

Submission in response to the Inquiry into Protections within the Victorian Planning Framework

31 January 2022

1. Introduction

Thank you for the opportunity to participate in the Inquiry into Protections within the Victorian Planning Framework ('the Inquiry') and provide feedback on the adequacy of the *Planning and Environment Act 1987* and the Victorian planning framework.

My feedback is informed by my recent experiences while participating in the VCAT appeal process when I joined a group of neighbours to oppose an application for the staged development of 32 units on a block of land in Highton, Geelong.¹ The feedback is, therefore, predominantly given with reference to the Greater Geelong Planning Scheme.

The whole process played out from May 2020 through to November 2021. We are not trained town planners or planning lawyers.² I drafted this submission as I believe that insight into the lived experience of the process and the protections that the Act provides from a lay person, community user's perspective will improve the outcome of the enquiry.³

The table on page 2 provides an overview of my submission:

¹ *Arc Townhomes Pty Ltd v Greater Geelong CC* [2021] VCAT 1318.

² As a lay people, we are not across the technical planning terminology and the specific legislative provisions contained in the Planning Framework. References to specific provisions are, therefore, limited.

³ I am aware that a few members of our group are providing feedback to the Committee. Having gone through the Planning and VCAT process together, we have had many discussions during which we shared our experiences and views on the adequacy of the Victorian planning framework. Therefore, our submissions contain some overlap.

Element listed in the Inquiry's terms of reference	Concern	Recommendation(s)
Environmental sustainability and vegetation protection		
<ul style="list-style-type: none"> • Green infrastructure management 	Absence of appropriate state-wide tree protection.	Amend the Victorian Planning Framework to include provisions that mandate tree-protection, including tree-retention across the state.
<ul style="list-style-type: none"> • Minimum garden requirements in Residential Growth Zones 	Current regulation in the State Planning Framework of green space in residential areas fails to appropriately recognize the importance of environmental considerations, specifically residents' health and wellbeing.	<ul style="list-style-type: none"> • Ensure that the provision of green space or garden area is mandatory in all residential areas. • Re-imagine the role of the garden area/green space provisions to extend their purpose beyond protecting the open garden character of neighbourhoods. • Amend state-based policies to include objectives that require applications to provide evidence of consideration of the development's impact on thermal comfort and the tools employed to mitigate and/or reduce the urban heat island effect. • Extend the application of the <i>Better Apartments Design Standards</i>, with consideration of the respective differences, to all multi-dwelling planning applications.
<ul style="list-style-type: none"> • Sustainability of developments 	Weak sustainability standards	Strengthen the sustainability standards in the Planning Framework at a state level.
Ensuring amenity within developments	The standards for internal amenity of the dwellings in multi-dwelling applications are inadequate.	Incorporate a document in the planning scheme similar to the <i>Better Apartment Design Standards</i> , as mandatory design objectives for multi-dwelling, medium/high density developments.
Community concerns about VCAT planning dispute processes	Systemically, VCAT planning dispute processes does not consistently provide fair and affordable access to justice for the Victorian community.	<ul style="list-style-type: none"> • Consider advancing equal representation in larger developments (e.g, multiple units and a total development value of more than \$10 million with multiple residents opposing), e.g, by allowing residents to off-set a percentage of their individual legal expenses against their municipal rates and taxes bills. • Ensure that the Planning Framework is clear, unambiguous, comprehensive and fair to minimise reliance on VCAT processes.

2. Environmental sustainability and vegetation protection

2.1 Green infrastructure (Tree canopy and vegetation) protection

2.1.1 Our concern: Absence of appropriate state-wide protection

Engaging with the planning process, we were appalled to learn how little protection the Greater Geelong Planning Scheme provides to trees. We were especially shocked as the Geelong City Council has since 2015, officially endorsed/or adopted several Strategies and associated Action Plans supporting environmental sustainability. These include the Urban Forest Strategy 2015 – 2025, the Action Plan in November 2015 and the Environment Strategy 2020-2030 and Action Plan in September 2020. Both the Urban Forest Strategy and the Environment Strategy highlight the importance of reducing urban heat risk. In particular, the Urban Forest Strategy confirms that urban tree canopy management is widely recognized as an effective tool to manage the impact of climate change, specifically increasing urban temperatures caused by the Urban Heat Island effect:

*They also build the ecological platform of resilience, adaptation and mitigation against urban heat island effects and climate change.*⁴

