



**Parliamentary Inquiry into the
Protections within the Victorian
Planning Framework.**

MAV submission

February 2022

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Introduction

The Municipal Association of Victoria (MAV) welcomes the opportunity to provide a submission to the Parliamentary Inquiry into the Protections within Victoria's Planning Framework.

The MAV is the peak representative and advocacy body for Victoria's 79 councils. The MAV was formed in 1879 and the *Municipal Association Act 1907* appointed the MAV the official voice of local government in Victoria.

The MAV has made numerous planning-related submissions to the Victorian Government over the last five years on topics that directly relate to the inquiry's terms of reference. Rather than duplicate this work, we encourage the Committee to refer to the submissions we link under each term of reference.

Last year the Victorian Government commenced a significant planning reform program with the stated objective of making the planning system "clearer, fairer and faster" for all Victorians. The reform program is informed by recommendations made by the Red Tape Commissioner in her review of planning and building approvals. These reforms, if passed by the Victorian Parliament, will likely be the most significant changes to the planning system since the creation of the *Planning and Environment Act 1987*.

The key driver of the reform package is lifting Victoria's post-COVID economic performance through facilitating growth. The MAV recognises the priority of driving economic growth as Victoria recovers from the impacts of the pandemic. It is vital however that any planning reform strike the right balance to ensure medium to longer term planning outcomes are not compromised.

The lack of open and transparent consultation with local government regarding the reform program has been disappointing. Despite local government being a key delivery partner in Victoria's planning system, the Victorian Government has largely refused to engage with councillors as the elected representatives of their communities. Consultation with council planning staff has been limited and governed by strict confidentiality requirements. This determination by the State to not engage openly and transparently is contrary to the principles of good governance and does little to build trust between councils and the State, or between the community and the State.

As the reform program progresses, key areas of focus for the MAV include:

- Addressing climate change mitigation and adaptation
- Protecting the role of councils in developing longer term visions for their municipality
- Ensuring the community retains a strong voice in the planning system
- Creating appropriate checks and balances on Ministerial powers
- Balancing shorter term economic recovery priorities with longer term strategic planning objectives
- Incorporate Traditional Owners knowledge and perspectives

These are outcomes we also want to see reflected in any recommendations resulting from this parliamentary inquiry.

ToR 1: The high cost of housing

Australia has a housing affordability crisis. This is largely caused by policy settings that treat housing as a vehicle for capital gains rather than a place to live. This attitude is reflected in government policy, media coverage, and the activities of developers and property owners. The politics of housing, and the primacy of the investor perspective, have frustrated meaningful progress on addressing housing affordability.

Planning has long been used as a scapegoat for unaffordable housing. This ignores both the primary role of financial policy in managing demand side risk and the significant community benefits provided by good planning.

In addition to addressing longstanding market interventions that favour investors, we need non-market provision of social and affordable housing. Victoria's investment through the Big Housing Build is welcome, but continued investment is needed to meet the needs of all Victorians.

Effective solutions for housing affordability require each level of government to utilise the policy levers they are responsible for. For local government, this involves the strategic and statutory planning processes focused on the supply side of the housing challenge. For state governments this involves working closely with local government on supply side policy considerations, funding and development of social and affordable housing, and appropriate demand considerations such as the roles of stamp duties and land tax. For the Commonwealth, this should involve setting appropriate demand side policies in line with their macro-economic responsibilities and promoting wage growth that keeps pace with costs of living.

We recommend the following actions:

- Ongoing direct investment from all levels of government into building social and affordable housing
- Mandatory social and affordable housing contributions levied through the planning system and mechanisms to ensure their tenure as social or affordable housing is permanent
- All levels of government continuing to work together to identify suitable land, including public land, for social and affordable housing
- Ensure social and affordable housing is developed or retrofitted to be resilient to climate change and to advance mitigation efforts
- A commitment from the State to engage early and genuinely with councils and communities about the location and design of new social and affordable housing, including Big Housing Build housing
- Expanding tenant protections to ensure that renting is a viable option for Victorian families
- Encouraging institutional investment that prioritises providing rental housing as a business model such as Build to Rent, rather than accumulating capital gains
- Examining state policy levers that could address property speculation and inflated demand, including increased taxes on vacant developable land

- Advocating to the Commonwealth to examine demand side policy levers that could address property speculation and inflated demand, including changes to the taxation system, prudential lending standards, and better targeting assistance for owner occupiers
- Advocating to the Commonwealth to ensure that all Australians, including those on welfare, can support themselves including meeting the cost of housing

Previous MAV submissions:

- [Parliamentary inquiry into housing supply and affordability - Oct 2021](#)
- [Homes Victoria Establishing a 10-Year Strategy for Social and Affordable Housing - Apr 2021](#)
- [Planning Mechanisms for Affordable Housing - Oct 2019](#)

ToR 2: Environmental sustainability and vegetation protection

We are in a state of climate emergency. The planning system must evolve to aid both mitigation and adaptation. 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.

