

T R A N S C R I P T

SELECT COMMITTEE ON VICTORIA PLANNING PROVISIONS AMENDMENTS VC257, VC267 AND VC274

Inquiry into Victoria Planning Provisions Amendments VC257, VC267 and VC274

Melbourne – Thursday 17 April 2025

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Dr Stephen Rowley

The CHAIR: Welcome back. We will now resume the committee's public hearings for the Inquiry into Victoria Planning Provision Amendments VC257, VC267 and VC274. Welcome, Dr Stephen Rowley.

Stephen ROWLEY: Good afternoon.

The CHAIR: Before we get into your evidence, there are a couple of disclaimers.

All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and provisions of the Legislative Council standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same thing, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded, and you will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you please state your name and the organisation you are appearing on behalf of.

Stephen ROWLEY: My name is Stephen Rowley, and I am appearing as an individual today.

The CHAIR: Thank you, Dr Rowley. Could I invite you to make your submission.

Visual presentation.

Stephen ROWLEY: Thank you. And just by way of background, I am not sure what information the committee has about me, but I am sometimes billed as an academic. I have had an academic career alongside a practising career, but in the context that we are here today probably what is more important is I have been a practising planner since the late 90s. I have written a book about the planning system; I teach planners; I do a lot of planning training; but I worked for 15 years in the local government doing ResCode assessments under the ResCode provisions, and I spent longer than that going to the tribunal. I only stopped doing VCAT planning work about 18 months ago, two years – 18 months ago – so a lot of those planning appeals are about ResCode. Part of the context here is that I am coming as a practitioner really familiar with using these controls. I am very interested in the operational side. And as is probably clear from what I have just said I am particularly interested in VC267, that is the thing I am very concerned about, which is the codification to the ResCode provisions.

I think it is important to understand that the changes to those provisions – and I appreciate my slides might be a little bit squinty up there – represent a lot of changes at once. We are changing the standards in ResCode to 'deemed to comply', and I am happy to speak to why that is such a profound change. We are also making some of the standards more permissive. We are removing the general neighbourhood character objective standard, which has existed even since September 2023, because this process has started, it is fair to say. But even since September 2023 that overall neighbourhood character objective has allowed a general qualitative assessment still of planning applications so it is not a purely tick-the-box exercise, so that is a really important change. We are removing a lot of local policies all at once in practice, because once something is fully compliant those policies cannot be considered. Or the other thing that happens is that they get applied to only tiny parts of a development, the things that stick out of a standard envelope, the things that depart. A lot of those policies will be fairly nonsensical in that context, because that was not how they were designed to be used. That is a long period of strategic work that will effectively get swept aside. We are removing many of the customisations of local zones that have occurred for local circumstance. We are removing a general clause 65 discretion, which is similar to that neighbourhood character consideration in that it allows a general ability to catch things not specifically addressed by the controls but it is broader; it means if it suddenly becomes apparent that land is in a floodway, for example, you have got an ability under clause 65 to assess it. So there are questions about once you deactivate clause 65, whether you will be able to catch everything you need to. And of course we are removing review rights.

In my view that has been done from the wrong starting point. There absolutely could be ways to increase codification and use more deemed-to-comply models within residential assessment; it is certainly possible. What I think was always a mistake – and this has been coming for a long time; this is something we have seen coming from multiple years away, and I have been arguing against it for all that time – is ResCode was always the wrong starting point to do that. You needed to actually start afresh and start with a new set of controls and design controls that were designed to be used that way. To take a set of controls that were designed to be used as a fully qualitative character-based assessment and retrofit them into a deemed-to-comply set of controls is, in my view, an incorrect way of doing it. The quote, and I appreciate it is super small up there, that I have pulled is from the original advisory committee report. These are the people who were essentially designing ResCode as we have it now, and their comment was:

Neighbourhood character is a clear example of an issue which cannot be reduced to simple rules. It requires qualitative assessment and the exercise of judgement. Similarly drafting a prescriptive standard to achieve objectives of building articulation to reduce bulk has proved unsuccessful. The focus of assessment of development proposals should always be on outcomes, not the satisfaction of rules for their own sake.

The reason I raise that in the context of saying that ResCode is the wrong starting point is that is the view of one group of planners 25 years ago. It is not necessarily the final word on how you should design a residential development provision, but it is the view of the people who had designed the controls that were used as the starting point for this exercise. They did not believe they had designed a set of codified rules that could accurately assess neighbourhood character. They did not believe they had come up with a prescriptive standard that could appropriately address the bulk and articulation of buildings, and they said so very clearly. If the work has been done – and I do not believe it has – to establish a set of rules and test a set of rules to allow the controls to be used in a codified manner, that work should be made available and should be clear. I do not think we have done that.