*The UHI effect can be mitigated by a range of factors. The most cost effective and efficient mitigation tool is an increase in tree canopy cover.*⁵

However, the number of trees on private land in Greater Geelong is diminishing as the Planning Scheme only protects native Victorian trees on private property. Despite Victorian Planning Provisions not limiting tree protection to indigenous Victorian trees,⁶ private non-native trees, regardless of their age and their value to the community, receives no protection in Geelong.⁷ In Highton, for example, we have seen extensive clearing of land by developers removing old, established canopy trees in the past 24 months. The absence of protection in the Geelong Planning Scheme or a local tree removal law means that removal of non-native trees and vegetation on private property does not constitute a ground for objection when opposing development applications under the Greater Geelong Planning Scheme.

The absence of appropriate tree protection in the Planning Scheme facilitates the regular indiscriminate clearing of all vegetation, including the perimeter trees, on entire blocks of land to facilitate easy and cost-effective access and development.

Our consideration of the proposal for the Highton site included a review of sites developed by the applicant in the past. It is evident that the applicant consistently implements a broadscale removal of trees. The locations include sites across different planning zones in Greater Geelong: Oxford Street in Whittington, Barrabool Road and

⁴ City of Greater Geelong, *Urban Forest Strategy* (2015) 31.

⁵ Ibid 49.

⁶ *VPP Practice Note 07: Vegetation Protection in Urban Areas* <www.doi.vic.gov.au/planningnotes>.

⁷ Clause 73.01 of the Planning Scheme defines native vegetation as 'plants that are indigenous to Victoria, including trees, shrubs, herbs, and grasses'.

Taylor Court in Highton, Percy Street in Newtown, Meadowvale Drive in Grovedale and two sites in Hazel Street in Belmont.

The increasing number of razed blocks of land in Geelong highlights the prevalence of this approach, and that is not just employed by corporate developers. Examples near us in Highton include numerous sites in Roslyn and Barrabool Road and three sites in South Valley Road.

In our case, the applicant, in keeping with their approach in the past, initially proposed to remove all but one of the trees on the site. Of the sixty-five (65) trees on the review site, the Planning Scheme only protected one (1) tree, a native Blackwood tree. And yet some of those trees are majestic. They include three 18 metre English oak trees, several equally large eucalypts, and a stand of smaller eucalypts.

During the VCAT proceedings, the developer's legal team was at pains to highlight that there are no tree controls that protect any of the existing trees, bar one, on the subject site:

*But the important, inescapable, fundamental fact is: Those trees are there by the grace of my client. They could be removed tomorrow.*⁸

*My client could have, and could tomorrow, go down there with a chainsaw and cut each and every tree down.*⁹

The residents submitted a study by DWELP/Council sponsored study by Deakin University that highlighted the urban heat island crisis in Highton, and the role of an appropriate tree canopy to protect the health of vulnerable residents. In closing, the solicitor highlighted that the City of Greater Geelong has not employed any of the tools available in the current Planning Framework, for example a VPO or ESO, to protect the trees in the zone the review site was located in. He also reiterated that the Council exercised a discretion not to adopt tree protection measures for the area:

*Council has the tools available to it to address that [heat island] crisis that Mr [REDACTED] says is besetting Highton. But it hasn't done that.*¹⁰

⁸ *Arc Townhomes Pty Ltd v Greater Geelong CC* [2021] VCAT 1318 (Personal transcript from the Official Recording, Day 4, 19 October) 0:02:06-0:02:08.

⁹ *Arc Townhomes Pty Ltd v Greater Geelong CC* [2021] VCAT 1318 (Personal transcript from the Official Recording, Day 4, 19 October) 0:01:17-0:01:20.

¹⁰ *Arc Townhomes Pty Ltd v Greater Geelong CC* [2021] VCAT 1318 (Personal transcript from the Official Recording, Day 4, 19 October) 0:02:30-02:56:00.

Of specific relevance to this inquiry, the solicitor strongly argued that, in the absence of particular provisions in the Planning Scheme, the Tribunal cannot reject the application on the basis of tree removal and any associated heat island impacts. The solicitor closed this argument by saying:

*Do something Council. If it is a crisis. But you, Tribunal cannot.*¹¹

2.1.2 Our recommendation

Amend the Victorian Planning Framework to include provisions that mandate tree-protection, including tree-retention across the state.

