoria, *Submission 129*, pp. 6-7.

²² Ibid., p. 8.

²³ Ibid., pp. 6-8.

Heritage Victoria acknowledged there was a need for improved support and guidance provided for local heritage protection, noting, for example, the absence of appropriate guidelines to apply assessment criteria at a local level:

Places that are potentially locally significant are assessed against a set of criteria which are similar to and closely align with the criteria used to assess for state significance. The criteria appear in *Planning Practice Note 1 – Applying the Heritage Overlay* which provides guidance about the operation of the *Planning and Environment Act 1987*. Unlike the process for assessing places and objects for State-level significance, there are no guidelines to assist local councils to apply the criteria. Planning Practice Note 1, while providing some high-level advice does not provide the level of detail required to consistently and thoroughly apply the criteria to places of local heritage significance.

Heritage Victoria cited the example of the Former Withers House in Balwyn North to illustrate the problem. The site was recommended for heritage protection in two heritage studies, but the recommendation in each study was based on different criteria. This inconsistency was leveraged by objectors to argue the site should not be protected in the Heritage Overlay.²⁴ Several other local councils expressed a similar view.²⁵

City of Stonnington considered that expanded and more detailed guidance to better assist councils to apply their Heritage Overlay ‘may mitigate some of the lengthy discussions occurring at planning panels in relation to heritage matters that affect many Councils, such as the grading of heritage places within precincts’.²⁶

Australia ICOMOS submitted that ‘Another weakness of the system is that often local values of state listed places are not adequately recognised in the system, particularly where they form part of a precinct. There needs to be greater integration of local and state heritage values’.²⁷

Other issues were identified as having scope for improvement were:

- there is a lack of clear standards for management and coordination of government-owned heritage places and a need to develop measurable standards for maintenance and conservation works across the whole of government²⁸
- interim protection orders at both state and local levels:
 - the Heritage Council cannot make a direct recommendation to the Minister to apply interim controls to a place nominated to the Victorian Heritage Register pending its assessment

²⁴ Heritage Victoria, *Submission 185*, pp. 5–6.

²⁵ See for example: Whitehorse City Council, *Submission 171*, pp. 3–4; City of Yarra, *Submission 259*, p. 11; Mornington Shire Council, *Submission 273*, pp. 26–27.

²⁶ City of Stonnington, *Submission 131*, p. 12.

²⁷ Australia ICOMOS, *Submission 170*, p. 4.

²⁸ National Trust of Australia (Victoria), *Submission 129*, p. 8.

- there is a need for a streamlined and efficient mechanism to impose interim protection orders at a local level pending assessment of a site under the Heritage Overlay; the current application process is inefficient, lengthy and onerous and fails to protect potential heritage places against demolition²⁹
- there is a need for better state-wide processes surrounding nomination and consideration of places with local heritage value including:
 - a lack of formal requirement for a nominated place that is not granted state level significance to be referred to local government for consideration of inclusion in a Heritage Overlay
 - a lack of a blanket nomination process for places of local significance to be covered by Heritage Overlays has resulted in many nominations that are not of state-level significance to the Victorian Heritage Register, unduly diverting Heritage Victoria resources³⁰
- the requirement for property owners seeking to develop places of state significance to obtain permits under both the Heritage Act and the Planning and Environment Act is inefficient, can lead to heritage issues ‘falling through the cracks’ and results in heritage impacts not being considered in a holistic way³¹
- inadequate resourcing of Heritage Victoria has led to a reactive approach to recommendations for new registrations on the Victorian Heritage Register that is largely driven by development threats; it has also led to a sizeable backlog of nominations to the Register³²
- there is a need for greater integration of other values at both state and local levels, including Aboriginal cultural heritage, natural values and places of historical or social value only (including identification of places and sites of significant LBGTIQ+ history, and of major innovation in Victoria’s history).³³

²⁹ Ibid., pp. 11–12; Cardinia Shire Council, *Submission 206*, p. 6; Moreland City Council, *Submission 150*, pp. 15–16; Maribyrnong City Council, *Submission 18*, p. 5.

³⁰ National Trust of Australia (Victoria), *Submission 129*, p. 12; Australia ICOMOS, *Submission 170*, p. 4.

³¹ National Trust of Australia (Victoria), *Submission 129*, p. 13.

³² Ibid., p. 15.

³³ Australia ICOMOS, *Submission 170*, p. 4; Engineering Heritage Victoria, *Submission 265*, pp. 3–5.

Questions for consideration in a future inquiry

1. Should the remit of Heritage Victoria be expanded to provide it a more active role in local heritage protection?
2. Is there a need for a more robust and streamlined system of interim heritage protection pending assessment of potential heritage places?
3. Should provision be made for a uniform nomination system to allow people to nominate places for local heritage protection under a Heritage Overlay?
 - a. What would the nomination process entail and how would nominations progress through screening, assessment and approval?
 - b. Who would hold responsibility to make decisions at various stages of the process?
 - c. What are the resourcing needs of such a system?
4. Should the permit requirements for owners of state significant heritage places be amended?

5.5 Possible federal involvement in Victorian heritage protections

As noted above, the Commonwealth plays an important role in the protection of heritage under the *Environment Protection and Biodiversity Act 1999* (Cth) (the EPBC Act), which establishes the National Heritage List of natural, Indigenous and historic places that are of significant national heritage value. The Act also establishes the Commonwealth Heritage List, which includes places on Commonwealth lands and waters, and provides a framework for the management of places on the World Heritage List.

World and national heritage listed sites, assessments and approvals are largely administered in Victoria by the State Government under a bilateral agreement. The National Trust submitted:

While this can streamline approvals, the process and the way it operates is not clear, and creates uncertainty for the community about who is responsible for the protection and management of our most significant heritage places.

The challenges with this system have been demonstrated in recent planning processes relating to developments within the Royal Exhibition Building & Carlton Garden World Heritage Site buffer zone, where it has largely fallen to local Councils and objectors such as the National Trust and community groups to fight inappropriate developments, in the absence of strong leadership from the Commonwealth, and due to inadequate

State Government resources to support the involvement of Heritage Victoria in lengthy VCAT appeals.³⁴

The National Trust noted the importance of the Commonwealth's leadership role, by way of the Australian Heritage Council (the AHC), to protect and celebrate heritage, but argued the under resourcing of the AHC reduced its ability to process and assess nominations, or be public champions for heritage. Further, statutory limitations on the AHC's power reduced its ability to effectively influence government and develop policy.³⁵ It urged the Victorian Government to advocate for increased resourcing of heritage at the Commonwealth level to:

- ensure the Australian Heritage Strategy can be properly implemented and appropriately reviewed
- enable more National Heritage List nominations to be assessed
- enable the Department of Agriculture, Water and the Environment (Cth) to undertake adequate strategic reviews of legislation, policy and practice
- strengthen the statutory role of the AHC
- provide increased financial support to the Victorian Government for the management of heritage places on the World and National Heritage Lists.³⁶

Australia ICOMOS submitted:

What is important at a federal level is increased leadership in facilitating cooperation and knowledge sharing between states and territories with an aim to promoting better heritage practice nation-wide.

This could include the strengthening and better resourcing of Australian Heritage Council (AHC) and the Heritage Chairs and Officials of Australia and New Zealand. The development of national guidelines and process documents by a body such as the AHC would be of great help to all jurisdictions.³⁷

Heritage Victoria noted a large-scale statutory review that looked into the overall operation of the EPBC Act (that concluded in 2020) had made a number of recommendations to address gaps and shortfalls in the legislation. Among these was a recommended pathway of staged reform, including substantial legislative change to achieve the recommendations. Heritage Victoria noted that any reform of the EPBC Act should be monitored and heritage bodies, including Heritage Victoria, be given opportunity to provide input.³⁸

Heritage Victoria informed the Committee it would monitor EPBC Act reform and engage with the Commonwealth Government where necessary.³⁹

³⁴ National Trust of Australia Victoria, *Submission 129*, p. 6.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Australia ICOMOS, *Submission 170*, p. 5.

³⁸ Heritage Victoria, *Submission 185*, p. 6.

³⁹ Ibid., p. 7.

5.6 Local heritage protection

As noted above, protection of places of significant local heritage is the work of local government. A large majority of submissions that addressed heritage protection were focused on processes at the local level under the Planning and Environment Act. Much of this evidence related to issues that were considered in detail by the Heritage Council in its *State of Heritage Review: Local Heritage* (Local Heritage Review, see Section 5.3 above). The Committee notes that in many cases, the concerns raised could be addressed through the timely implementation of the Heritage Council's review recommendations.

Dominant themes that emerged in relation to local heritage protection included:

- There is a need for greater independence in the provision of advice and in decision-making processes.
- Local councils are not adequately resourced to perform their heritage protection role.
- A lack of expertise and training in cultural heritage within local government and the Victorian Civil and Administrative Tribunal (VCAT) has led to poor heritage outcomes.
- Owners of heritage protected property are unfairly disadvantaged and not adequately supported in relation to heritage obligations and restrictions.
- Stronger penalties and enforcement should apply to the illegal demolition and/or removal of heritage places.

These issues are addressed across the following sections.

5.6.1 Social and Cultural Reasons Included in Heritage Protection

The National Trust submitted that the ambit of the Planning and Environment Act needs to expand to cover heritage that is important for social and cultural reasons:

The challenge of our current system of protection is that it is fabric-focused, and cannot protect “intangible” values such as ongoing uses. There are also no guidelines on how social significance should be assessed and managed at the local level.

[...]

The loss of these buildings continues to be mourned by their local communities.

[...]

This can include places such as pubs, day care centres, schools, open spaces, theatres, civic halls and buildings, heritage sites, football grounds, and markets.⁴⁰

⁴⁰ National Trust of Australia Victoria, *Submission 129*, p. 11.

5.6.2 Should heritage protection be separate to planning administration?

Heritage Victoria noted that recent reviews, including the Heritage Council's Local Heritage Review and the Commissioner for Better Regulation's review of the planning and building approvals process (released in November 2021) had identified that local councils often failed to provide the internal resources and expertise to effectively implement their obligations under the Planning and Environment Act, particularly regional and rural councils.⁴¹

The Local Heritage Review revealed that not all councils had undertaken and implemented a heritage study, and that there were both geographical and typological gaps in heritage protections across Victoria.⁴²

The National Trust argued that many of these gaps had emerged since the discontinuation of state funding to support protection of local heritage. It noted there were some cases where a time lag between the preparation of heritage studies by councils, and their implementation through Planning Scheme Amendments, led to delayed application of planning controls, and the loss of significant heritage places.⁴³

Notwithstanding these concerns, neither Heritage Victoria nor the National Trust believed that heritage protection should be separated from the planning administration.

In line with the Local Heritage Review recommendations, Heritage Victoria was in favour of:

- greater state involvement in local heritage protection
- provision of greater assistance to local councils to ensure their planning departments are equipped to respond to heritage matters.⁴⁴

While the National Trust called for heritage protection objectives to be fully integrated with the planning system:

Encouraging good heritage management also requires the objectives of heritage conservation to be integrated into strategic and statutory planning decisions ... the best outcomes for both planning and heritage can be achieved through the proper integration of heritage within the planning system in a way that recognises the value of heritage, and through adequate resourcing for the implementation of heritage protections.

The tokenistic incorporation of heritage buildings into new developments through practices such as facadism and overdevelopment have poor outcomes for both the heritage place and broader planning objectives. This is exacerbated by state

⁴¹ Heritage Victoria, *Submission 185*, p. 8.

⁴² Heritage Council of Victoria, *State of Heritage Review: Local Heritage*, p. 2.

⁴³ National Trust of Australia Victoria, *Submission 129*, p. 11 (with sources).

⁴⁴ Heritage Victoria, *Submission 185*, pp. 7-8.

government policies seeking densification in urban areas, and can occur when a local planning scheme does not have clear policies in place to ensure that heritage places are appropriately protected, while also providing for objectives such as the increased provision of housing to be achieved.⁴⁵

Australia ICOMOS held a similar view:

The removal of heritage considerations from the planning administration is not supported. In the interest of orderly planning outcomes, heritage needs to be considered holistically with other planning objectives to ensure well-balanced and considered outcomes. Rather than removing heritage from the broader planning system, better training and resourcing should be provided to planning authorities for the management of local heritage. This could include the establishment of specialist local heritage advisors at a state level (within DELWP) as recommended by the State of Heritage Review, as well as the development of tool kits and specialist training resources.⁴⁶

Resourcing of local councils in relation to heritage protection is further discussed in Section 5.6.3 below.

Most local councils⁴⁷ that submitted to the Inquiry did not support separating heritage protection from the planning framework, or the establishment of a separate heritage tribunal (addressed in Section 5.6.4 below). The City of Stonnington submitted:

Council officers generally consider the process to apply the heritage overlay at a local level to be rigorous and fair, with recommendations sought from expert heritage consultants and multiple Councillor touchpoints. Interested parties have the opportunity to make submissions and be heard at an independent planning panel through the planning scheme amendment process.⁴⁸

Maribyrnong City Council echoed this view. It considered the criteria and processes for applying for heritage protection were thorough and rigorous. It acknowledged that although it took time to conduct heritage studies and community consultation in order to prepare a Planning Scheme Amendment, it was a fair process that ensured Amendments were based on evidence, and provided affected property owners time to consider the impacts. It submitted:

Council does not support removal of heritage considerations from the planning sphere, or establishment of a separate heritage tribunal. Such separation is likely to lead to an even more confusing and cumbersome process for applicants and communities in heritage areas. In inner urban areas such as Maribyrnong, heritage is often not the only matter to be dealt with in scrutinising a proposed development. The planning process

⁴⁵ National Trust of Australia Victoria, *Submission 129*, p. 14.

⁴⁶ Australia ICOMOS, *Submission 170*, p. 5.