ESD requirements in planning schemes need State Government leadership. 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.

Across Victoria there is increased understanding of climate change vulnerabilities and hazards, including the areas at risk of bushfire, flooding, sea level rise, or erosion. Despite the fact that much of the available hazard data is held or being developed at the state-level, it is still left to individual councils to introduce controls in their planning scheme to ensure future development is appropriate. This is a highly resource intensive challenge for councils, particularly rural and regional councils with limited resources and expertise.

A thriving natural environment is critical for a sustainable Victoria. Our natural environment carries immense intrinsic value, as well as directly contributing to the health and wellbeing of all Victorians and underpinning our economy. We must not only protect but enhance our natural environment through the planning system.

We recommend the following actions:

- Climate change be elevated as a central consideration in both strategic and statutory planning, including considering listing some planning decisions in Schedule 1 of the *Climate Change Act 2017*
- Consider the seven Adaptation Action Plans recently released by the State, particularly the Built and Natural Environment plans which are relevant to this inquiry
- Ensure the planning system enhances Victoria's natural environment, rather than merely slows its degradation. Under the current framework, the 'no net loss' objectives are seeing only temporary 'management' gains while Victoria continues to permanently lose vegetation.
- The Victorian Government 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
- The Victorian Government advocate for stronger climate change consideration in the National Construction Code, and unilaterally implement reforms through Victorian building regulations if necessary
- Use Ministerial intervention to apply appropriate planning controls in planning schemes to manage sea level rise, inundation and flooding risk based on the best available data and science. This should be undertaken in the same way the Bushfire Management Overlay (BMO) is applied

- The Victorian Government introduce rigorous planning policies to enhance the natural environment, such as cooling and greening provisions to increase tree planting and canopy coverage
- The Victorian Government address the increasing tension between bushfire risk and biodiversity protection in settlement planning
- Strengthen and resource enforcement of environmental protections through the planning system that are commensurate with both the value of the natural environment and the potential financial gains reaped through illegal activity. This should include higher penalties for illegal vegetation removal and significant disturbance to distinctive landscapes
- [Consider the draft findings of the](#) Victorian Auditor General's Office audit into "Offsetting native vegetation loss on private land" which indicate that there is no way to currently determine if the goal of no net loss is being achieved

Previous MAV submissions:

- [Victorian Environmentally Sustainable Development \(ESD\) of Buildings and Subdivisions Roadmap - Feb 2021](#)

We also recommend the committee consider a new report commissioned by the Victorian Greenhouse Alliances in partnership with the Council Alliance for a Sustainable Built Environment. The report looks at barriers and opportunities within the planning system to respond to climate change: [Climate change & planning in Victoria – November 2021](#)

ToR 3: Certainty and fairness in planning decisions for communities

Since the introduction of the Planning and Environment Act 1987, Victoria's planning system has become well known for incorporating community consultation in planning. It is a component of our system that is enshrined in legislation and gives social license to planning decisions.

In recent years there has been a shift away from local decision making, towards centralised decisions made by DELWP or the Minister for Planning. These decisions are often made with little or no public consultation and lack channels for further appeals. Protecting community voice in the planning system through council-based decision making, consultation and appeal processes is an ongoing priority concern for the local government sector. Both the planning system and the *Local Government Act* require councils to undertake extensive community consultation in setting policies and strategies. Communities and councils rightly expect that this work will not be diminished or ignored by the Victorian Government. Local government should be respected as a partner to the State in delivering great planning outcomes and reform for communities.

Councils are also concerned about an increasing push for standardised or consistent planning approaches across all councils. While this may suit some in the development sector, standardisation of planning schemes hampers councils from being able to protect local values and respond to community needs. It also stymies council innovation and leadership on planning matters.

Councils spend significant time and resources on strategic planning and policy development. This work addresses important issues such as mandatory versus discretionary controls, protecting local green wedges and agricultural land, liveability of apartments and ESD. It is vital that this strategic work is not lost in the application of new state-level policies, or through Ministerial discretion.

We recommend the following actions:

- Protect the social license of the planning system by requiring genuine consultation with communities on high impact projects and preserve third party appeal rights
- Respect and preserve councils' role in the planning system as the voice of the community
- Examine both the resourcing of VCAT and the potential co-opting of its role from a review body to a first port of call for applicants seeking to subvert local decision making
- Ensure that where the State takes on decision-making responsibilities, it still considers local planning policy and strategic work
- Ensure criteria for Ministerial call-ins is based on measures such as social value and the value of jobs post-construction, not solely capital cost
- Recognise and protect the diverse intrinsic local values and purposes for green wedge land in each municipality
- Implement stronger protections for agricultural land to ensure the resilience of Victoria's agricultural industry in the face of climate change and conflicting land uses.
- Amend the Planning and Environment Act and the Victoria Planning Provisions to allow for mandatory height and setback controls. Any concerns over proposed mandatory controls are

best debated and tested at an independent Panel hearing, rather than outright rejection of such measures by DELWP.