These provisions should go beyond the existing higher-order policy provisions and be stronger than existing guidelines that merely encourage protection instead of mandating it. The objectives contained in Schedule 1 to Clause 32.04 and Schedule 2 to Clause 32.07 of the Moreland Planning Scheme provide a good example of provisions that should be contained in the state-level zone objectives.

In addition, include a clear definition of what constitutes a canopy tree in the general definition section to ensure state-wide application. No such definition in Geelong Planning Scheme.

2.1.3 Arguments supporting including state-wide responsive tree-protection

2.1.3.1 The relationship between green infrastructure, climate change and the heat island effect

Researchers worldwide recognise the urban heat island effect as a consequence of urbanisation and the impact of the urban environment on its climate.¹² Researchers also agree that increased urban temperatures present a range of social, economic and environmental risks.¹³ In particular, urban heat and the urban heat island effect pose grave health risks to vulnerable residents:¹⁴

*One of the most confronting impacts of climate change is the risk of more deaths from hot weather. Heat stress can exacerbate existing health conditions including diabetes, kidney disease and heart disease. Older people are particularly vulnerable.*¹⁵

¹¹ *Arc Townhomes Pty Ltd v Greater Geelong CC* [2021] VCAT 1318 (Personal transcript from the Official Recording, Day 4, 19 October) 0:03:31-0:03:33.

¹² Laura Kleerekoper, Marjolein van Esch and Tadeo Baldiri Salcedo, 'How to Make a City Climate-proof: Addressing the Urban Heat Island Effect' (2012) 64 *Resources, Conservation and Recycling* 30.

¹³ City of Greater Geelong and the Wyndham City Council, *Urban Heat Island Report* (2013) 5.

¹⁴ World Health Organization, 'Heatwaves', *Health Topics* <https://www.who.int/health-topics/heatwaves#tab=tab_1>; California Office of Environmental Health Hazard Assessment, *Heat-related Mortality and Morbidity* (2019) <<https://oehha.ca.gov/epic/impacts-biological-systems/heat-related-mortality-and-morbidity>>.

¹⁵ Thomas Longden quoted in Institute for Climate, Energy and Disaster Solutions, Australian National University, 'We know that heat kills; accurately measuring these deaths will help us

Researchers agree that climate change will likely lead to more frequent, more severe, and longer heat waves during summer months.¹⁶ The projected climate change will exacerbate these risks in future.¹⁷

The important role of trees and vegetation reducing temperatures urban areas is globally recognized.¹⁸ Closer to home, as stated in par 2.1 above, the City of Greater Geelong's Urban Forest Strategy describes urban tree canopy management as 'the most effective' tool to manage the impact of climate change, specifically increasing urban temperatures caused by the Urban Heat Island effect.¹⁹ A viewpoint that many other Victorian Councils echo in their tree-management policies and urban forest strategies.²⁰

Given the wide recognition of the importance and efficacy of tree canopy cover and vegetation as a response to climate change, implementing it consistently state-wide deserves serious consideration.

2.1.3.2 Consistency and fairness in the Planning Framework

Currently, tree management across Victorian councils is inconsistent.²¹ Some Victorian Councils already have progressive canopy management provisions in place, while others

assess the impacts of climate change', *Research* (Web Page) <<https://iced.s.anu.edu.au/research/research-stories/we-know-heat-kills-accurately-measuring-these-deaths-will-help-us-assess#:~:text=The%20results%20were%20staggering,.,Australia%20for%20this%20time%20period.%E2%80%9D>>.

¹⁶ Matthew Collins et al, *Long-term Climate Change: Projections, Commitments and Irreversibility* in F.T. Stocker, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (New York, 2013) 1062; United States Environmental Protection Agency, 'Reduce Urban Heat Island Effect', *Green Infrastructure* (Web Page) <<https://www.epa.gov/green-infrastructure/reduce-urban-heat-island-effect>>.

¹⁷ Intergovernmental Panel on Climate Change, Special Report: *Global Warming of 1.5°C* (2021); City of Greater Geelong, *Climate Change and Heatwave Project: Identification of high-risk areas across the City of Greater Geelong* (2020) 5.

¹⁸ Margaret Loughnan et al, *A Spatial Vulnerability Analysis of Urban Populations During Extreme Heat Events in Australian Capital Cities* (National Climate Change Adaptation Research Facility, 2013) 21.

¹⁹ City of Greater Geelong, *Urban Forest Strategy* (2015) 31.