⁴⁷ See for example: City of Monash, *Submission 71*, p. 6; Manningham City Council, *Submission 138*, p. 5; Moreland City Council, *Submission 150*, p. 14; City of Yarra, *Submission 259*, pp. 12–13; Mornington Shire Council, *Submission 273*, p. 28.

⁴⁸ City of Stonnington, *Submission 131*, p. 12.

provides for a comprehensive assessment of the impacts of a proposed development against all the requirements of the planning scheme.⁴⁹

Bayside City Council, however, argued that the standard planning scheme amendment process was not the best approach for heritage protection:

The assessments of heritage properties is a costly, resource intensive process that becomes contentious, and is not best served through a standard planning scheme amendment process. The process to undertake an assessment of a heritage property is often done from the public realm alone, as many owners are unwilling to allow access to their properties. Whilst there are online resources available, rarely is there opportunity to inspect a property thoroughly before determining whether it is of potential heritage significance. Whilst it can be considered that this may not be essential, it can create challenge when liaising with property owners as the engaged experts have formed a view without being able to thoroughly inspect a property, creating tension and questioning the integrity of the assessments.⁵⁰

Some other stakeholders also argued for greater separation of local heritage protection from the planning system, with one arguing there was a case for local heritage planning decisions to be handed to an independent expert body, similar to Heritage Victoria, instead of sitting with local councils.⁵¹ However, Maribyrnong Council was not persuaded a separate system of independent heritage advisers was warranted, submitting:

Council's heritage advisors have consistently provided independent and authoritative advice on planning permits in heritage areas, and their advice is accepted by applicants and community members.⁵²

Heritage Victoria's view was that the existing framework for managing local heritage assessments included checks and balances to ensure objectivity and consistency, although there was scope for improvements to further assist the identification and protection of places of local significance. It submitted:

Currently, most heritage assessments or studies are undertaken by qualified heritage consultants. Consultants are guided by various codes of ethics, including the *Burra Charter 1981* and the *International Council on Monuments and Sites (ICOMOS) Ethical Principals* which are intended to provide objective guidance for assessing significance of places and objects. There are additional checks and balances in place to assist the assessment of heritage places, including public notice requirements, third party appeal rights and peer review of heritage assessments.⁵³

Some mechanisms with potential to assist local councils to improve their approach to local heritage protection were identified by the Heritage Council in its Local Heritage Review. These are summarised in Box 5.2.

⁴⁹ Maribyrnong City Council, *Submission 18*, pp. 5–6.

⁵⁰ Bayside City Council, *Submission 134*, p. 17.

⁵¹ Graeme Butler, *Submission 17*, p. 1; Name Withheld, *Submission 78*, p. 1.

⁵² Maribyrnong City Council, *Submission 18*, p. 6.

⁵³ Heritage Victoria, *Submission 185*, p. 9.

BOX 5.2: Mechanisms for better local heritage outcomes identified in the *State of Heritage Review: Local Heritage*

The Heritage Council's *State of Heritage Review: Local Heritage* identified mechanisms that offered potential for councils to achieve better management of their local heritage:

- **Heritage strategies** detail the present state of heritage identification, protection, support and promotion in the local government area (LGA). They offer potential for local councils to improve not just their support for local heritage, but also the identification, protection and promotion of their local heritage.

In relation to heritage strategies, the review noted:

- just over half of all councils had a current heritage strategy in place, with an average efficacy rating of 3.3/5
- 29 of the 42 councils with a heritage strategy in place reported difficulties that effected their operation
- councils that had success implementing heritage strategies noted they were useful for guiding and grounding strategic heritage work.

- **Heritage advisory committees (HACs)** are usually established to provide advice and guidance to councils on a range of local heritage issues in order to improve their local heritage performance. They commonly consist of counsellors, council officers and representatives from the local community who have an interest in heritage.

In relation to HACs, the review noted:

- approximately 1/5 of all councils had a heritage advisory committee, which meet 6.3 times per year on average
- the most common reasons for not having a HAC were a lack of heritage activity, a lack of council interest, or a lack of funding and/or staff
- HACs were identified as an underutilised tool in local heritage protection.

- **Heritage advisory services** involve the use of heritage specialists to primarily provide free expert advice to the local community on heritage conservation. They may also provide advice and training to councils on planning permit applications and strategic heritage work. The work of heritage advisors was identified in the surveys as a strength of the system. Until 2012, the Victorian government operated a funding program for councils to engage a heritage advisor. At its peak, 89% of councils had a heritage advisor under the program.

In relation to heritage advisory services, the review noted:

- approximately 3/4 of all councils had a heritage advisor
- approximately one in five councils had internal heritage staff
- 42 councils contracted a heritage advisor for a set number of hours each week
- 16 councils contracted a heritage advisor on an as-needs basis

(Continued)

BOX 5.2: Continued

- 22 councils did not have a heritage advisor or internal heritage staff, largely due to a lack of funding or a lack of heritage activity
- use of heritage advisors or internal heritage staff was the most common measure used by councils to support their local heritage activities
- of concern was 28% of councils employing a heritage advisor on an as-needs basis, which suggested their heritage advisors were not readily available to provide heritage advice to the public and those councils did not reap the full benefit of a proper heritage advisory service.

Source: Heritage Council of Victoria, *State of Heritage Review: Local Heritage*, pp. 26-37.

5.6.3 A need for adequate resourcing and appropriate expertise

A need for dedicated staff with heritage expertise to be permanently located within all local council planning units and departments was another issue canvassed in submissions. Local councils that submitted to the inquiry generally agreed with this in principle but pointed out that resourcing was an issue.

Cardinia Shire Council considered a dedicated internal resource would ensure heritage was appropriately monitored and managed,⁵⁴ while Nillumbik Shire Council noted there was a limited number of appropriately qualified and experienced heritage professionals who are highly sought after and often very expensive to engage for the scope of work produced through heritage reviews (compared to other types of land use studies).⁵⁵

Brimbank City Council noted the amount of documentation required in heritage citations had increased significantly over the past 30 years, increasing the costs of assessments and studies for LGAs with limited funds. It recommended the State Government:

- provide financial and in-kind support to LGAs to ensure that they have the funds and expertise to commission and project manage a heritage study from start to finish, and then implement its recommendations
- explore streamlined approaches to heritage study documentation, to bring down overall costs.⁵⁶

Brimbank Council further submitted the current system of contracted council heritage advisors worked well if an LGA had sufficient funding, including funding for heritage advisors to not only comment on planning permit applications, but also provide free consultations and advice to property owners, and to provide regular formal and informal heritage training to council planners and other staff.⁵⁷

⁵⁴ Cardinia Shire Council, *Submission 206*, p. 6.

⁵⁵ Nillumbik Shire Council, *Submission 10*, p. 14.

⁵⁶ Brimbank City Council, *Submission 54*, p. 13.

⁵⁷ *Ibid.*, p. 15.

Australia ICOMOS considered there was a need for greater heritage education and knowledge sharing within councils and noted this could be assisted with stronger leadership at a state level:

increased education and knowledge sharing amongst councils, may be assisted through a stronger focus on local heritage planning leadership from DELWP, but preferably from within Heritage Victoria. In the past, Heritage Victoria had a dedicated local government planning team but, after it devolved to DELWP, the influence of this group appears to have been diluted. Such a group could monitor ongoing progress across the councils, for example by the establishment of requirements to undertake gap studies and reviews within a certain timeframe.

There is a reluctance amongst some Councils to assess some types and components of heritage places, such as structures from the post-war modernist period, interiors, landscapes, gardens and trees, amongst others. There is a need for continuing education for Council staff and the broader public about the changing understanding and appreciation of heritage, a greater engagement with Indigenous people as part of these processes, and ongoing resourcing so Councils can continue to evolve with changing heritage practice.⁵⁸

The National Trust called for better resourcing of councils to perform their heritage protection functions, pointing to many geographical and typological gaps in heritage protections across Victoria that had emerged since the discontinuation of funding to support protection of local heritage. It submitted:

A fund of approximately \$300k was made available each year to Councils to support the preparation of heritage studies, with the expectation that they would be translated into planning scheme protection. Another \$300k was made available in matching funds to support the employment of Heritage Advisors. There was also state government oversight of the engagement of Heritage Advisors, which provided consistency and accountability, as well as practical support to Councils.⁵⁹

The National Trust pointed to a number of funding initiatives that could be considered or expanded:

- While the Living Heritage Grants Program demonstrates how investment in restoration leads to positive heritage, economic, and social outcomes, its limitation to places on the Victorian Heritage Register sees the exclusion of most privately owned places. At a local level, financial incentives to support the conservation of heritage places is an effective but under-utilised measure.
- A major limitation of current funding streams is that they only fund conservation works. Incentives for the adaptive re-use of heritage places and spaces, such as re-purposing heritage buildings and undertaking works to make more heritage buildings accessible and viable, for example through creative uses, are an excellent way of activating under-utilised heritage places in creative ways. Substantial funding would be needed from the outset to ensure these places are fit for purpose.

⁵⁸ Australia ICOMOS, *Submission 170*, p. 7.

⁵⁹ National Trust of Australia Victoria, *Submission 129*, p. 11 (with sources).

- A more comprehensive program of incentives for the conservation of both state and local heritage places should be developed, and could be funded by a heritage lottery along the lines of Lotterywest or the UK Heritage Lottery Fund. Establishment of a heritage lottery should be investigated as a matter of priority.
- Funding to establish a 'Revolving Fund' would save at-risk heritage properties from destruction. A Revolving Fund establishes a mechanism for heritage places that would otherwise be sold, demolished, and redeveloped, to instead be restored and on-sold with protective covenants or heritage agreements to sympathetic buyers.⁶⁰

Both the City of Moreland and Monash City Council advised that, since the withdrawal of this funding, councils had had to adapt by upskilling staff and directly employing or contracting advisors from their own funding.⁶¹

Monash City Council noted there would be a benefit having access to independent external advice to be available for some matters, such as demolitions or contentious listings, and suggested this could be provided through Heritage Victoria.⁶²

Moreland City Council suggested a grants program based on a similar model operating in New South Wales could also assist councils in meeting their heritage obligations.⁶³

Brimbank City Council argued State Government funding was needed to support heritage protections, particularly for owners of heritage properties (see Section 5.6.5 for further discussion), and resourcing for council heritage advisors and heritage studies.⁶⁴

While Nillumbik Shire Council submitted:

Unfortunately for a significant number of councils, particularly those with lower rate bases it is difficult to fund the necessary heritage reviews that need to be prepared by suitably qualified heritage input to provide the strategic justification to apply the heritage overlay through the planning scheme amendment process. As a result, local governments may take many years (if at all) to undertake this strategic work to seek to protect identified heritage places. This means that many heritage places are vulnerable to be lost through demolition forever. This is particularly a problem for outbuildings, gardens, fences and trees that may have heritage value – not just buildings themselves.⁶⁵

The National Trust also pointed to the Victorian Heritage Restoration Fund as an effective example of a program that supported local heritage restoration, detailed in Box 5.3.

⁶⁰ Ibid., pp. 18–19.

⁶¹ City of Monash, *Submission 71*, p. 7; Moreland City Council, *Submission 150*, p. 15.

⁶² City of Monash, *Submission 71*, p. 7.

⁶³ Moreland City Council, *Submission 150*, pp. 14–15.

⁶⁴ Brimbank City Council, *Submission 54*, p. 3.

⁶⁵ Nillumbik Shire Council, *Submission 10*, p. 14.

BOX 5.3: Case study: Victorian Heritage Restoration Fund

The Victorian Heritage Restoration Fund (VHRF) was established in 2013 as a Committee of Management providing a program of restoration grants to local councils for heritage places in private or public ownership. It is administered by the National Trust of Australia (Victoria).

The VHRF was formerly known as the Melbourne Heritage Restoration Fund, which was developed in 1988 and previously operated in Melbourne for over 30 years.

The VHRF is one of the few grant-giving bodies providing funding to private property owners focused on increasing social amenity through streetscape improvement.

Over the last three years the VHRF has partnered with four Councils—

- Melbourne City Council
- Yarra City Council
- Ballarat City Council
- Casey City Council

—to deliver their grants programs for restoration projects to places included in the Heritage Overlay. A total of \$720,00 in grants funding has been awarded to over 60 projects, contributing to over \$2.5 million worth of conservation works to heritage properties across Victoria.

The eligibility criteria for each council varies slightly, but in general, a place must be located within a Heritage Overlay and the proposed works must relate to restoration/conservation works that are visible from the public realm and are not maintenance or structural repairs.

Types of projects that are funded under the program include: reinstatement of missing verandas; paint removal to previously unpainted facades; decorative feature restoration such as ornate parapets; reinstatement of original windows; and fence reconstruction works.

The centralised management of the fund provides efficiencies and savings for Councils, as well as access to the National Trust's expert heritage conservation staff who administrate the fund. The VHRF Committee transparently and independently assesses applications and oversees the distribution of grants and works undertaken. There would be significant benefits in expanding this program to other councils across the state.

The VHRF offers cost savings benefits relating to administration and provides consistency and transparency in decision making and independent assessments. Its ongoing sustainability depends on annual budget bids from participating councils and it would benefit from state and/or federal government support. With ongoing government funding support, the current program model has potential to be expanded to provide greater consistency to heritage assistance funding across Victoria.

Sources: National Trust Australia (Victoria), *Submission 129*, p. 19; Victorian Heritage Restoration Fund, *Submission 125*, p. 1.

