Victorian
Local Governance
Association

27 January 2022

The Secretary
Parliament of Victoria
Legislative Council, Environment and Planning Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Email: planninginquiry@parliament.vic.gov.au

Dear Sir / Madam

Protections within the Victorian Planning Framework

Thank you for the opportunity for the Victorian Local Governance Association ('VLGA') to make a submission to the above inquiry by the Environment and Planning Committee.

The VLGA is an independent governance organisation supporting councils and councillors. We provide opportunities for councillor networking, professional development and information exchange and we actively engage with key policymakers and broader stakeholders to inform, influence and lead the conversations that determine the priorities for the local government sector in Victoria and support good governance at the local level.

Whilst not claiming expertise as professionally trained town planners, we do have a keen interest in the good governance aspects of the Victorian Planning Framework and supporting elected councils to achieve well planned communities in accordance with the objectives of the Planning and Environment Act 1987 ('the Act').

As a consequence, we do not propose to comment on all aspects of the Terms of Reference, but will frame our responses, where made, below in that format as provided.

We do not require that this submission be made confidential.

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;**

   As a general principle we submit that housing equity and affordability are issues that ought to be top of mind to any society that seeks to lay claim to principles of human rights, equity and fairness. It is unconscionable that any member of our community might not have access to secure housing.

The manner in which we respond to housing insecurity, including affordability, is a marker to our decency as a community. Going further there is ample evidence that this goes beyond a human rights issue. There is a genuine financial payback – investment in housing reduces whole of government expenditure over time and provides greater capacity for those citizens who would otherwise suffer housing insecurity to make a productive contribution to the social, cultural and economic capital of our state.

In that frame, we submit that issues regarding housing affordability ought to be addressed through well-founded public policy. That is through policies that are intellectually rigorous and have been stress-tested with a variety of stakeholders. We are confident that the Committee will receive submissions with more rigour in economics and social policy, for example, than we could provide.

However, we do point to a disturbing trend in recent times, which is the notion posited by a number of commentators that the issues of housing affordability will be addressed through:

a) increased supply; combined with
b) reduced government charges and red tape.

We will expect the committee will receive a range of submissions on this topic. The VLGA submits that property is not a class of asset to be developed to the maximum extent possible with a commensurate minimisation of red tape.

Development inevitably carries legacy issues for affected communities, and the regime under the Planning and Environment Act 1987 is designed to optimise the benefits of orderly land use and minimise the adverse impacts by ensuring that land uses have a functioning level of compatibility.

There are a range of knock-on effects, to underlying market certainty, economic activity, social cohesion and quality of community that flow from effective land use planning. We ask that the Committee consider carefully of the consequences of a supply side response to affordability of housing.

Turning to matters more pertinent to the Act, the VLGA has previously made representations to government in relation to Victoria's Big Housing Build, 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.

We submit that "stress-testing" against relevant provisions of the Victoria Planning Provisions (VPPs) of various types of specific types of social housing proposals, and market-intervention policy proposals is required. Such a process can determine (if there is inconsistency) whether the proposal in question or the VPP provision needs amendment. To not do so will, we submit, instead leave councils to resolve inconsistencies once a new policy is in operation.

We also note in passing the opportunities for greater involvement by local government in relation to housing affordability. In particular the beneficial enterprise provisions in the LG Act 2020 (replacing the former entrepreneurial powers provisions in the LG Act 1989) are available to enable councils to assist to fill gaps in affordable housing not being filled in particular markets.

2. Environmental sustainability and vegetation protection

We again anticipate that many issues under this heading will be the focus of submissions to the Committee by trained professionals such as land-use planners and environmental consultants or advisers.
Although the technical elements may be beyond the remit of VLGA we are concerned about the governance perspective, including capacity and support for elected councils to make a meaningful contribution to approvals processes.

Feedback we have received suggests that currently councils can be left to resolve the application of inconsistent provisions between (for example) vegetation, bushfire and design & development overlays in practice. This can have the consequence of decisions being adjudicated by VCAT to achieve clarity (as has happened in relation to a previous form of the Environmental Audit Overlay, as one example).

As a result, we submit that consideration be given to a regime under which councils might have authority to enable proposed policy amendments in relation to environmental sustainability and vegetation protection to be approached holistically.

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; protecting third party appeal rights;**
- **d) the role of Ministerial call-ins;**

In relation to issues of certainty and fairness', we submit that the dynamics for councils' in managing their statutory planning (particularly 'responsible authority') role are particularly problematic. Councils are increasingly confronted by planning permit applications that exceed discretionary planning scheme controls (such as height) by significant amounts.

There 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.

The overuse of "ambit" planning permit applications in this way serves to erode councils' strategic planning ('planning authority') role, including creation of a window by which more opportunistic players can be incentivised to avoid or undermine the rigorous and transparent processes through which local planning schemes and policies are developed.