- Retain the Urban Growth Boundary (UGB) and refocus efforts on better planning and design in established areas of metropolitan Melbourne

Previous MAV submissions:

- [MAV submission to Apartment Design Standards inquiry](#)
- [Submission to Planning for Melbourne's Green Wedges and Agricultural Land](#)
- [Submission on protecting Melbourne's strategic agricultural land](#)
- [Submission to Red Tape Commissioner Planning and Building Approvals](#)

ToR 4: Protecting heritage

Victoria's built and natural heritage is one of its greatest assets. From providing meaningful cultural connections to place, to tourism and recreation potential, heritage places are of deep importance to all communities. However, protection and enhancement of local heritage remains a key pressure point for councils. Issues such as a demolition by neglect, competing views over what to protect, and staff knowledge and resourcing are key problems for local government in the heritage space.

Preserving local heritage through the planning system is arguably one of the costliest, time consuming and controversial strategic planning projects undertaken by a council. Amending a planning scheme to identify and protect heritage places, precincts and landscapes requires preparation of detailed reports and assessment, consultation with property owners and the wider community, as well as a panel processes. The sum of this work can take years and costs can run into the hundreds of thousands of dollars for a council. This is prohibitive for many councils, particularly rural councils.

While there is general support in the community for protecting heritage, councils must negotiate competing views and interests over what constitutes a place worthy of protection, as well as property owners concerned over loss of property value. This leads to haphazard decision making, particularly where there are gaps in the planning scheme regarding heritage and where interim heritage protection orders are sought. Ongoing review and updating of heritage provisions in planning schemes as well as the need for specialist heritage advice for statutory planning applications add to councils' resourcing burden. There is also a need for DELWP and the Planning Minister to 'step up' in their responsibilities in managing heritage across Victoria. Consistent approaches and guidance on issues such as demolition by neglect and nominating heritage precincts would be welcomed by councils.

Many of the above issues are explored in detail in the Heritage Council's ['State of Heritage Review: Local Heritage 2020'](#).

We recommend the following actions:

- Improve leadership at the State level in the protection and management of heritage, particularly embedding a dedicated heritage team within the planning arm of DELWP
- Help councils to address capacity and capability gaps that limit their ability to proactively undertake heritage studies, address gaps in local heritage protections and ensure compliance with heritage controls and orders
- Review planning controls for heritage to ensure they are fit for purpose
- Investigate ways to strengthen the protection for non-building heritage such as trees, geological formations, archaeological sites, and landscapes including tangible and intangible aboriginal cultural heritage.
- Provide support for education and promotion of heritage, including for local council leaders
- Consider how government can better support people in control of heritage locations to maintain and preserve them

ToR 5: Residential zones

Councils are at the forefront of ensuring the planning system delivers housing for all Victorians. This includes using planning tools such as a zones and overlays to ensure that homes are diverse in type, affordable, regenerative in the face of climate change, and have access to transport, open space and a range of community services. A key part of this is also the timely release of land to meet demand.

Councils have worked hard to apply appropriate zone and overlay controls and develop supporting local policy to balance the need to provide more housing with requiring design that meets local community expectations. Balancing State-led priorities like housing growth with the need for excellent urban design and improved neighbourhood character is the core business of local council planning departments. In doing so, councils must retain their ability to negotiate with stakeholders and make key decisions on their community's future.

We recommend the following actions:

- Amend the planning scheme amendment process to enable councils to more quickly progress amendments on behalf of their community, including by time-bounding authorisation and final scheme amendment decisions by the Minister and DELWP
- Introduce reforms to provide councils with the ability greater ability to determine mandatory built form planning requirements for its local communities
- Proactively improve ResCode Standards to better align with the Better Apartment Design Standards, which set a higher standard of amenity for residents, to meet community expectations
- Protect councils' ability to introduce strong local policy and zone and overlay schedules to protect local character and to encourage the kind of housing desired by the community
- Work more closely with councils both in the development of amendments to the Victoria Planning Provisions, and in their implementation, ensuring council officers and councillors are ready to implement any changes when they are gazetted.
- Recognising that a planning system is only effective to the extent it influences on-the-ground outcomes, work with councils to ensure they have the legislative tools, capability, and capacity to improve as-built compliance
- Amend the current cap on developer contributions for community infrastructure in growth areas to address the significant funding shortfall that growth area councils are facing.

Previous MAV submissions:

- [MAV submission to Improving the Operation of ResCode discussion paper](#)