5.6.4 Creation of an independent tribunal to hear heritage appeals

Concerns about a perceived or actual lack of independence exercised by VCAT in relation to heritage appeals was a recurring theme. One stakeholder expressed the view that:

- VCAT decisions often ignored local heritage policy resulting in a disorderly application of planning schemes, confusing applicants and leading to unwelcome precedents for future development.
- Very few VCAT members have any training in heritage matters. Hearings are often dominated by developer advocates and experts, leading to a one-sided interpretation of complex issues.
- VCAT members should be experts in the field they deal with, or their decisions should be bound and informed by an external heritage referral body to promote consistency of decision making.⁶⁶

Sentiments and views sympathetic to one or more of these points were canvassed in many other submissions to the Inquiry.⁶⁷

These are consistent with the National Trust's submission, which noted that a majority of its survey respondents considered VCAT appeals were not effective at achieving positive heritage outcomes. The National Trust argued that integration of heritage into planning was as relevant in the appeal process as any other aspect of the system. While it did not consider a separate tribunal was necessary, greater heritage expertise in the pool of VCAT members was. The National Trust stated:

The issue of ensuring that heritage is holistically integrated into planning is relevant at all levels of the planning system, including appeals process ... While adverse heritage outcomes arising from VCAT decisions can partially be attributed to weak policies related to heritage in local planning schemes, another key issue is a lack of heritage expertise within the pool of Tribunal members. The adversarial system strongly favours developers with the resources to engage the best advocates and expert witnesses. The more expert a panel is however, the more able the tribunal is to ask its own questions of the independent witnesses called to give evidence, and assess the merits of the case.⁶⁸

Similarly, Heritage Victoria did not consider establishing a separate tribunal to hear heritage appeals was a necessary step to improve heritage protection, recommending instead that the pool of heritage expertise at VCAT be expanded upon. It submitted:

Developing the existing expertise within VCAT, expanding on its resources when dealing with heritage matters, and ensuring the 7 year membership always includes a minimum number of heritage experts could assist the improvement of VCAT outcomes, leading to decisions that positively benefit heritage and the wider community.⁶⁹

⁶⁶ Graeme Butler, *Submission 17*, p. 1.

⁶⁷ See for example: Sandra Alexander, *Submission 77*, pp. 1–2; Name Withheld, *Submission 78*, p. 1; Yarra Planning Coalition, *Submission 270*, p. 16.

⁶⁸ National Trust of Australia Victoria, *Submission 129*, pp. 14–15.

⁶⁹ Heritage Victoria, *Submission 185*, pp. 8–9.

Local government submissions were consistent with this view and did not see the need for an independent tribunal. The appointment of VCAT members with recognised heritage expertise and ensuring their involvement with heritage matters was the preferred approach.⁷⁰

5.6.5 Financial incentives, better support for property owners

Several stakeholders raised concerns that there was an unfair burden placed on owners of heritage properties:

- One submitter argued that the burden of maintaining the heritage value for all falls squarely upon the owner, resulting in two different classes of owners under the law.⁷¹
- Another submitter called for incentives to be given to people to retain their existing period homes rather than demolishing them.⁷²
- Only 1% of the National Trust's survey respondents believed current incentives to support the custodianship of heritage places were adequate.⁷³
- Another stakeholder submitted that development pressure on heritage places was continuous and greater financial incentives should be provided for heritage place owners to retain all of the contributory parts of the place and its setting: 'It should be a financial advantage to own a heritage place, particularly those of major importance' he argued.⁷⁴

The National Trust submitted:

Heritage places are protected through our planning system because they are valued by communities, and contribute to our sense of place and identity. Financial incentives for the care of heritage places provide a tangible demonstration that heritage is valued by communities, and contribute to greater support for heritage protection by property owners. They also have positive economic impacts for communities, creating employment for skilled tradespeople, and contributing to local economies.⁷⁵

Brimbank City Council argued for support and programs for private and not-for-profit owners to preserve heritage places through a lottery system (see Section 5.6.3 above).⁷⁶

Whitehorse City Council considered there was a significant benefit to the community, particularly for residential property owners with limited resources, to have access to a heritage advisory service. It argued that this approach should be encouraged across all

⁷⁰ See for example: Brimbank City Council, *Submission 54*, p. 15; Whitehorse City Council, *Submission 171*, p. 4; Yarra City Council, *Submission 259*, p. 13.

⁷¹ John Locco, *Submission 4*, p. 1.

⁷² Ms Annette Cooper, *Submission 13*, p. 3.

⁷³ National Trust of Australia Victoria, *Submission 129*, p. 17.

⁷⁴ Graeme Butler, *Submission 17*, p. 1.

⁷⁵ National Trust of Australia Victoria, *Submission 129*, p. 17.

⁷⁶ Brimbank City Council, *Submission 54*, p. 15.

municipalities with heritage overlays, with advisors made available for pre-application meetings and general heritage related enquiries.⁷⁷

However, Whitehorse City Council also noted that, given the perceived impact of the imposition of heritage controls on residential property owners in particular, there should be a continuing discussion on the ways in which some financial assistance or offset can be provided:

If solely left to councils to manage (i.e. through rate reductions or significant grants programs) a conflict may arise where the financial ‘downside’ versus councils’ responsibility to identify and protect their heritage will result in less enthusiasm for the latter. Given that the responsibility to identify and protect local heritage on behalf of the community is delegated to local government by the State Government, it is incumbent on the State Government to take some form of leadership on this front. At the Federal Government level, changes the tax system that help to support local heritage protection could be considered.⁷⁸

The Heritage Council’s Local Heritage Review noted it was sometimes necessary to provide more direct support to owners of heritage places, including through financial measures to assist owners to conserve their local heritage places. Examples of financial incentives include loans and grants for owners of individually significant or contributory heritage places, planning permit fee waivers, free heritage advice.

The Review found the benefits of measures were considerable:

- They provide a tangible demonstration that heritage is valued and facilitate acceptance of heritage protection.
- They have the practical benefit of employment of local tradespeople.
- They led to wider direct and indirect benefits, including—
 - the formation of new businesses and jobs
 - the stimulation of tourism and private investment
 - increased property values
 - instilling a sense of community pride.

The Review noted that financial incentives were an underutilised measure to support owners with the costs associated with heritage places as the necessary financial commitment could create a barrier to their use. It found there was an opportunity to better promote the use of financial incentives and develop a guide to assist in their creation and implementation.⁷⁹

⁷⁷ Whitehorse City Council, *Submission 171*, p. 4.

⁷⁸ Ibid.

⁷⁹ Heritage Council of Victoria, *State of Heritage Review: Local Heritage*, pp. 31–33.

5.6.6 Penalties for illegal demolitions and tree removals

This section covers demolition of heritage places, including illegal tree and vegetation removal. The issue of illegal tree and vegetation removal is incidentally referenced in this section and discussed in detail in Chapter 3.

The Heritage Council's Local Heritage Review found that management of demolition applications was a key concern for local councils, and there was ongoing confusion about how best to manage the process. It recommended that further State Government support was needed to assist councils to manage reactive heritage assessments, which are required as a result of demolition applications and suggested that the Heritage Council and DELWP could facilitate discussions with the Heritage Council's Local Government Specialist Committee to address concerns and provide clarity around the demolition application process and how best to manage it.⁸⁰

Illegal demolition

The National Trust noted that the illegal demolition of heritage places, while relatively rare, could be catastrophic and result in the total loss of a heritage place to the community.⁸¹

Penalties for the illegal demolition of heritage places under the Planning and Environment Act and the Heritage Act have increased in recent years. This was, in part, a response to the illegal demolition of the Carlton Inn (Corkman Irish Pub) in 2016, which exposed the inadequacy of penalties, as well as the difficulty of enforcing them. Changes include:

- increased penalties for illegal demolition
- introduction of custodial sentences
- provisions to regulate the development of land on which a heritage building was unlawfully demolished or has fallen into disrepair
- empowerment of local councils to enforce heritage protection through amendments under s 6B of the Planning and Environment Act.

However, the National Trust noted these new provisions are yet to be tested and failed to take into account that reconstructing or reinstating a heritage building was not always a viable or positive outcome in terms of good heritage practice, and may not result in recovery of the values that made that place significant in the first place.⁸²

Demolition by neglect

Demolition by neglect is the destruction of a building through abandonment or lack of maintenance, including:

⁸⁰ Heritage Council of Victoria, *State of Heritage Review: Local Heritage*, p. 48.

⁸¹ National Trust of Australia Victoria, *Submission 129*, p. 19.

⁸² *Ibid.*, p. 20.

- **Deliberate neglect** occurs when an owner deliberately fails to maintain or secure a building with the aim of gaining a demolition permit.
- **Inadvertent or accidental neglect** occurs when owner does not intentionally neglect their property for the purposes of redevelopment, but fails to undertake regular maintenance of, or to secure, the property. This is often caused by absentee owners, elderly or ill owners, estate disputes, or a lack of financial resources.⁸³

At a state level, penalties for the neglect and destruction of places in the Victorian Heritage Register have been increased through the Heritage Act. Heritage Victoria has adopted a compliance and enforcement strategy to manage its compliance responsibilities.

Heritage Victoria informed the Inquiry that despite offence provisions in the state and local heritage systems, there were ongoing challenges in mitigating and prosecuting unlawful demolition or failure to maintain heritage properties:

Demolition by neglect is a particularly difficult offence to prosecute for, as it requires verification that an enforceable action has taken place, when the nature of neglect is that there is an absence of action.

In 2013 the National Trust of Australia (Victoria) released a report and policy recommendations into the issue of demolition by neglect. The report recommended an amendment to the Planning Scheme to ensure council policy could refuse to issue a demolition permit on the basis of poor condition or low integrity of the place to which the application applied. The report recommended the best way to mitigate the risk of demolition by neglect was to 'draft a model local law that could be used as a starting point by all councils throughout Victoria'. The Heritage Council's *State of Heritage Review: Local Heritage* report agrees with the recommendation and includes its own recommendation to assist local councils to develop a model of local law to mitigate the risk of demolition by neglect.⁸⁴

Heritage Victoria also considered that while the recent legislative changes went some way to addressing the issue of illegal demolition, existing and future actions that could be taken to further reduce properties lost to illegal demolition, for example:

- Heritage Victoria's policy guidance *Minimum standards for maintenance and repair of heritage places*, issued in 2020, sets out expectations for managing places included in the Heritage Register and assists owners to know and understand their legal obligations.
- The Living Heritage Program provides grants to eligible owners and managers of publicly accessible properties included in the Heritage Register to carry out conservation works. This is in line with the National Trust's demolition by neglect report recommendation of incentives for owners. Financial assistance such as the Living Heritage Program, and nonfinancial assistance such as free heritage advice, could assist owners to understand their obligations as well as manage and conserve their heritage properties.

⁸³ Ibid., p. 21.

⁸⁴ Heritage Victoria, *Submission 185*, p. 12 (with sources).

- Through implementation of the Heritage Council’s Local Heritage Review, it is anticipated that councils will receive greater support from the State Government to assist in managing and protecting locally significant heritage assets.
- Ongoing policy work to mitigate demolition by neglect of places and objects of state-level heritage significance, including future legislative change to further strengthen enforcement provisions in the Heritage Act.⁸⁵

Australia ICOMOS submitted that while the deliberate and sudden demolition of heritage places was a key area of concern, demolition by neglect was having a wider impact on heritage places across the State:

This is a phenomenon that is clearly visible in the built environment across Melbourne and the state more broadly. Example sites may include the Brunswick Brickworks and Spurling House Brighton, both of which are places of state significance on the Victorian Heritage Register. Following the degradation of such places, it is common for the developer to then put forward an engineer’s report to say that the place is unsalvageable due to its condition and its inability to meet current building regulations. Including qualified heritage advisors in decision-making at an early stage is an integral function in these scenarios.⁸⁶

Australia ICOMOS called for:

- stronger legislation to prevent and deter demolition by neglect, including:
 - streamlining processes for penalties allowing heritage places to fall into disrepair
 - cumulative neglect leading to impacts from fire, pests, squatters etc, as well as the illegal removal of fabric during an assessment period
 - implementation of recommendations in the National Trust’s *Demolition by Neglect* report
- implementation of recommendations in the Heritage Council’s Local Heritage Review, specifically:
 - development of a demolition by neglect model local law
 - facilitation of discussions to clarify demolition applications processes.⁸⁷

At a local level, councils can enact local amenity laws relating to derelict or dilapidated buildings to deal with demolition by neglect. Laws of this ilk are in place in Greater Geelong and Ballarat, for example.⁸⁸

The National Trust submitted that although new provisions to tackle demolition by neglect were added to the Planning and Environment Act, in practice no guidance has been provided to councils on how to implement these laws. Since the Act was amended,

⁸⁵ Ibid., pp. 12–13.

⁸⁶ Australia ICOMOS, *Submission 170*, p. 8.

⁸⁷ Ibid., p. 9.

⁸⁸ National Trust of Australia Victoria, *Submission 129*, p. 21.

the National Trust advised it had written to two large councils to act on urgent issues of demolition by neglect only to learn that both councils were unclear on how this could be achieved. The National Trust argued:

- Guidance must be developed by the State Government to assist local government authorities to address this widespread issue.
- Demolition by neglect needed to be strengthened at both local and state level through the enactment of laws to allow for prosecution and penalisation of owners who failed to maintain their heritage buildings, particularly in the case of deliberate neglect.
- Planning Schemes should be amended to include the discouragement of demolition through condition or integrity. Councils should undertake regular reviews to ensure the Heritage Overlay is comprehensive and up to date, and to identify properties at risk.⁸⁹

The City of Brimbank also noted the lack of guidance on how to implement the new measures for illegal/neglectful demolition of heritage places into planning schemes. It was supportive of the new approach of restricting future development opportunities in the face of illegal demolition.⁹⁰

Monash City Council made the point that penalties should be an active discouragement so that landowners who illegally demolish heritage buildings are not better off. It argued where penalties were substantially outweighed by the increase in land value as a result of demolition, far from being a deterrent, they were seen simply as a cost of doing business by those developers not interested in doing the right thing.⁹¹

The City of Casey submitted:

Perhaps the greatest challenge in the preservation of heritage is demolition by neglect. Whilst this is an industry-wide challenge, it is especially notable in a growth area context. As one of the fastest growing municipalities, Council faces the significant challenge of trying to protect and integrate its most valued heritage into a rapidly developing urban area. Relevant factors include:

- Lack of knowledge or appreciation of conservation values in heritage places resulting in poor outcomes through the subdivision process.
- Lack of maintenance of heritage buildings before, during, and after surrounding urban development contributing to demolition by neglect.
- Decline in the health of trees due to age, damage and disease.
- Increasing land values and subsequent pressure for urban development within heritage curtilages (sic).
- Lack of funding, resources and appropriate expertise to properly care for heritage places before, during, and after urban development.