To ensure that strategic planning steps under the Planning and Environment Act 1987 are not eroded or bypassed by "ambit" planning permit applications under discretionary planning controls, we submit that it should not be necessary for councils to seek to adopt mandatory controls widely. Instead, VPP clauses containing discretionary controls should be amended to clarify that no discretion in a discretionary planning control may validly be used (by a council, VCAT or the Minister) to grant a permit for a use, development or subdivision whose implementation would have material strategic planning effects.

Under this proposal affected persons would have appeal rights to a presidential member of VCAT under section 149B of the P&E Act.

Going further, any action that would have a material strategic planning effect would then need to follow the planning scheme amendment and planning panel hearing processes (Part 3 of the P&E Act), as Parliament intended. We understand that this approach may bring about a relatively small number of applications for whom 'red tape' is increased.
However, for the reasons described above we submit that the additional rigour will enable stress testing of legacy issues and provides a net community benefit in each case.

As a final comment in the section, we submit that councils administering planning as both a planning authority (strategic planning, via planning scheme provisions) and as a responsible authority (statutory planning, via planning permit assessment processes), and also proponents and applicants, would benefit from a more holistic approach to the operation of the Planning and Environment Act 1987, Climate Change Act 2017, Environment Protection Act 2017 and Heritage Act 2017.

Such an approach could achieve (where possible) equivalent natural environment and built environment outcomes with less (and better co-ordinated) administrative burdens. Effective pre-application consultations can be used in such processes to articulate strategic site objectives, evaluation methodology and transparency around offset arrangements to facilitate innovative design.

In closing this section, we note that devolution of some centralised DELWP functions to regional planning bodies may assist with the above processes.

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; and**
   - **g) penalties for illegal demolitions and tree removals.**

A gain we anticipate that most submissions in this category will properly be made by those with land use planning and heritage expertise.

Consistent with our submission in Item 3, above, we submit that if councils are to retain a significant role in assessing heritage-related applications, the need for a holistic approach and administrative co-ordination remains critical to the ability of councils (or whichever arm of government is tasked with the heritage role) to undertake heritage assessment and decisions effectively.

In regard to the question in Part b), we would only support Federal Government involvement in Heritage Protection to be required in relation to sites of material national, or indeed international significance, where it is apparent that inadequate protection can be afforded at State level.

A particularly vexed issue for councils and communities relates to the penalties for illegal demolition of heritage structures and illegal tree removals. Noteworthy examples (such as the Corkman Hotel) demonstrate the shortcomings of the Act as a vehicle for enforcement.

The legislative shortcomings are exacerbated by the framing of penalties as dollar-denominated or penalty-unit-based, which are typically overrun by the increase in land value to be gained by those activities. This is because land values usually increase at a greater rate than the CPI from which penalty units are derived.

Therefore, a different approach needs to be taken if councils' most severe punitive actions are not to become derisory.

An alternative (and almost certainly controversial) approach in cases of illegal demolition of heritage structures and illegal tree removals may be to amend Part 5 of the P&E Act (regarding planning compensation) to include new provisions for value-uplift removal. This would mean that on the sale of the subject property, the difference between the heritage-affected (or tree-affected) value of the property and the (usually higher) heritage-free (or tree-free) value be paid from the proceeds of the sale into a public fund for heritage (or tree) preservation.

Such a framework would, we submit, undercut any financial incentive for owners to undertake illegal demolition of heritage structures and illegal tree removals, and to that extent be self-enforcing.

5. Ensuring residential zones are delivering the type of housing that communities want.

We offer no submission on this section.

6. Any other matter the Committee considers relevant.

In closing we submit on two final issues:

a) Councils increasingly need additional DELWP support in planning scheme reviews – given the additional complexity of managing (justifiably) more stringent environmental requirements. There is a public interest in quantifying and standardising such support – avoiding unnecessary duplication at council level in relation to support functions that can be rolled out as required.

b) Without knowing the outcome of the IBAC Operation Sandon report into Casey City Council, it is evident that it will refer to the risks associated with the activities of lobbyists. Councils and councillors need whatever support can be made available in techniques to avoid lobbyists influencing their statutory decisions on planning matters.

There is a material benefit to communities in having the confidence that locally elected councillors will play a role in the land use planning processes. That benefit will be achieved where;

i. the role of councillors is clearly articulated and steps are taken to support the performance of councillors in those roles; and
ii. risks are articulated and prevention and mitigation controls transparently applied.

Related to the above points, the VLGA suggests that any review of, and proposed changes to, the Victorian Planning Framework should also take into consideration and be informed by the outcomes of reviews which relate to the local government sector – in particular the current state government review into the culture of local government.

Thank you again for the opportunity to make this submission. In the event of any queries please do not hesitate to make contact by telephone at 9349 7999 or email: kathryn@vlga.org.au .

Yours sincerely

Kathryn Arndt
Chief Executive Officer