²⁰ See, for example, City of Melbourne, *Urban Forest Strategy: Making a Great City Greener 2012-2031* (2012) 31; Maribyrnong City Council, *Urban Forest Strategy* (December 2018) 6; Greater Shepparton City Council, *Urban Forest Strategy 2017-2037* (April 2017) 10.

²¹ The inconsistencies are not limited to the protection of tree canopies. The concept of what constitutes a canopy tree also varies across Planning Schemes, impacting on the height of trees planted and the successful implementation of planting strategies. For example, the City of Greater Geelong, *Urban Forest Strategy* (2015) 23, highlights that 'the public urban forest consists of a very high percentage of small statured trees and is potentially not functioning at its most efficient capacity. This means that there is a large opportunity cost of missing environmental and economic values such as shading, air pollution and carbon sequestering and stormwater interception.'

have weak or non-existent protections.²² It seems as if the inconsistency corresponds to the financial position, capacities, and climate change policies of different councils. The inconsistent approach enables developers to pursue developments with less amenity and weak climate change responsiveness in those municipalities with weaker local planning provisions. Our experience and the list we provided in par 2.1 of sites in Geelong where trees were indiscriminately felled without contravening any planning provisions illustrates the impact of the near limited tree protection in Greater Geelong.

All urban communities in Victoria deserve cooler cities and suburbs. Heat-resilience should not depend on the resources and attitudes of your local council.

Changing the provisions of the Victorian Planning Framework to mandate tree preservation and management across the state will ensure that the health and wellbeing of all the residents of Victoria are equally protected across the State.

2.1.3.3 Addressing the discrepancy in tree canopy coverage and associated exposure to heat risk in Victoria

Referring to the 'heat gap', researchers highlight that temperatures often varies across different local municipalities in the same city; and that this variation corresponds with the variation in tree canopy cover.²³ The 'heat gap' between lower socio-economic suburbs with higher density populations and more affluent suburbs is widely recognised.²⁴ Research also identifies young children, the aged and members of low socio-economic households as more vulnerable to the impact of increasing high temperatures.²⁵ The overlap between heat vulnerable communities and areas with low canopy cover underscores the urgency to address the discrepancy in tree canopy cover in different areas of Victoria.

To ensure the health and wellbeing of our communities into the future, we must use all available tools, including appropriate provisions in the Planning Framework, to eliminate the heat gap and improve green cover across Victoria.

²² Attachment A contains an overview of tree protections in 41 Victorian Planning Schemes.

²³ Australian Conservation Foundation, *Temperature Check: Greening Australia's Warming Cities* (2021) 5.

²⁴ Ibid.

²⁵ Margaret Loughnan et al, *A Spatial Vulnerability Analysis of Urban Populations During Extreme Heat Events in Australian Capital Cities* (National Climate Change Adaptation Research Facility, 2013) 21-23; City of Greater Geelong, *Urban Forest Strategy* (2015) 33.

2.2 Minimum Garden Area requirements in residential growth zones²⁶

2.2.1 Our concern: Failure to appropriately recognize the importance of environmental considerations, specifically in the context of residents' health and wellbeing, in planning and development.

Whilst preparing our submissions, it came to our attention that in March 2020, to comply with VC110, the Geelong Council resolved that land zoned as Residential Growth Zone Schedule 2 (RGZ2, Urban Increased Housing Diversity Areas) be rezoned to a new General Residential Zone Schedule 4 (GRZ4, Urban Increased Housing Diversity Areas).

The Council also recommended that the new General Residential Zone schedule exempt the garden area requirement consistent with the previous Residential Growth Zone Schedule 2. The exemption, it was said, was required to differentiate the zone from conventional residential zones and to ensure the zone continues to facilitate increased housing density and diversity.

Notably, the Council's adopted position was based, in part, on the fact that prior to the rezoning, Increased Housing Diversity Areas were included in a Residential Growth Zone, which does not require a minimum garden area.

However, the garden area requirement exemption was omitted from the new General Residential Zone schedule which came into effect in December 2020. Subsequently, the Council has submitted a request to the Planning Minister's office to prepare and approve a Ministerial amendment to the Greater Geelong Planning Scheme (Amendment C426ggee). The proposed amendment includes the removal of any garden requirement in relation to General Residential Zone Schedule 4 (Urban Increased Housing Development Areas).