⁸⁹ Ibid., pp. 19–21.

⁹⁰ Brimbank City Council, *Submission 54*, p. 16.

⁹¹ City of Monash, *Submission 71*, p. 7.

An opportunity exists to ensure that the planning system, in particular for growth areas the Precinct Structure Planning framework, creates a strong foundation for the preservation of heritage throughout development. Council also acknowledges the recent implementation of additional protections for heritage sites against unlawful demolition by the *Planning and Environment Amendment Act 2021 (Vic)*. This Inquiry provides an opportunity to further explore avenues to positively enforce and encourage the active maintenance and management of heritage assets going forward.⁹²

Questions for consideration in a future inquiry

1. Can and how should heritage considerations be better integrated with all aspects of the planning system?
2. Should consideration be given to creating a model or best-practice approach for councils to manage their local heritage responsibilities?
 - a. How should funding and other resources be made available to facilitate the operation of the heritage protection systems?
 - b. How would funding need be assessed?
 - c. What activities should be targeted for support?
 - d. What non-government funding initiatives could be utilised?
 - e. How can financial incentives be better utilised to assist and support owners of heritage properties?
3. Can the Victorian Heritage Restoration Fund or other model be expanded into a state-wide program?
4. Does VCAT have an adequate level of heritage expertise in respect of its role in heritage appeals?
 - a. Is VCAT's role in heritage appeals consistent with the principles of heritage protection in Victoria?
5. Are current laws for illegal demolition and demolition by neglect appropriate?
 - a. Do they act in the manner intended?
 - b. Can or should they be further strengthened?
 - c. How can councils be better supported in implementing and enforcing demolition laws?
 - d. How could complementary measures (e.g. education/awareness, incentives) be utilised to work alongside and support the penalty framework?

⁹² City of Casey, *Submission 154*, pp. 2-3.

5.7 Other issues

5.7.1 Heritage overlay exemptions

The National Trust raised the issue of the erosion of heritage protections through the increasing use of exemptions to Heritage Overlays in the face of development pressures. It submitted:

Since the introduction of the *Planning and Environment Act* in 1987, the number of exemptions to notice and review requirements under the Heritage Overlay has continued to increase, and these provisions are not being evaluated for either their effectiveness, or whether they are resulting in adverse heritage or planning outcomes.

Exemptions introduced for specific reasons, such as responding to the Global Financial Crisis and bushfire events, are not being reviewed and repealed where appropriate, despite the reason for their introduction having passed.

The economic impacts of COVID-19 have also resulted in an increasing number of Ministerial amendments and call-ins, as well as the establishment of fast-track planning processes. This has resulted in a significant increase in the number of developments which are proceeding without public notice or meaningful input from the community.⁹³

It cited two examples of this:

- the current Caulfield Racecourse redevelopment, the detailed plans of which were not made public and which has seen the destruction of historic trees and buildings on the site
- the Ministerial call-in under the Heritage Act of a permit application for the development of a second office tower at No. 1 Spring Street (Shell House) prior to a hearing by the independent Heritage Council of Victoria.⁹⁴

Ministerial call-ins are covered in greater detail in Chapter 4.

5.7.2 Historical Archaeology in Victoria

Heritage Victoria raised the issue of the status of the Victorian Heritage Inventory in the context of planning framework heritage protections.

The Victorian Heritage Inventory, established by the Heritage Act, is a list of known archaeological sites 75 or more years old which provide information on past activity in the State. Any disturbance of registered archaeological sites and artefacts of historical significance require consent from Heritage Victoria. The Act also provides blanket

⁹³ National Trust of Australia Victoria, *Submission 129*, pp. 9–10.

⁹⁴ *Ibid.*

protection for all historical archaeological sites in Victoria, including sites that are currently unassessed or are unknown, and are not included on the Heritage Inventory or Heritage Register.⁹⁵

Heritage Victoria noted there is currently no clear link between the planning framework and the Heritage Inventory to ensure local councils actively protect and manage archaeological sites. The presence of archaeological sites on the Heritage Inventory does not translate to protection under a Heritage Overlay:

Often successful protection of archaeological heritage is dependent on council staff knowledge, resources and expertise.⁹⁶

Heritage Victoria cited a recent example that highlights how the gap between the Heritage Overlay and the Heritage Inventory can result in progression of unlawful activity:

In November 2021 Heritage Victoria was alerted to unlawful activity at a Heritage Inventory site. Investigation revealed that the applicant had undertaken excavation works without consent from Heritage Victoria but had no knowledge that the site was recorded in the Heritage Inventory but had made enquiries to council and reviewed the property title.

In this instance the applicant had applied for, and was granted a planning permit for the works, but was not informed by the council that a consent from Heritage Victoria was required before works could be lawfully carried out. The site in question is protected under the Heritage Overlay, but no reference to the Heritage Inventory is made in the Heritage Overlay record. In this example neither the applicant, nor it appears the local council were aware of the Heritage Inventory, leading to risk of detrimental or irreversible action.⁹⁷

Heritage Victoria has recommended consideration of the current framework for the protection and management of historical archaeology in Victoria. The Committee notes this issue might form part of a future, detailed inquiry of the Planning Framework.

Questions for consideration in a future inquiry

1. How can the local planning framework better ensure protection of archaeological sites on the Victorian Heritage Inventory?
2. Are heritage overlay exemptions used appropriately?
 - a. How can they be better managed to ensure they do not unduly undermine heritage protection principles?
 - b. Is an audit of existing exemptions required?

⁹⁵ Heritage Victoria, *Submission 185*, p. 2.

⁹⁶ Ibid.

⁹⁷ Ibid.

**Adopted by the Legislative Council Environment and Planning Committee
Parliament of Victoria, East Melbourne
13 July 2022**

Appendix A

Submissions

1.	Timothy Hurley
2.	June Dineen
3.	Name Withheld
4.	John Locco
5.	Name Withheld
6.	Rose Ciampoli
7.	Richard Belcher
8.	Confidential
9.	Heritage Council of Victoria
10.	Nillumbik Shire Council
11.	Housing Industry Association
12.	Frank Simpson
13.	Annette Cooper
14.	Fellows Family
15.	Name Withheld
16.	Name Withheld
17.	Graeme Butler
18.	Maribyrnong City Council
19.	Name Withheld
20.	Kerry Hammer
21.	Ilona Komesaroff
22.	Surf Coast Energy Group
23.	Bayside Community Action Group
24.	Melbourne Maritime Heritage Network (MMHN)
25.	Name Withheld
26.	Jane Hildebrant
27.	Peter Corfield
28.	Planning Democracy Group
29.	Name Withheld
30.	Name Withheld
31.	Name Withheld
32.	Name Withheld
33.	Nicole Allen
34.	Gary Vines
35.	Protect Clifton Hill
36.	Name Withheld
37.	Friends of Drouin's Trees
38.	Highett Community Response to the Graham Road Development
39.	Housing All Australians
40.	Pamela Lloyd
41.	Mansfield Matters Group Inc, Keep Mansfield Healthy Inc, MCHAC Inc.
42.	Building 4.0 Corporative Research Centre
43.	Australian Food Sovereignty Alliance
44.	Confidential
45.	Rosetta Manaszewicz
46.	Hellen Fersch
47.	Ken Marriott
48.	Name Withheld
49.	Name Withheld
50.	Australian Institute of Landscape Architects Victoria
51.	Sustainable Australia Party
52.	National Trust of Australia -Mornington Peninsula Branch
53.	City of Boroondara
54.	Brimbank City Council
55.	Richard Marsh
56.	Vis Koffsovitz
57.	Beverley Lines
58.	Mike Francis
59.	Baw Baw Ratepayers Association
60.	Brunswick Residents Network (BRN)

61.	Parks Victoria	97.	Name Withheld
62.	Name Withheld	98.	Name Withheld
63.	Victorian Local Governance Association	99.	Name Withheld
64.	Ballarat Heritage Watch Inc	100.	Elsa Neal
65.	South Smith Street Action Group	101.	Warrandyte Community Association
66.	Name Withheld	102.	Name Withheld
67.	Robin Kelly	103.	Christina Branagan
68.	Name Withheld	104.	Prof Miles Lewis
69.	Max Berriman	105.	Geoff Langford
70.	Robert Menzies Institute	106.	Tony Smith
71.	Monash City Council	107.	Sam Dugdale
72.	Malcolm Wrest	108.	Name Withheld
73.	Mitchell Shire Council	109.	Greg Spark
74.	Name Withheld	110.	Robyn Weir
75.	Dingley Village Community Association	111.	William Marshall
76.	Warrandyte Historical Society	112.	Name Withheld
77.	Sandra Alexander	113.	Obesity Policy Coalition
78.	Name Withheld	114.	Name Withheld
79.	Heatherton R.A.I.D. (Residents Against Inappropriate Development) Inc	115.	Tony Isaacson
80.	Peter McPhee	116.	Katerina Izdebskaia
81.	Peter Vadiveloo	117.	Name Withheld
82.	Confidential	118.	Bernadette Pierce
83.	Kaye Oddie	119.	Dr James Lesh
84.	Confidential	120.	Name Withheld
85.	Janice Davies	121.	Confidential
86.	Confidential	122.	Ruskin Park Residents Action Group
87.	Confidential	123.	Victorian Healthcare Association
88.	Darebin Appropriate Development Association Inc (DADA)	124.	Patricia Carden
89.	Anne Heath Mennell	125.	Victorian Heritage Restoration Fund
90.	Diane Calwell	126.	Infrastructure Victoria
91.	Colin Gridley	127.	Green Wedges Coalition
92.	Valerie Polley	128.	Macedon Ranges Residents' Association Inc
93.	Emeritus Professor Michael Buxton	129.	National Trust of Australia Victoria
94.	Name Withheld	130.	Ross and Lyn Campbell
95.	Confidential	131.	City of Stonnington
96.	Toorak Residents Group 2020	132.	Brendan and Beverly Dillon

133.	MEG (Malvern East Group)	168.	Name Withheld
134.	Bayside City Council	169.	Planning Institute Australia Vic
135.	Surrey Hills and Mont Albert Progress Association	170.	Australia ICOMOS
136.	City of Port Phillip	171.	Whitehorse City Council
137.	Dr Karen Boyd-Jones	172.	Australian Planners Declare
138.	Manningham City Council	173.	Chris Sutton
139.	Heritage Alliance Conservation Architects and Heritage Consultants	174.	Name Withheld
140.	Green Building Council	175.	Ian Warren
141.	Sally Clarke	176.	Anne Tyson
142.	VicHealth	177.	Friends of the Royal Exhibition Building and Carlton Gardens
143.	Robert Dagnall	178.	Grattan Institute
144.	Save the Brickworks Inc	179.	Name Withheld
145.	Save Kingswood Group Inc	180.	Combined Residents of Whitehorse Action Group Inc (CROWAG)
146.	Royal Historical Society of Victoria Inc	181.	Samantha Westbrooke
147.	Beaumaris Modern	182.	Andre Bokos
148.	Grassy Plains Network	183.	Ringwood District Historical Society
149.	Adjungbilly Pty Ltd	184.	Blackburn Village Residents Group Inc
150.	Moreland City Council	185.	Heritage Victoria Department of Environment Land Water and Planning
151.	Friends of the Queen Victoria Market Inc	186.	Vanessa Whitem
152.	Glen Eira Climate Action Group	187.	Greater Torquay Alliance Inc
153.	Confidential	188.	Blackburn Creeklands Advisory Committee
154.	City of Casey	189.	Alison Pridham
155.	Balance Architecture	190.	Nina Earl
156.	Glen Eira Historical Society Inc	191.	Liz Burton
157.	Name Withheld	192.	Confidential
158.	Victorian Farmers Federation	193.	Sandra McMahon
159.	Name Withheld	194.	Jeanne Nel
160.	Sustainable Population Australia Vic Tas Committee	195.	Defenders of the South East Green Wedge Inc
161.	Cement Concrete & Aggregates Australia	196.	Boroondara Heritage Group for Advocacy and Protection
162.	Bellbird Residents Advocacy Group (BRAG)	197.	Moonee Valley Heritage Action
163.	Glenelg Shire Council	198.	Surveying and Spatial Sciences Institute
164.	Nerida Muirden	199.	3228 Residents Association
165.	Victorian National Parks Association	200.	Yolande Leonardi
166.	Name Withheld	201.	Banyule City Council
167.	Name Withheld		

202.	City of Whittlesea	238.	Name Withheld
203.	Kristian Hansen	239.	Name Withheld
204.	Jesuit Social Services	240.	Name Withheld
205.	Construction Material Processors Association	241.	Name Withheld
206.	Cardinia Shire Council	242.	Kevin Widmann
207.	Glen Eira City Council	243.	Name Withheld
208.	Bunurong Land Council Aboriginal Corporation	244.	Robert Bailey
209.	Narre Warren East Residents Group	245.	Ian Moran
210.	City of Ballarat	246.	Helen Schinzel
211.	Cities of Ballarat and Greater Bendigo	247.	Sandra Lange
212.	Jennifer McDonald	248.	Confidential
213.	Protectors of Public Lands Victoria Inc	249.	Geoffrey Hergt
214.	Sheila Newman	250.	James Dowling
215.	Victorian Planning & Environmental Law Association	251.	Suzanne Hengstberger
216.	Sally Vivian	252.	Barbara Dowling
217.	Latrobe City Council	253.	Name Withheld
218.	Greg and Linda Jones	254.	Name Withheld
219.	Name Withheld	255.	Name Withheld
220.	Keith Ronaldson	256.	Peter Hengstberger
221.	Kingston Residents Association	257.	A.L. Chalmers
222.	Confidential	258.	Joshua Arbon
223.	Eric Bond	259.	City of Yarra
224.	Peter O'Leary	260.	Alphington Fairfield Appropriate Development Association (AFADA)
225.	Barbara McCarten	261.	Catherine Lawson
226.	Paul Reid	262.	Fay McNamara
227.	Geoffrey Palfreman	263.	Blackburn & District Tree Preservation Society
228.	Keith Grant	264.	Kew Cottages Coalition
229.	Name Withheld	265.	Engineering Heritage Victoria
230.	Michael Pritchard	266.	Joan Ford
231.	Gaye Smolcic	267.	Nepean Conservation Group Inc
232.	Name Withheld	268.	Municipal Association of Victoria (MAV)
233.	Name Withheld	269.	Giselle Esparon
234.	Streets Alive Yarra Inc	270.	Yarra Planning Coalition
235.	John Smolcic	271.	Scale it Down Protect Brunswick Parks
236.	Kenneth Fraser	272.	Council for a Sustainable Built Environment (CASBE)
237.	Sandra Fraser	273.	Mornington Peninsula Shire

274.	Protect Fitzroy North
275.	Kenneth Gomez
276.	Victorian Greenhouse Alliances and CASBE
277.	Name Withheld
278.	The 3068 Group
279.	Alexander Alec McCracken
280.	City of Kingston
281.	Save Our Suburbs Inc (Vic)
282.	Confidential
283.	Esther Caspi
284.	City of Greater Bendigo
285.	Richard Woodall
286.	Walk in St Kilda Road and Environs
287.	Dale Schnapp

Extracts of proceedings

Chapter 2

Mr Hayes moved, on behalf of Dr Ratnam, that a new finding be inserted at line 208 in the following terms:

Many local Councils expressed concern about the impact of the Government's 'streamlining' planning processes that bypass formal Council and community involvement and assessment against local planning provisions.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick
	Mr Grimley

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, that a new finding be inserted at line 276 in the following terms:

That there are inadequate laws and regulations to protect loss of vegetation on private land

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick
	Mr Grimley

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, that a new recommendation be inserted at line 276 in the following terms:

That the Victorian Government introduce state-wide regulations to minimise the loss of vegetation and significant trees in the private realm.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Grimley
	Mr Davis
	Ms Bath

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, that a new finding be inserted at line 327 in the following terms:

There are mechanisms available to the Government to increase the availability of affordable housing in Victoria, including mandatory inclusionary zoning

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Grimley
	Mr Davis
	Ms Bath

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, that a new recommendation be inserted at line 327 in the following terms:

That the Victorian Government introduce mandatory inclusionary zoning and a social housing levy to increase the amount of affordable housing in Victoria.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, on behalf of Dr Ratnam, that a new finding be inserted at line 357 in the following terms:

There is a gap between State/local government climate and environmental policy and the ability to implement this policy through the planning system, where development outcomes trump environmental outcomes.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, on behalf of Dr Ratnam, that a new recommendation be inserted at line 357 in the following terms:

The Victorian Government strengthen through legislation the consideration of climate change impacts in planning decision making rules and implementation.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, that at line 462 the following words be inserted:

- The development and population boom of the last 20 years has succeeded making Melbourne ‘extremely unaffordable’ for anyone without a generous income (3068 Group, Submission 278, p.3)
- The large number of houses assessed to be vacant in Melbourne (Boroondara Heritage Group, Submission 196, pp.3,6,10; Christina Branigan, Submission 103, p.7; Nerida Muirden, Submission 164, p.1)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, that at line 568 the following words be inserted:

Jane Hildebrant submitted:

Factors Encouraging Housing as an Investment Vehicle

Excessive reliance on immigration to “grow” the economy, taxation breaks e.g. negative gearing and allowing overseas interests to invest in residential property has directly led to escalating house and prices, rapid residential subdivision of peri-urban farming zone land, huge amounts of tree clearance with the result that Melbourne is no longer “Marvellous” having lost its “most liveable city” title in 2018.

(Jane Hildebrant, Submission 26, p.3)

And she further submitted:

Economic growth founded on stimulating investment in residential property is simply not sustainable. It is patently obvious that facilitating housing as an investment has only served to increase socioeconomic and intergenerational inequity as wealth is transferred to the already wealthy. The result is more poverty, more homelessness and more discontent, which is most politically undesirable. The planning scheme cannot remedy this crisis alone. It requires a national strategy.

Some ideas include:

- Limiting the number of properties held taking advantage of negative gearing.
- Allow tax deductions for the interest portion of mortgages for owner-occupied homes as, for example, in Canada.
- Legislate for long-term rental contracts, for example, in Japan and Europe. This way people could treat their rented property as a permanent home, adding personal improvements, having pets etc., which would induce a sense of pride in caring for the property.
- Prohibit non-citizens from buying residential property
- Curb population growth

(Jane Hildebrant, Submission 26, pp.4/5)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negated.

Mr Hayes moved, that at line 580 the following words be inserted:

Alison Pridham called on the State Government to pressure the Federal Government to reduce population pressures on Victoria, she submitted:

Population policies of the Federal government have impacted Victoria and placed upward pressure on the price of housing. Parts of Melbourne have seen rapid increases in population. The Federal government could be pressured to bring immigration back to a sustainable level. This would assist in helping large cities such as Melbourne absorb the influx without negatively impacting housing price, commute times, and overburdening existing infrastructure.

(Alison Pridham, Submission 189, p.1)

Kristian Hansen also made a submission on how Federal population policy has reduced housing affordability:

Housing affordability – Two factors are usually identified as being behind house price growth: constraints on housing supply (including planning systems), and economic policy favouring housing as an investment class. A third factor is population growth, and whether housing supply can be reasonably expected to keep up with demand from this population growth. Two issues deserve more thorough investigation. Firstly, the disconnect between the Federal Government’s management of immigration and population growth, and the states’ role in dealing with the accommodation consequences. Secondly, the factors which have historically led the great majority of the immigrant population to settle in Sydney and Melbourne.

(Kristian Hansen, Submission 203, p.1)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Chapter 3

Mr Hayes moved, that after the word “biodiversity” at line 124 the following words be inserted:

The VNPA pointed out that the amended Flora and Fauna Guarantee Act imposed a duty on ministers and public authorities to give proper consideration to the objectives of the Act.

These include a guarantee on the persistence of flora and fauna in the wild and an objective “to protect, conserve, restore and enhance biodiversity”.

However the VNPA submitted that material to support the implementation of that duty had been slow in appearing. It called for expedited action in this regard:

We strongly support this Committee’s Recommendation 49 in the Ecosystem Decline Inquiry report that the Victorian government produce information including ministerial guidelines to support the implementation of the duty. We urge the government to pay particular attention to specifying expectations as to how the duty is to be applied in the land use planning context given the frequent interaction between decision making by planning and responsible authorities and the subject matter of the new duty.

(Victorian National Parks Association, Submission 165, p.27)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negated.

Mr Hayes moved, that at line 205 the following words be inserted:

Vanessa Whitem called for green space or garden areas to be mandatory in all residential areas. The state government should:

Prevent councils from removing the minimum garden area from any planning scheme residential zone. It should not be subject to exemptions. However, we recognize that achieving this goal requires innovative approaches to green spaces, green infrastructure and what constitutes a ‘garden area’.

(Vanessa Whitem, Submission 186, p.6)

Also calling for greater vegetation protection in the planning scheme are the Greater Torquay Alliance group:

The Victorian planning scheme should require a minimum percentage of protection of vegetation and biodiversity within all land subdivision. Vegetation, including trees of all ages and grasslands should not be blatantly culled/cleared or felled to make way for residential developments. The biodiversity within Victoria is being decimated to make way for large subdivisions, primarily constructed as hardstand paved areas. Subdivisions should be deigned in an integrated manner with the native vegetation and surrounding landscape, rather than large tracts of land being cleared progressively from one stage of the estate to the next.

(Greater Torquay Alliance, Submission 187, p.3)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, that at line 280 the following words be inserted:

The Glen Eira Climate Action Group submitted that in regards to Greenhouse Gas Emissions (GHG), the Planning and Environment Act was outdated and based on a 1980’s limited understanding of climate and biodiversity issues and it needed modernising:

The current provisions to protect the environment are too vague and lack effectiveness as we continue to see high GHG emitting projects proceed and loss of biodiversity and healthy environments.

The Act doesn’t consider climate change and does not apply the Climate Act 2017 act to properly provide for climate to be considered in planning decisions for land-use, development and transport. The Planning and Environment Act should be listed in the Climate Act 2017 (Schedule 1 p 68) to properly apply climate action in.

(Glen Eira Climate Action Group, Submission 152, pp.1/2)

The Committee Divided.**The question was put.**

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, on behalf of Dr Ratnam, that a new recommendation be inserted at line 429 in the following terms:

The planning framework should be updated to identify the risks associated with climate change and introduce measures and controls to mitigate these risks and facilitate climate change adaptation.

The Committee Divided.**The question was put.**

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, on behalf of Dr Ratnam, that a new recommendation be inserted at line 638 in the following terms:

The Victorian Government introduce state-wide ESD standards into the planning framework.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, on behalf of Dr Ratnam, that a new recommendation be inserted at line 887 in the following terms:

The Victorian Government update the state-wide planning framework to strengthen the recognition and protection of Aboriginal heritage, culture and knowledge.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, that at line 1168 the following words be inserted:

3.5.12 Habitat Corridors

The Council Alliance for a Sustainable Built Environment (CASBE) called for habitat corridors to be included in regional planning schemes:

Habitat corridors are recognised as a key component in building resilience of the natural environment in the face of climate change. Work has been undertaken in identifying key habitat corridors, at a both local and regional scale. However, these rarely find their way into regional Planning Schemes, other on an ad-hoc basis at a municipal scale. This is not compatible with the delivery of such linkages which generally extend beyond a municipal scale and require overall connectivity to achieve their original purpose.

(CASBE, Submission 272, p.3)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
Mr Meddick	

The question was agreed.

Chapter 4

Mr Hayes moved, on behalf of Dr Ratnam, that a new finding be inserted at line 195 in the following terms:

The Victorian Planning framework lacks the certainty and clarity needed to deliver affordable, sustainable and liveable neighbourhoods.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, that a new finding be inserted at line 344 in the following terms:

The urban growth boundary is being eroded with more discretionary land uses being permitted with the potential to seriously erode the environment and food systems that it is meant to protect.

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, on behalf of Dr Ratnam, That a new finding be inserted at line 1081 in the following terms:

The ability of the community to participate meaningfully and shape development outcomes has been seriously eroded with the reduction of third party appeal rights as well as the time intensive and costly dispute resolution process through VCAT

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
	Mr Melhem
	Ms Watt
	Mr Meddick
	Mr Davis
	Ms Bath

The question was negatived.

Mr Hayes moved, that at line 1372 the following words be inserted:

Other Issues: Potential For Corruption in Planning

Ian Wood, President of the Save Our Suburbs Group, submitted that the high level of subjective decision making and discretion in the planning system, at worst tends towards corrupt outcomes, and called for an increased devolution of power in the planning system to local communities as an antidote:

The high level of subjective decision making and considerable discretionary power in the planning system lends itself at best to inconsistent decision making, and at worst to susceptibility of decisions to undue influence and corruption. Corrupt practices require two essential factors: motivation and opportunity. These can be a product of lax regulatory systems that prioritise speed and discretion over rigour and accountability. Satisfactory 'structural and cultural' responses are essentially a matter of good governance.

The more power is dispersed, the more resistant it is to corruption. Dispersal of power is an antidote to corruption because it renders conspiracy, control and concentration of power difficult, which improves accountability in how decision-making power is exercised. A condition of dispersed power is public participation, through non-governmental and community based organisations orientated to the public interest. That alone is a strong recommendation for increasing third party objection and appeal rights (TPOAR).

The NSW ICAC report Anti-Corruption Safeguards and the NSW Planning System proposes 'six key corruption safeguards': providing certainty; balancing competing public interests; ensuring transparency; reducing complexity; meaningful community participation and consultation; and expanding the scope of third party merits appeals. All of these safeguards have been taken into account to some degree by the recommendations listed at the head of this submission.

(Save Our Suburbs, Submission 281, p.4)

Other Issues: Developer Political Donations

Planning Democracy submitted that political donations by developers be banned as they have been proven to be a corrupting influence:

They have been a corrupting influence, exposed by State anti-corruption bodies in Queensland and New South Wales, and by the IBAC Inquiry into the Casey Council here in Victoria. To their credit, the Queensland and New South Wales Parliaments have outlawed campaign donations by property developers. Victoria should do likewise."

(Planning Democracy, Submission 27, p.4)

Sustainable Population Australia cited the need for planners to address the increasing wealth gap in the housing sector, but said that developer political donations were an obstacle to achieving housing, that low income people can afford to rent and buy:

(Sustainable Population Australia, Submission 160, pp.8/9)

The Sustainable Australia Party in its submission also called for all political donations from property developers to be banned as did Bernadette Pierce and Patricia Carden.

(Sustainable Australia Party, Submission 51, p.5; Bernadette Pierce, Submission 118, p.1; Patricia Carden, Submission 124, p.1)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick

The question was negated.

Chapter 5

Mr Hayes moved, that at line 280 the following words be inserted:

The National Trust identified gaps in local heritage protections stating that:

Significant gaps also remain in the protection of locally significant places under Heritage Overlays, which are largely based on studies undertaken in the 1990s and 2000s, and have not been systematically updated. This issue is discussed in detail in the State of Heritage Review report, which identifies both geographical and type gaps. The review found that the most common place-type gaps are trees and gardens, post-war residential, and historic landscapes.