The amendment has not been approved yet. If it is approved and becomes operational, it would leave large key areas of Geelong without any garden or canopy tree requirement but with higher suburb temperatures associated with the increase in hard surfaces. Without any alternative measures in place in the Planning Scheme to mitigate the impact of the absence of green infrastructure, residents living in these areas would face a future of extreme heat.

We understand the need for and support initiatives that support residential growth and affordable housing. We also recognize finding a balance between the need for housing and responding to environmental issues presents a serious challenge.

However, we are concerned that the current provisions in the State Planning Framework regulating green space in residential areas fail to appropriately recognize the importance

²⁶ This issue and green infrastructure overlaps. Most, if not all the arguments supporting stronger and state-wide tree canopy protection are also relevant when considering the question as to how to regulate green space in residential growth areas. The discussions should be read together.

of environmental considerations, specifically in the context of residents' health and wellbeing, in planning and development.

2.2.2 Our recommendations

Ensure that the provision of green space or garden area is mandatory in all residential areas.²⁷ It should not be subject to blanket local exemptions, without informed community consultation and ministerial approval.

However, we recognize that achieving this goal requires innovative approaches to green spaces, green infrastructure and what constitutes a 'garden area'. For example, 'garden areas' above ground level – a roof garden would help, especially if it included canopy trees.²⁸

Possible changes include

- Re-thinking and re-imagining the role of the garden area/green space provisions to extend their purpose beyond protecting the open garden character of neighbourhoods.
- Including mandatory environmental and sustainability provisions in the stated purposes of zones in state-based policies, for example Clause 32.07.
- Amending state-based policies, for example, Clause 32.07-1, to include objectives that require applications to provide evidence of consideration of the development's impact on thermal comfort and the tools employed to mitigate and/or reduce the urban heat island effect. The design objectives in Schedule 2 to Clause 32.07 of the Moreland Planning Scheme provides a good example.
- Extend the application of the Better Apartments Design Standards, with consideration of the respective differences, to all multi-dwelling planning applications.

2.2.3 Arguments supporting the inclusion of mandatory garden area/green space or garden area provisions for all residential zones

2.2.3.1 The Urban Heat Island effect and green space in high density urban areas

The discussion in par 2.1.3.1 above is particularly pertinent to residential growth areas.²⁹ Green space is even more necessary in the city centres where higher density housing drives the conversion of vegetated areas to impervious surfaces and increases the hardscape.³⁰

²⁷ See par 2.1.3.1 above.

²⁸ Mindful of the significant maintenance green walls require and the likelihood of neglect and the greenery dying, we would caution against including green walls in such a concession.

²⁹ Urban heat islands cause higher temperatures in urban centres than in surrounding suburban and rural areas: S. Peng et al, 'Surface Urban Heat Island Across 419 Global Big Cities' (2012) 46 *Environmental Science & Technology* 696.

³⁰ Caiyan Wu et al, 'Estimating the Cooling Effect of Pocket Green Space in High Density Urban Areas in Shanghai, China' (2021) 9 (May) *Frontiers in Environmental Science* 2.

2.2.3.2 Fairness and consistency

Similar to tree protection measures, responses to climate change and planning scheme provisions aimed at mitigating the urban heat island effect varies across councils in Victoria.

As stated in par 2.1.3.2, there seems to be a correlation between the financial position, capacities, and climate change policies of different councils and the regulation of urban temperatures.

Urban heat islands pose considerable heat-related health risks for urban residents, combined with increased energy costs (for example, air conditioning), and water consumption.³¹ It is therefore, vital to urban public health and sustainable development that we take urgent consistent action, including employing urban planning tools, to mitigate the urban heat island effect across Victoria.

2.2.3.3 The importance of amenity to residents' health and well-being

The recent changes to the Victorian Planning Framework to improve the liveability of apartment buildings in Victoria indicate that the State Government recognises the importance of amenity for urban residents.³² Notably, the changes include specific provisions about landscaping, particularly canopy trees, acknowledging the importance of green space to ensure attractive and liveable urban environments.

2.3 Sustainability of Developments

2.3.1 Our concern

The Highton application presented a case study on sustainability in multi-dwelling development applications. The trained architect in our group observed that sustainability in the initial 32 dwellings proposed in the application was inadequate. Issues included

- The bulk of the houses were multi-level, attached houses with the rows oriented in a north-south direction.
- The dwellings lacked North and South facing windows, with most windows facing east and west with no sun screening. This would expose those rooms to uncomfortable heat gain in either the morning or afternoon for the hotter months. The lack of northerly sun in colder months would prevent utilising the sun to improve comfort by solar warming through windows.
- Roads and garages dominated the design, discouraging pedestrian activity and incidental meetings of neighbours.