Councils should be supported to address these gaps through the implementation of the State of Heritage Review recommendations.

(National Trust, Submission 129, p.16)

Boroondarra Council in a letter to the Department of Environment, Land, Water and Planning also expressed concerns about gaps in this area:

In response to concerns expressed by our community, Council has recently considered a number of options to protect standalone 'contributory' heritage properties that do not qualify for protection by the Heritage Overlay under the current heritage protection framework.

Some properties the community view as having heritage value do not qualify for inclusion in the Heritage Overlay in the absence of a recommendation by a suitably qualified and experienced heritage consultant that these properties met the standard of being 'individually' significant.

The available statutory framework fails to recognise these standalone ‘contributory’ properties as having heritage value unless they are individually significant or form part of a cohesive heritage precinct. The loss of these properties is of significant concern to the community and negatively impacts the highly valued heritage character of Boroondara.

(Boroondara Council, Submission 53, Attachment 1, p.25)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick

The question was negatived.

Mr Hayes moved, that at line 384 the following words be inserted:

5.6.X Social and Cultural Reasons Included in Heritage Protection

The National Trust submitted that the ambit of the Planning and Environment Act needs to expand to cover heritage that is important for social and cultural reasons:

The challenge of our current system of protection is that it is fabric-focused, and cannot protect “intangible” values such as ongoing uses. There are also no guidelines on how social significance should be assessed and managed at the local level.

The loss of these buildings continues to be mourned by their local communities.

This can include places such as pubs, day care centres, schools, open spaces, theatres, civic halls and buildings, heritage sites, football grounds, and markets.

(National Trust, Submission 129, pp.16/17)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
Mr Meddick	

The question was agreed.

Mr Hayes moved, that at line 835 the following words be inserted:

5.6.6. Demolitions Only To Be Allowed With A Planning Permit

The Boroondara Heritage Group recommended that no building permit to demolish should be granted until and unless a planning permit for what is to be built as a replacement is approved.

It called for the Planning and Environment Act to make this clear and unequivocal.

(Boroondarra Heritage Group, Submission 196, p.3)

Submitter Rosetta Manaszewicz also called for no building to be demolished without having acquired a planning permit first.

(Rosetta Manasewicz, Submission 145, p.1)

Planning Democracy also recommended this:

Demolitions should not occur until the planning process has decided what is to replace it. This would put a stop to developers and owners demolishing buildings ahead of consideration of their heritage significance. The current arrangement puts demolition powers in the hands of private building surveyors. Requiring a Council planning permit brings Councils into the picture, as they should be.

It would also help address the problem identified by the Boroondara Residents Action Group some years ago, that Federal Government Foreign Investment Review Board Rules contain a perverse incentive for foreign nationals to demolish existing homes.

The frequent outcome has been that foreign nationals buy up quality homes, obtain a permit to demolish through a private Building Surveyor, clear the block of all vegetation and canopy trees, then build a large fake “Georgian” or “French Provincial” McMansion, property boundary to property boundary, with a few small trees in the front. This has resulted in the loss of heritage homes, as well as tree canopy cover, permeable land and open space.

(Submission 28, Planning Democracy, p.1)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick

The question was negatived.

Mr Hayes moved, on behalf of Dr Ratnam, That a new recommendation be inserted at line 835 in the following terms:

Victoria's heritage protection system needs to be strengthened through the use of state-wide guidance, legislation and regulation

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick

The question was negatived.

Minority reports

VICTORIAN PARLIAMENTARY INQUIRY INTO THE ADEQUACY OF THE PLANNING AND ENVIRONMENT ACT 1987 AND THE VICTORIA PLANNING FRAMEWORK IN RELATION TO PLANNING AND HERITAGE PROTECTIONS

THE SUSTAINABLE AUSTRALIA PARTY MINORITY REPORT

Prepared by Clifford Hayes, MLC, 20 July 2022

I submit this minority report in the interests of a more complete and comprehensive inquiry into the Planning and Environment Act 1987.

I welcome the majority report, as it covered many of the issues that were included in the submissions. However, it lacked vital detail on a number of important subjects and did not do justice to the hard work and concerns of a number of submitters.

Material which I believe would give the report a more inclusive reflection of the some of the concerns raised with the planning system, and which merited inclusion in the majority report, is set out below.

These additions to the report are in chapter order:

CHAPTER 2 THE HIGH COST OF HOUSING

Addition 1

2.3.2. Costs and Settings For Rental Accommodation

In Chapter Two, the issue of rental affordability was covered at 2.3.2.

The report states that a number of stakeholders submitted on this issue and mentions them.

One of those mentioned was the 3068 Group.

The report however only selectively quoted from their submission, and crucially omitted what the 3068 Group listed as a primary cause for increasing prices for rental accommodation in Melbourne.

The 3068 Group is quoted as citing the SGS Rental Affordability Index which 'lays bare a devastating failure' in the sector. And the 3068 Group is further quoted saying that Melbourne's rental accommodation is 'extremely unaffordable.'

However just a few lines later in the report, where the causes of Melbourne's rental accommodation problems are listed, the 3068 Group's submission was not quoted.

This does not do justice to the 3068 Group's submission. If its evidence as to the symptoms of the problem is good enough to be published, it logically follows that its evidence as to the causes should also have been published.

I now quote the 3068 Group's entire evidence on why Melbourne rental accommodation has become unaffordable to many people, which includes both the symptoms and the causes:

Far from being the most liveable city in the world, the development and population boom of the last 20 years has succeeded in making Melbourne 'extremely unaffordable' for anyone without a generous income. Students, pensioners, and single income families have all been banished. A minimum wage or hospitality worker may still find some rental affordability on the fringes. Only dual income families find middle and inner Melbourne affordable or acceptable. The socio-economic segregation of Melbourne has reached levels experienced in the United States. Endemic homelessness and hardship is built into the Victorian Planning Framework - yet the homeless are completely left out of decision making and blamed for their predicament.

(3068 Group, submission 278, p.3)

I believe the list at Chapter 2.3.2. of the majority report, which cites in dot point form a number of causes submitted regarding Melbourne's rental accommodation problems, should be comprehensive and reflect the evidence given in the submissions received.

So the cause of the problems as cited in the 3068 report should be listed along with the other dot points, at Chapter 2.3.2.:

- **The development and population boom of the last 20 years has succeeded in making Melbourne 'extremely unaffordable' for anyone without a generous income.**

At the same part of the report, another important contributory factor to Melbourne's rental accommodation problems was not listed amongst the causes of Melbourne's rental affordability problems.

Three submitters to the inquiry raised the issue of the large number of houses kept vacant putting upward pressure on rental costs, but it was not mentioned in the list of causes in the majority report.

Most of the other causes listed in the report, were made on the strength of one submission. Logically one would think that vacant houses, which were mentioned by three different submissions, should also have made the list of causes of Melbourne's rental affordability problems.

This should also be included as a dot point at Chapter 2.3.2.:

- **The large number of houses assessed to be vacant in Melbourne.**

(Boroondara Heritage Group, submission 196, pp.3/6/10; Christina Branigan, submission 103, p.7; Nerida Muirden, submission 164, p.1)

Addition 2

Chapter 2.3.3. Factors Encouraging Houses As An Investment Vehicle

Two submissions should have been quoted in this section to provide additional evidence on the factors encouraging housing as an investment vehicle.

Submitter Jane Hildebrant stated that the central factor was the decision in recent decades to base Victoria's economy on high rates of population growth.

She made the following contribution to the inquiry which was not mentioned in the majority report and in Chapter 2.3.3., I would add the following:

As a factor encouraging houses as an investment vehicle, submitter Jane Hildebrant stated that the central factor was the decision in recent decades to base Victoria's economy on high rates of population growth:

Factors Encouraging Housing as an Investment Vehicle

Excessive reliance on immigration to "grow" the economy, taxation breaks e.g. negative gearing and allowing overseas interests to invest in residential property has directly led to escalating house and prices, rapid residential subdivision of peri-urban farming zone land, huge amounts of tree clearance with the result that Melbourne is no longer "Marvellous" having lost its "most liveable city" title in 2018.

(Jane Hildebrant, submission 26, p.3)

And she further submitted:

Economic growth founded on stimulating investment in residential property is simply not sustainable. It is patently obvious that facilitating housing as an investment has only served to increase socioeconomic and intergenerational inequity as wealth is transferred to the already wealthy. The result is more poverty, more homelessness and more discontent, which is most politically undesirable. The planning scheme cannot remedy this crisis alone. It requires a national strategy.

Some ideas include:

- *Limiting the number of properties held taking advantage of negative gearing.*

Allow tax deductions for the interest portion of mortgages for owner-occupied homes as, for example, in Canada.

- *Legislate for long-term rental contracts, for example, in Japan and Europe. This way people could treat their rented property as a permanent home, adding personal improvements, having pets etc., which would induce a sense of pride in caring for the property.*

- *Prohibit non-citizens from buying residential property*

Curb population growth

(Jane Hildebrant, submission 26, pp.4/5)

Addition 3

Chapter 2.4. Population Policy

The section specifically mentions the dominant role of the Federal Government in determining population policy. Federal Government population policy, or to be more accurate, the lack of it, in the last two decades, is a major cause of the deterioration in housing affordability and the homelessness crisis.

One area of causation the majority report refers to in passing is the migration program, but more evidence should have been provided from the submissions of Alison Pridham and Kristian Hansen.

At Chapter 2.4., I would add the following:

While the state has no role in determining the size of the migration program, submitter Alison Pridham said that the State Government could make representations to the Federal Government to reduce the size of the migration programme:

Population policies of the Federal government have impacted Victoria and placed upward pressure on the price of housing. Parts of Melbourne have seen rapid increases in population. The Federal government could be pressured to bring immigration back to a sustainable level. This would assist in helping large cities such as Melbourne absorb the influx without negatively impacting housing price, commute times, and overburdening existing infrastructure.

(Alison Pridham, submission 189, p.1)

Kristian Hansen in his submission also pointed out how Federal population policy has reduced housing affordability, and questioned whether housing supply can be reasonably expected to keep up with population growth:

Housing affordability - Two factors are usually identified as being behind house price growth: constraints on housing supply (including planning systems), and economic policy favouring housing as an investment class. A third factor is population growth, and whether housing supply can be reasonably expected to keep up with demand from this population growth. Two issues deserve more thorough investigation. Firstly, the disconnect between the Federal Government's management of immigration and population growth, and the states' role in dealing with the accommodation consequences. Secondly, the factors which have historically led the great majority of the immigrant population to settle in Sydney and Melbourne.

(Kristian Hansen, submission 203, p.1)

Chapter 3 ENVIRONMENTAL SUSTAINABILITY AND VEGETATION PROTECTION

Addition 4

3.1. Tree And Bio Diversity Protections

In Chapter 3.1. in relation to tree and bio-diversity protections, the Victorian National Parks Association (VNPA) submitted that the slow implementation of the amended Flora and Fauna Guarantee Act was reducing these protections.

At Chapter 3.1., the following words should be added:

The VNPA pointed out that the amended Flora and Fauna Guarantee Act imposed a duty on ministers and public authorities to give proper consideration to the objectives of the Act.

These include a guarantee of the persistence of flora and fauna in the wild and an objective "to protect, conserve, restore and enhance biodiversity".

However the VNPA submitted that material to support the implementation of this duty had been slow in appearing. It called for expedited action in this regard:

We strongly support this Committee's Recommendation 49 in the Ecosystem Decline Inquiry report that the Victorian government produce information including ministerial guidelines to support the implementation of the duty. We urge the government to pay particular attention to specifying expectations as to how the duty is to be applied in the land use planning context given the frequent interaction between decision making by planning and responsible authorities and the subject matter of the new duty.

(Victorian National Parks Association, submission 165, p.27)

Addition 5

3.1. Tree and Biodiversity Protection

A number of submitters noted the disturbing reduction in urban vegetation and how property development was contributing to this problem.

I believe these should have been included at Chapter 3.1. which covers Tree and Biodiversity Protection, as follows:

“Vanessa Whitem called for green space or garden areas to be mandatory in all residential areas. The state government should:

Prevent councils from removing the minimum garden area from any planning scheme residential zone. It should not be subject to exemptions. However, we recognize that achieving this goal requires innovative approaches to green spaces, green infrastructure and what constitutes a ‘garden area’.

(Vanessa Whitem, submission 186, p.6)

Also calling for greater vegetation protection in the planning scheme are the Greater Torquay Alliance group:

The Victorian planning scheme should require a minimum percentage of protection of vegetation and biodiversity within all land subdivision. Vegetation, including trees of all ages and grasslands should not be blatantly culled/cleared or felled to make way for residential developments. The biodiversity within Victoria is being decimated to make way for large subdivisions, primarily constructed as hardstand paved areas. Subdivisions should be deigned in an integrated manner with the native vegetation and surrounding landscape, rather than large tracts of land being cleared progressively from one stage of the estate to the next.

(Greater Torquay Alliance, submission 187, p.3)

Addition 6

3.2. Climate Change Mitigation and Adaptation

In Chapter 3.2., the following point that the Planning and Environment Act was outdated in relation to Greenhouse Gas Emissions should have been included:

The Glen Eira Climate Action Group submitted that in regards to Greenhouse Gas Emissions (GHG), the Planning and Environment Act was outdated and based on a 1980's limited understanding of climate and biodiversity issues and it needed modernising:

The current provisions to protect the environment are too vague and lack effectiveness as we continue to see high GHG emitting projects proceed and loss of biodiversity and healthy environments.

The Act doesn't consider climate change and does not apply the Climate Act 2017 act to properly provide for climate to be considered in planning decisions for land-use, development and transport. The Planning and Environment Act should be listed in the Climate Act 2017 (Schedule 1 p 68) to properly apply climate action in.

(Glen Eira Climate Action Group, submission 152, pp.1/2)

Chapter 4 FAIRNESS IN PLANNING DECISIONS

Addition 7

4.8. Other Issues: integrating public health into the planning process

In the section in Chapter 4.8. under the heading "Other issues: integrating public health into the planning process", two submissions which raised this issue were included.

However a third, which specifically referred to plans to further densify and populate Melbourne and the negative impacts on health, was completely omitted.

Given that the government is telling everyone that Melbourne's population is set to substantially increase in the next few decades, whether the public support this objective or not, it is logical in the interests of a comprehensive report, that worthy evidence submitted on the negative effects of increasing urban population density in Melbourne also be included in this part of the report, as follows:

Planning Democracy expressed concerns that the greater population density envisaged in Plan Melbourne would negatively impact people's health in Melbourne:

Plan Melbourne's headline statement re Housing is that we will build another 1.6 million homes in Melbourne by 2050. This will make us a much denser city. But density is bad for our health. The coronavirus pandemic is a spectacular example. It is no coincidence that as of the start of 2022, the deaths from coronavirus in Australia's 2 most densely populated cities, Sydney and Melbourne, totalled 2206, while total deaths everywhere else in Australia were a mere 53.

This pattern was repeated around the world. A Chinese study found that every outbreak involving three or more people occurred indoors. Outdoors, there are many factors such as air flows, humidity and sunshine which lower the chance of the virus surviving. Coronavirus spreads around residential towers via shared spaces – apartments, laundries, elevators and staircases. It can also spread via

plumbing and ventilation, particularly in apartments where there are no balconies and where windows barely open.

Not only are people in more densely populated areas more likely to get COVID-19, a study from Italy found they are more likely to die of it. But well before the pandemic, the rapid construction of high-rise towers was raising health questions. There is no shortage of evidence that residents of high-rise buildings are vulnerable to mental health issues.

(Planning Democracy, submission 27, p.9)

Addition 8

In the same section, Chapter 4.8. which covers “Other issues”, I believe two other issues central to the issue of fairness in planning decisions were completely omitted, and therefore I list them as sub chapter headings below.

The issue of potential for corruption in planning decisions is not only topical but worthy of inclusion.

Similarly developer political donations were mentioned in no less than five submissions, the issue is topical and worthy of inclusion.

I list them below for inclusion:

4.9. Other Issues: Potential For Corruption in Planning

Ian Wood, President of the Save Our Suburbs Group, submitted that the high level of subjective decision making and discretion in the planning system, at its worst tends towards corrupt outcomes, and called for an increased devolution of power in the planning system to local communities as an antidote:

The high level of subjective decision making and considerable discretionary power in the planning system lends itself at best to inconsistent decision making, and at worst to susceptibility of decisions to undue influence and corruption. Corrupt practices require two essential factors: motivation and opportunity. These can be a product of lax regulatory systems that prioritise speed and discretion over rigour and accountability. Satisfactory ‘structural and cultural’ responses are essentially a matter of good governance.

The more power is dispersed, the more resistant it is to corruption. Dispersal of power is an antidote to corruption because it renders conspiracy, control and concentration of power difficult, which improves accountability in how decision-making power is exercised. A condition of dispersed power is public participation, through non-governmental and community based organisations orientated to the public interest. That alone is a strong recommendation for increasing third party objection and appeal rights (TPOAR).

The NSW ICAC report Anti-Corruption Safeguards and the NSW Planning System proposes ‘six key corruption safeguards’: providing certainty; balancing competing public interests; ensuring transparency; reducing complexity; meaningful

community participation and consultation; and expanding the scope of third party merits appeals. All of these safeguards have been taken into account to some degree by the recommendations listed at the head of this submission.

(Save Our Suburbs, submission 281, p.4)

4.10. Other Issues: Developer Political Donations

Planning Democracy submitted that political donations by developers be banned as they have been proven to be a corrupting influence:

They have been a corrupting influence, exposed by State anti-corruption bodies in Queensland and New South Wales, and by the IBAC Inquiry into the Casey Council here in Victoria. To their credit, the Queensland and New South Wales Parliaments have outlawed campaign donations by property developers. Victoria should do likewise.

(Planning Democracy, submission 27, p.4)

Sustainable Population Australia cited the need for planners to address the increasing wealth gap in the housing sector, but said that developer political donations were an obstacle to achieving housing, that low income people can afford to rent or buy. (Sustainable Population Australia, submission 160, pp.8/9)

The Sustainable Australia Party in its submission also called for all political donations from property developers to be banned, as did Bernadette Pierce and Patricia Carden. (Sustainable Australia Party, submission 51, p.5; Bernadette Pierce, submission 118, p.1; Patricia Carden, submission 124, p.1)

CHAPTER 5 HERITAGE PROTECTION

Addition 9

Chapter 5.4. Adequacy Of Current Criteria and Processes

A number of submitters expressed concern that there were gaps in local heritage protections. Therefore at Chapter 5.4., the following should be added:

The National Trust identified gaps in local heritage protections stating that:

Significant gaps also remain in the protection of locally significant places under Heritage Overlays, which are largely based on studies undertaken in the 1990s and 2000s, and have not been systematically updated. This issue is discussed in detail in the State of Heritage Review report, which identifies both geographical and type gaps. The review found that the most common place-type gaps are trees and gardens, post-war residential, and historic landscapes.

Councils should be supported to address these gaps through the implementation of the State of Heritage Review recommendations.

(National Trust, submission 129, p.16)

Boroondara Council. in a letter to the Department of Environment, Land, Water and Planning also expressed concerns about gaps in this area:

In response to concerns expressed by our community, Council has recently considered a number of options to protect standalone 'contributory' heritage properties that do not qualify for protection by the Heritage Overlay under the current heritage protection framework.

Some properties the community view as having heritage value do not qualify for inclusion in the Heritage Overlay in the absence of a recommendation by a suitably qualified and experienced heritage consultant that these properties met the standard of being 'individually' significant.

The available statutory framework fails to recognise these standalone 'contributory' properties as having heritage value unless they are individually significant or form part of a cohesive heritage precinct. The loss of these properties is of significant concern to the community and negatively impacts the highly valued heritage character of Boroondara.

(Boroondara Council, submission 53, Attachment 1, p.25)

Addition 10

5.6. Local heritage protection

At Chapter 5.6., the following section should be added as a number of submitters expressed concern about this issue:

5.6.7. Demolitions Only To Be Allowed With A Planning Permit

The Boroondara Heritage Group recommended that no building permit to demolish should be granted until and unless a planning permit for what is to be built as a replacement is approved.

It called for the Planning and Environment Act to make this clear and unequivocal. (Boroondara Heritage Group, submission 196, p.3)

Submitter Rosetta Manaszewicz also called for no building to be demolished without having acquired a planning permit first. (Rosetta Manaszewicz, submission 145, p.1)

Planning Democracy also recommended this:

Demolitions should not occur until the planning process has decided what is to replace it. This would put a stop to developers and owners demolishing buildings ahead of consideration of their heritage significance. The current arrangement puts demolition powers in the hands of private building surveyors. Requiring a Council planning permit brings Councils into the picture, as they should be.

It would also help address the problem identified by the Boroondara Residents Action Group some years ago, that Federal Government Foreign Investment Review

Board Rules contain a perverse incentive for foreign nationals to demolish existing homes.

The frequent outcome has been that foreign nationals buy up quality homes, obtain a permit to demolish through a private Building Surveyor, clear the block of all vegetation and canopy trees, then build a large fake “Georgian” or “French Provincial” McMansion, property boundary to property boundary, with a few small trees in the front. This has resulted in the loss of heritage homes, as well as tree canopy cover, permeable land and open space.

(Planning Democracy, submission 28, p.1)

Addition 11

Chapter 5.6. Local Heritage Protection

There is a greater need in the Planning and Environment Act to expand heritage coverage to protect socially and culturally important sites.

The following sub-chapter at Chapter 5.6.:

5.6.x. Social and Cultural Reasons Included in Heritage Protection

The National Trust submitted that the ambit of the Planning and Environment Act needs to expand to cover heritage that is important for social and cultural reasons:

The challenge of our current system of protection is that it is fabric-focused, and cannot protect “intangible” values such as ongoing uses. There are also no guidelines on how social significance should be assessed and managed at the local level.....

The loss of these buildings continues to be mourned by their local communities.....

This can include places such as pubs, day care centres, schools, open spaces, theatres, civic halls and buildings, heritage sites, football grounds, and markets.

(National Trust, submission 129, pp.16/17)

Minority Report - Inquiry into the Victorian Planning Framework

Samantha Ratnam Member of the Legislative Council for Northern Metropolitan Region

The planning system is an integral part of ensuring liveable, affordable and sustainable neighbourhoods and communities. This parliamentary inquiry into Victoria's urban planning framework offered an important opportunity for an in-depth investigation into urban planning outcomes in Victoria and how they could be strengthened. An inquiry of this nature has not been conducted previously despite mounting community concern about the weakness and ineffectiveness of existing planning laws and regulations in this state.

It is clear from the evidence presented to the Committee that Victoria's land use and planning system is delivering unaffordable, unsustainable and poor quality urban development and is not meeting the challenges posed by climate change. The system is experienced by many in the community as overly complex and frustrating with decreasing transparency and accountability. At the same time, Aboriginal cultural heritage and built form heritage is poorly protected.

With Victoria experiencing a housing affordability crisis, there is an urgent need for planning reform that facilitates more affordable housing. The challenge of climate change is making the introduction of sustainable design standards an urgent task as is protecting and enhancing green spaces. The alarming rate of extinction of Victoria's biodiversity makes the protection of habitat in both urban and non-urban settings absolutely critical.

For too long the planning system in Victoria has favoured the facilitation of profits for developers more so than it has achieved good social and environmental outcomes. Victorian State Governments have refused to conduct the type of holistic review and reform of the system that is required. They have chosen instead to undertake fragmented and incremental changes when problems arise that have resulted in a system that is not delivering the kind of outcomes that communities want.

Victoria's local government councils have overwhelmingly advocated to successive state governments for meaningful consultation and reform of the planning system. Despite this, they have often been met with resistance from successive planning ministers who have increasingly centralised planning decision-making with very little transparency or accountability to the community or the parliament. This makes an inquiry of this kind even more important and necessary.

Thank you to the 287 submitters who contributed to this inquiry with thorough and detailed contributions. It was very disappointing that the Environment and Planning Committee chose not to conduct public hearings for this inquiry. Public hearings are ordinarily a critically important aspect of parliamentary inquiries that provide the committee with the opportunity to call and question witnesses such as government departments, expert groups and members of the community.

In the absence of public hearings, my fellow committee member Clifford Hayes MLC and I conducted a series of meetings with submitters to the inquiry to help inform our understanding and deliberations for this report. I would like to thank the following groups for speaking with us through this process:

- Dr James Lesh - Lecturer, Cultural Heritage and Museum Studies, Deakin University
- Dr Stephen Rowley - urban planner, planning educator, and author of *The Victorian Planning System, Practice, Problems and Prospects*

- Felicity Watson - National Trust of Australia (Victoria)
- Nina Earl - Conservation volunteer, Recipient 2021 VEFN Best Friend Award
- Ross Gillespie and David Morrison - Combined Residents of Whitehorse Action Group.
- Andy Fergus and Leanne Hodyl - Urban Design Forum Australia
- Natasha Palich - Council Alliance for a Sustainable Built Environment
- Glen McCallum - President, Protect Fitzroy North Inc.
- Matt York - President Australian Institute of Landscape Architects - Victorian Chapter
- Ruth Giles, Chris Johnston, Megan McDougall - Save the Brickworks, Brunswick.
- Sam Dugdale, Karen Boyd Jones, Ross and Lyn Campbell - Glen Eira residents
- Sandra Alexander, Christina Branagan and Rosemary Blanden - Boroondara Heritage Group
- Rosemary West - Green Wedges Coalition and Kingston Residents Association
- Margaret O'Brien - Friends of Royal Exhibition Buildings and Carlton Gardens
- Ron Torres - Director Planning Place and Sustainability, Glen Eira City Council
- Charles Sowerwine and Ian Wight - Royal Historical Society of Victoria (Heritage Committee)
- Brendan Coates and Joey Moloney - Grattan Institute
- Jeremy McLeod - Nightingale Housing
- Grassy Plains Network
- Matt Ruchel, Victorian National Parks Association
- Steven Avery and Amanda Bacon - Heritage Victoria

The evidence we gathered from these meetings canvassed issues ranging from the suitability of current planning legislation, compliance and enforcement, affordable housing, sustainable design, heritage protection and the community participation in decision making. Acknowledging the issues canvassed in the majority report, I submit that a number of findings and recommendations could have been included that reflect the strength and consistency of the submission evidence as follows.

Chapter 2

Additional Findings:

- i. Many local government councils expressed concern about the impact of the Victorian Government's 'streamlining' planning processes that bypass formal council and community involvement and assessment against local planning provisions.
- ii. There are mechanisms available to the Government to increase the availability of affordable housing in Victoria, including mandatory inclusionary zoning.
- iii. That there are inadequate laws and regulations to protect loss of vegetation on private land.
- iv. There is a gap between state and local government climate change policy and the ability to implement these policies through the planning system, where development outcomes most often trump environmental outcomes.

Additional Recommendations:

- i. The Victorian Government should introduce mandatory inclusionary zoning and a social housing levy to increase the amount of affordable housing in Victoria.
- ii. The Victorian Government should introduce state-wide regulations to minimise the loss of vegetation and significant trees in the private realm.
- iii. The Victorian Government should strengthen through legislation the consideration of climate change impacts in planning decision making rules and implementation.

Chapter 3

Additional Recommendations:

- i. The planning framework should be updated to identify the risks associated with climate change and introduce measures and controls to mitigate these risks and facilitate adaptation.
- ii. The Victorian Government should introduce state-wide environmental sustainable design standards into the planning framework.
- iii. The Victorian Government should update the state-wide planning framework to strengthen the recognition and protection of Aboriginal heritage, culture and knowledge.