A review of older developments in Greater Geelong revealed deterioration of the finishes chosen which results in a reduced useful life of the buildings.

³¹ Ibid.

³² VC174.

2.3.2 Our recommendation

Strengthen the sustainability standards in the Planning Framework at a state level to prevent lip-service by developers and Councils.

2.3.3 Arguments for strengthening the sustainability standards

2.3.3.1 Morphology of Development is Set at Planning Stage

Improvements in the sustainability of a dwelling can be very difficult to make at building certification stage when the morphology of the dwelling and development is already set from planning stage. It is widely recognized in architecture and construction that changes to improve sustainability are much easier to make earlier in the process. For example, improving the sustainability of a building is very limited and more expensive if passive solar design has been ignored at the planning stage.

2.3.3.2 Longevity of buildings

The architect in our group explained that longevity of a building is an important element of sustainability. She quoted Carl Elefante:

*The Greenest building is... one that is already built.*³³

Three main elements contribute to longevity: 1) the durability of the materials used, 2) the care in building and 3) affection for the building due to quality of design. Part of planning decisions is to accept or deny developer aspirations regarding exterior finishes. Arguably, decisions made at this stage regarding morphology also limit any changes that could be made to the structure of a building based on sustainability of the choice of materials. External finishes and exterior design, in particular, strongly influence the longevity of a building. If a building has higher perceived value, people are prepared to fight for its preservation. For example, veranda detailing and chimney brickwork on Federation-era houses often inspires heritage protection for neighbourhood character or individual dwellings. In the case of new dense developments, what is the minimum longevity the external design should achieve? Perhaps it would be better to specify this than particular materials, to encourage variety in our cities.

3. Amenity Within Developments

3.1 Our concern

The trained architect in our group observed that the internal amenity of the dwellings proposed for the Highton review site was inadequate. Examples include the following:

- The front doors and garages opening directly onto the footpath, and/or too close to the road with no transition from the private to the public realm.
- Dwellings cutting into the hillside to such an extent that lower-level rooms had no or very little natural light, with windows within one (1) meter of five (5) meter high retaining walls.

³³ Carl Elefante, 'The Greenest Building Is... One That Is Already Built' (2012) 27(1) *Forum Journal* 62.

- An almost complete lack of north and south facing windows on all dwellings, with most windows facing east and west with no sun screening. This would expose those rooms to uncomfortable heat gain in either the morning or afternoon for the hotter months. The lack of northerly sun in colder months would prevent utilising the sun to improve comfort by solar warming and increase the depressing effect of winter due to a lack of natural light.

Objections to the lack of amenity during the VCAT hearing were frequently denied on the grounds that such considerations were to be vetted at a later stage during the building certificate process. However, the morphology of the buildings is set at development approval, rendering solutions to these kind of amenity issues during the building certification process unviable.

3.2 Recommendation

Incorporate a document in the planning scheme similar to the *Better Apartment Design Standards*, as mandatory design objectives for multi-dwelling, medium/high density developments.

Doing so would ensure planning certainty as instances where individual planning officers must exercise a discretion would be limited. Furthermore, amenity issues will be address in a timely manner instead of postponing it until the Building Certification stage, when many amenity issues cannot be corrected. Such a document should be developed in conjunction with the Office of the Victorian Government Architect.

3.3 Arguments for inclusion of development amenity protections on a state-wide basis in the Planning Framework

3.3.1 Morphology of development is set at the planning stage

Improving the amenity of a dwelling can be very difficult and costly at building certification stage where the morphology of the dwelling is already set from planning stage, as described at paragraph 3.2.1. For example, changing the size and location of windows to improve interior natural daylight may not be possible due to overlooking issues. Also, if a row of attached terrace houses is approved in a north-south orientation, the only option for windows would be east-west.

3.3.2 Social sustainability - Access to Playground Provision

Dense developments which have a lower entry cost attract young families. While aspirational, there is no provision in the planning scheme which requires the provision of safe access to a playground. Notice, we have not suggested supplying a playground because of the economics, however, school-age children need access to a playground, preferably independently i.e., without crossing major roads.³⁴ Also, if provided, community facilities in subdivisions need to be subject to passive surveillance from nearby dwellings.³⁵ Our experience in our neighbourhood is that playgrounds and parks

³⁴ Krysiak, N. (2020). Best practice for designing child-friendly high density neighbourhoods. Sydney, Cities for Play, funded by the Winston Churchill Foundation.