Chapter 4

Additional Findings:

- i. The Victorian Planning framework lacks the certainty and clarity needed to deliver affordable, sustainable and liveable neighbourhoods.
- ii. The urban growth boundary is being eroded with more discretionary land uses being permitted with the potential to seriously erode the protection of the environment and food systems that it is meant to protect.
- iii. The ability of the community to participate meaningfully and shape development outcomes has been seriously eroded with the reduction of third party appeal rights and the time-intensive and costly dispute resolution process through VCAT with outcomes favouring private developers over the community.

Chapter 5 Heritage

Additional Findings:

- i. Victoria's built-form heritage is governed by a weak system of laws and regulations that provide inadequate clarity and certainty for decision makers and communities.

Additional Recommendations:

- i. Victoria's heritage protection system needs to be strengthened through the use of state-wide guidance, legislation and regulation.

Environment and Planning Committee Inquiry into the Protections within the Victorian Planning Framework

Minority report

The Liberal and National members of the Environment and Planning Committee submit this minority report noting that in the Legislative Council we supported the establishment of this inquiry.

We believe, however, that the terms of reference were deficient in not precisely and directly dealing with several key matters.

We make the following points:

1. The tragic and accelerating loss of tree canopy in many suburbs, including the significant loss of street trees and trees in key local precincts. It is clear that the loss of tree canopy diminishes the liveability of Melbourne's suburbs in particular and leads to a heat island effect where canopy is lost and intense development has occurred.
2. We note the Liberals and Nationals have committed to providing \$20 million to increase tree canopy coverage across metropolitan Melbourne from around 15 per cent up to 35 per cent by 2050 and to work with local councils and community groups to plant 2 million trees over the next four years and support the development of more environmentally liveable and resilient local communities across Melbourne.
3. Weak heritage protection means a gradual loss of important built heritage. This is particularly acute when it comes to the protection of precincts where individual properties may not reach a relevant threshold for protection, but in fact the precinct in aggregate is of great significance and worthy of protection.
4. The Opposition wrote to the Committee Chair on 27 May 2021 – a copy of the correspondence and proposal is attached (attachments 1 and 2) – seeking that these matters be addressed concurrently with the current inquiry. We attached detailed terms of reference.
5. The Committee rejected this proposal and voted it down on 11 August 2021. At this point we believe the majority of the Committee lost its way. We would respectfully propose that the proposed terms of reference be considered in the next Parliament along with the proposed inquiry foreshadowed by the majority report.
6. We reiterate our disappointment that the Committee rejected these thoughtful and reasonable terms of reference for concurrent inquiry. We think they sold Victorians short.
7. We note the Housing Industry Association provided a comprehensive submission, predominantly in support of the recent recommendations arising from the 2019 Red Tape Commissioner Planning and Building Review, to the Committee before Christmas. HIA expressed disappointment that the Committee extended the deadline for submissions by four weeks beyond the 31 January deadline and consequently decided there was not enough time to hold public hearings.
8. The Liberals and Nationals believe the committee was deficient in the consideration of material put to it. It did not interrogate key materials. We believe nevertheless that certain additional material should have been incorporated in the report. Key matters are highlighted in Attachment 3.

9. We further note that Mr Hayes on behalf of Dr Ratnam moved that a new recommendation be inserted "That the Victorian government introduce mandatory inclusionary zoning and a social housing levy to increase the amount of affordable housing in Victoria". The Greens political party has proposed a doubling of Labor's big new housing tax to raise \$13 billion over ten years. If Labor's 1.75 percent housing tax was to raise \$800 million a year, the Greens proposal is a housing tax on steroids and would likely force up the cost of housing in metropolitan Melbourne by up to \$40,000. A \$40,000 increase in the already massive cost of new houses because of a new tax would be a body blow to many young families seeking to buy their first home, but it can be readily contemplated that a Parliament where Labor fell short of a majority would strike a deal for a Labor/Greens government and that this tax would be the price of a deal with the Greens.



Hon David Davis MP



Dr Matt Bach MLC



Melina Bath MLC

Attachment 1 – Heritage and tree canopy inquiry

During this inquiry, The Liberals and Nationals proposed to concurrently inquire into the protection of heritage buildings and streetscapes, protection of heritage trees, matters of neighbourhood character and key issues on the loss of canopy trees.

What the Liberal and National party members on the committee proposed was a self-referenced inquiry for the committee to undertake concurrently with an inquiry into the Planning Framework in the following terms:

ENVIRONMENT AND PLANNING COMMITTEE — SELF REFERENCE UNDERTAKE CONCURRENT INQUIRIES

That the Environment and Planning Committee —

(1) inquire into, consider and report in relation to Plan Melbourne and —

(a) whether adequate protections are available to protect heritage buildings and streetscapes and, if not, what additional protections are required to ensure that important, valuable or significant properties and streetscapes are appropriately protected to ensure that these heritage buildings and streetscapes preserve the architectural history of Victoria and ensure these are passed on to future generations of Victorians;

(b) whether the current heritage protections protect the character of Melbourne and take account of neighbourhood character sufficiently;

(c) whether adequate protections are available to protect heritage trees and, if not, what additional protections are required to ensure that large, established heritage trees are appropriately protected;

(d) examine the contribution of trees in Melbourne to community wellbeing and the management of the impact of climate change and the impact of the loss of canopy trees on amenity, including the impact of the loss of canopy trees as part of redevelopments with increased density; and

(2) undertake this inquiry concurrently with their Inquiry into the Protections within the Victorian Planning Framework and report on both issues in accordance with the Council's resolution of 28 October 2020.

This proposal was rejected by the majority of the Committee. In our view, the Committee's decision has sold short the protection of heritage and tree canopy in our suburbs.

Below is the formal request provided to the Committee for its consideration.

Hon. David **DAVIS** MP

MEMBER FOR **SOUTHERN METROPOLITAN REGION**

Leader of the Opposition in the Legislative Council
Leader of the Liberal Party in the Legislative Council



Shadow Minister for Transport Infrastructure; Public Transport (Metropolitan);
Planning and Heritage; Federal-State Relations; the Arts and Creative Industries

27 May 2021

Ms Sonja Terpstra MLC
Chair
Environment and Planning Committee

Via email: Sonja.terpstra@parliament.vic.gov.au

Dear Chair,

I respectfully request the attached draft terms of reference be considered as a self-reference by the Legislative Council Environment and Planning Committee at its meeting tomorrow afternoon.

The terms of reference are designed to complement and run concurrently with the Committee's existing Inquiry into the Protections within the Victorian Planning Framework, previously agreed to by the Chamber and should not unreasonably burden either Committee Members or the Secretariat given there is significant overlap in the terms of the planning protections inquiry.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'David Davis'.

David Davis MP

Cc: Legislative Council Environment and Planning Committee Members and Secretary

Attachment 2 – EPC self reference Plan Melbourne

ENVIRONMENT AND PLANNING COMMITTEE — SELF REFERENCE UNDERTAKE CONCURRENT INQUIRIES

I move, That the Environment and Planning Committee —

- (1) inquire into, consider and report in relation to Plan Melbourne and —
 - (a) whether adequate protections are available to protect heritage buildings and streetscapes and, if not, what additional protections are required to ensure that important, valuable or significant properties and streetscapes are appropriately protected to ensure that these heritage buildings and streetscapes preserve the architectural history of Victoria and ensure these are passed on to future generations of Victorians;
 - (b) whether the current heritage protections protect the character of Melbourne and take account of neighbourhood character sufficiently;
 - (c) whether adequate protections are available to protect heritage trees and, if not, what additional protections are required to ensure that large, established heritage trees are appropriately protected;
 - (d) examine the contribution of trees in Melbourne to community wellbeing and the management of the impact of climate change and the impact of the loss of canopy trees on amenity, including the impact of the loss of canopy trees as part of redevelopments with increased density; and
- (2) undertake this inquiry concurrently with their Inquiry into the Protections within the Victorian Planning Framework and report on both issues in accordance with the Council's resolution of 28 October 2020.

Attachment 3 – Some key decisions were made regarding incorporation of witness material received by the Inquiry.

Whilst the Liberals and Nationals agree the committee was severely deficient in its consideration of material put to it and, sadly, did not interrogate key materials, we believe nevertheless that certain additional materials should have been incorporated in the report. Consequently we supported certain additions to the report. We highlight the following additions as described in the extract of proceedings.

Mr Hayes moved, on behalf of Dr Ratnam, That a new finding be inserted at line 276 in the following terms:

That there are inadequate laws and regulations to protect loss of vegetation on private land

The Committee Divided.

The question was put.

Ayes
Mr Hayes
Mr Davis
Ms Bath

Noes
Ms Terpstra
Mr Melhem
Ms Watt
Mr Meddick
Mr Grimley

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, That a new finding be inserted at line 327 in the following terms:

There are mechanisms available to the Government to increase the availability of affordable housing in Victoria, including mandatory inclusionary zoning

The Committee Divided.

The question was put.

Ayes
Mr Hayes

Noes
Ms Terpstra
Mr Melhem
Ms Watt
Mr Meddick
Mr Grimley
Mr Davis
Ms Bath

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, that a new recommendation be inserted at line 327 in the following terms:

That the Victorian Government introduce mandatory inclusionary zoning and a social housing levy to increase the amount of affordable housing in Victoria.

The Committee Divided.

The question was put.

Ayes
Mr Hayes

Noes
Ms Terpstra
Mr Melhem
Ms Watt
Mr Meddick
Mr Davis
Ms Bath

Mr Hayes moved, that at line 1168 the following words be inserted:

3.5.12 – Habitat Corridors

The Council Alliance for a Sustainable Built Environment (CASBE) called for habitat corridors to be included in regional planning schemes:

Habitat corridors are recognised as a key component in building resilience of the natural environment in the face of climate change. Work has been undertaken in identifying key habitat corridors, at a both local and regional scale. However, these rarely find their way into regional Planning Schemes, other on an ad-hoc basis at a municipal scale. This is not compatible with the delivery of such linkages which generally extend beyond a municipal scale and require overall connectivity to achieve their original purpose.

(CASBE, Submission 272, p.3)

The Committee Divided.

The question was put.

Ayes
Mr Hayes
Mr Davis
Ms Bath
Mr Meddick

Noes
Ms Terpstra
Mr Melhem
Ms Watt

The question was agreed.

Mr Hayes moved, that at line 280 the following words be inserted:

The National Trust identified gaps in local heritage protections stating that:

Significant gaps also remain in the protection of locally significant places under Heritage Overlays, which are largely based on studies undertaken in the 1990s and 2000s, and have not been systematically updated. This issue is discussed in detail in the State of Heritage Review report, which identifies both geographical and type gaps. The review found that the most common place-type gaps are trees and gardens, post-war residential, and historic landscapes.

Councils should be supported to address these gaps through the implementation of the State of Heritage Review recommendations.

(National Trust, Submission 129, p.16)

Boroondarra Council in a letter to the Department of Environment, Land, Water and Planning also expressed concerns about gaps in this area:

In response to concerns expressed by our community, Council has recently considered a number of options to protect standalone 'contributory' heritage properties that do not qualify for protection by the Heritage Overlay under the current heritage protection framework.

Some properties the community view as having heritage value do not qualify for inclusion in the Heritage Overlay in the absence of a recommendation by a suitably qualified and experienced heritage consultant that these properties met the standard of being 'individually' significant.

The available statutory framework fails to recognise these standalone 'contributory' properties as having heritage value unless they are individually significant or form part of a cohesive heritage precinct. The loss of these properties is of significant concern to the community and negatively impacts the highly valued heritage character of Boroondara.

(Boroondara Council, Submission 53, Attachment 1, p.25)

The Committee Divided.

The question was put.

Ayes
Mr Hayes
Mr Davis
Ms Bath

Noes
Ms Terpstra
Mr Melhem
Ms Watt
Mr Meddick

The question was negated.

Mr Hayes moved, that at line 835 the following words be inserted:

5.6.6. Demolitions Only To Be Allowed With A Planning Permit

The Boroondara Heritage Group recommended that no building permit to demolish should be granted until and unless a planning permit for what is to be built as a replacement is approved.

It called for the Planning and Environment Act to make this clear and unequivocal.

(Boroondarra Heritage Group, submission 196, p.3)

Submitter Rosetta Manaszewicz also called for no building to be demolished without having acquired a planning permit first. (Rosetta Manaszewicz, submission 145, p.1)

Planning Democracy also recommended this:

Demolitions should not occur until the planning process has decided what is to replace it. This would put a stop to developers and owners demolishing buildings ahead of consideration of their heritage significance. The current arrangement puts demolition powers in the hands of private building surveyors. Requiring a Council planning permit brings Councils into the picture, as they should be.

It would also help address the problem identified by the Boroondara Residents Action Group some years ago, that Federal Government Foreign Investment Review Board Rules contain a perverse incentive for foreign nationals to demolish existing homes.

The frequent outcome has been that foreign nationals buy up quality homes, obtain a permit to demolish through a private Building Surveyor, clear the block of all vegetation and canopy trees, then build a large fake "Georgian" or "French Provincial" McMansion, property boundary to property boundary, with a few small trees in the front. This has resulted in the loss of heritage homes, as well as tree canopy cover, permeable land and open space.

(Submission 28, Planning Democracy, p.1)

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick

The question was negated.

Mr Hayes moved, on behalf of Dr Ratnam, That a new recommendation be inserted at line 835 in the following terms:

Victoria's heritage protection system needs to be strengthened through the use of state-wide guidance, legislation and regulation

The Committee Divided.

The question was put.

Ayes	Noes
Mr Hayes	Ms Terpstra
Mr Davis	Mr Melhem
Ms Bath	Ms Watt
	Mr Meddick

The question was negated.