³⁵ Ibid.

provide opportunity for parents and children and dog-walking residents to meet each other and establish friendships and a support network within the community.

3.3.3 Social Sustainability – multi-age developments and community

There appears to be little neighbourhood life or contact between residents in the developments as described with no front porches for elders to watch community activity and almost no front gardens requiring work outside. It is important for aging in place for elderly residents to come to know their neighbours so that they can be supported with tasks and to prevent loneliness which impacts on mental health.³⁶ Incidental encounters are an important contributor to meeting and knowing the neighbours. Having elders around is also important for passive surveillance of children, so that they may have more freedom to play outside independently.

3.3.4 Minimum acceptable result

Similar to the case for sustainability provisions, it is admirable to have general policy documents regarding amenity and ways of achieving it. However, what is included in the planning scheme is the minimum and many developers will only do that and pay little attention to design guidance. Therefore, the amenity requirements included in the minimum design standards should be improved. Furthermore, to ensure consistency and to prevent developers targeting jurisdictions with weaker laws, these regulations should be adopted state-wide.

4. Community concerns about VCAT appeal processes

4.1 Our concern

The stated purpose of VCAT is to provide fair, efficient, and affordable justice for the Victorian community.³⁷ Some members of VCAT are better than others when it comes to advancing that objective in practice. Systemically, however, community members participating in Planning disputes are at a distinct disadvantage in VCAT hearings:

- Developers rarely appear for themselves. They appoint legal representatives and planners with planning expertise, a niche area of law. Engaging professional representation is expensive. In most instances, community members do not have the resources to engage professional representation.

We employed crowdsourcing to raise funds to appoint a planning consultant. The applicant was represented by a team of lawyers and planners. They also called four expert witnesses to provide evidence during the hearing. Our funding only covered the cost of the planning consultant, we could not engage a lawyer. Nor could we afford expert witnesses. Underscoring the inequity that results, the applicant's lawyer repeatedly during the hearing raised the fact that we did not

³⁶ Eckhard Feddersen and Insa Lüdtko, *Living for the Elderly: A Design Manual* (Birkhäuser, 2nd rev ed, 2018).

³⁷ Victorian Civil and Administrative Tribunal, Submission: Access to Justice Review (2016) 1.

provide any expert evidence which contradicts the evidence led on behalf of the Applicant. It was also specifically noted in the applicant's submissions.

- Although the Tribunal is not bound by the formal rules of evidence or any practices or procedures applicable to courts of record, the Planning List has developed a complex and opaque set of practices and rules. Many of these are procedural and evidentiary conventions which practitioners get to know because they regularly appear before the Tribunal. Community members, without comparable planning expertise and experience of VCAT proceedings, struggle to navigate these rules successfully.
- The process allows a lot of leeway for experienced legal representatives to employ intimidating tactics against community members appearing for themselves.
- Appeals to a VCAT decision are only permitted on grounds of law, and most of the decisions are based on an interpretation of the relevant Planning Scheme based on the facts of the case. It effectively means that there is no appeal for objectors regarding the decision. This means that the Members are very powerful. In this context, objectors, already unsure about the rules as to what is acceptable and what not, do not wish to offend the members and limit their protests during proceedings.

The issues listed above means that, without costly professional representation, it is highly unlikely, if not impossible for community members to successfully oppose a planning application at VCAT. This discourages community members to get involved with planning disputes at VCAT level. Consequently, in terms of the Planning List, VCAT fails to provide fair, efficient, and affordable justice for the Victorian community.

4.2 Our recommendations

1. **Consider advancing equal representation in larger developments (e.g, multiple units and a total development value of more than \$10 million), e.g, by allowing residents to off-set a percentage of their individual legal expenses against their municipal rates and taxes bills, where the developer secures legal, or planning representation and the application is opposed by multiple residents. This would hold the added advantage of incentivising Council planners to engage with the community to pre-empt such opposition.**
2. **Ensure that the Planning Framework is clear, unambiguous, comprehensive and fair to minimise reliance on VCAT planning dispute processes.**

Thank you for your consideration.

Yours sincerely,

Jeanne Nel