The other thing I would say is we lack a good starting point. The diagram at the bottom right is the official planning practice note about how to apply residential zones. I refer to this often when I talk about the problems with residential planning, and there are a lot of problems. I am certainly not saying we should just be talking about status quo going forward. We have got minimal, incremental and substantial change areas that we identify – so slow-growth, low-growth, medium-growth, high-growth areas. If you look at that diagram, it is saying that if you are in a medium growth area you can apply five different zones. If you are in any of these zones – a mixed use or township zone and particularly those last three, the residential growth zone, general residential zone, neighbourhood residential zone – each of those zones can represent two states of growth, so the clarity that you would expect from the planning settings about outcomes is not there. I mention that firstly because it represents, I think, that a better path for improving the planning system is undoing some of this muddle. But it also means if you are trying to rely on the zones as the basis for your codified settings and to help say, ‘We’ll use these prescriptive standards that all have different standards in neighbourhood and general residential growth,’ you cannot rely on that because the zones are so inconsistently applied and do not give you a clear indication alone of the growth settings you expect. That is currently in the local policies that are being removed, so that is why I flag that.

The last thing I will say on this slide is that my view is we are removing community appeal rights. I am a believer in community appeal rights, but I can recognise there are legitimate arguments that maybe they should be less widespread. They are quite widespread in Victoria, traditionally. But if we are removing those rights, I would say it is our obligation – and I mean planners, lawmakers, government – to be able to say to the community, ‘We have taken away your appeal rights, but we’ve done it on the basis of a set of controls that we’ve tested really carefully.’ We are really clear on the outcomes that they produce, and we can say to the community what those outcomes are.

This probably takes me to the diagrams on the next page. I prepared the diagrams in the bottom left, and that was because I was concerned we did not have diagrams that showed what a codified ResCode outcome looked like. This is under the new provisions; this is the new 11-metre by 3-metre envelope that they have created. It may be that there will often be scenarios within that where that envelope is appropriate. There are a lot of old six-pack flats that have roughly that envelope. Sometimes they are pretty awful. Sometimes they are not the end of the world; they can be okay. But I am very uncomfortable looking at that envelope and saying basically that any massing within that envelope – if you imagine that being built next to you – you have no recourse to VCAT about the massing of that building, and to me that is a very aggressive planning setting. Again I come down to: has the testing been done, and have we got enough confidence that we can say to the community, ‘Yes, we’re

comfortable with the outcomes we're getting here'? In my view, rather than working backwards from the existing ResCode provisions, they should have been starting with this kind of exercise. This is how you would use a deemed-to-comply provision. I personally think you should be using deemed-to-comply provisions for simpler scales of development than three or five multidwelling development, but certainly what you should be doing is codifying things and working from that massing – coming up with provisions that represent a massing you think is acceptable and codifying that and testing that. That should have been the exercise.

I will make two comments really quickly and you can perhaps ask me about them. The diagram on the right is their own diagram about landscaping. Basically the provisions will require only that 10 per cent tree coverage. My reading of the provisions, and I will stand by it, is that you cannot ask for any more landscaping – no bushes, no flowers, nothing else. That is the way the provision is worded. That in my view is a very low bar. The other thing – and I am happy to speak to it in questions perhaps – is in my view it will incentivise removal of existing trees.

The last point I just want to make before I wrap up is about operational complexity, and this is I think really poorly understood. The current provisions are discretionary provisions used in assessment. You do not need to go through line by line, as someone doing the assessment, and say that every last little point of a standard is met. It is extremely common to say, 'Is this the frontage? Is that the frontage? What counts as a side setback in this case?' There might be little technical points of assessment that you do not actually have to resolve. Now though, by making them deemed to comply, the provisions become black-letter law provisions, and a council officer or whoever is doing the assessment has to be 100 per cent sure as to whether or not it is fully compliant with every page of what is an extremely complex set of requirements. They are not more complex than the current requirements, but they are used differently so the complexity matters a lot more.

In my view, the claims that this is going to speed up assessment – which is obviously the benefits side of the equation; I have talked about what some of the potential risks are – and the claims that this will lead to efficiencies are massively overstated. I am extremely dubious about how workable the provisions will be day to day, because of the need to be confident that every last point of these provisions is met. People's rights to appeal hinge on this, right. You can be subject to legal challenge if you get any points in these provisions wrong. I would encourage you to look through them and think about what the exercise looks like as a council officer. It is extremely challenging, and in my view that is going to eat up the efficiency bonuses that people are purporting will come from this. I think I was at time, so perhaps I should stop there.

The CHAIR: That was great. Thank you. There will be about 8 minutes per slot, and I will kick off. Thank you, Dr Rowley. That was really fascinating. I guess the question you have invited is: if the deemed-to-comply approach is wrong – and recognising, obviously, and I think everyone here agrees, that increasing housing is a major priority – what is the right way?

Stephen ROWLEY: I alluded to the idea of a deemed-to-comply exercise. You absolutely could be starting to draw envelopes. You start with essentially a massing diagram, like the one that was on my slide, and you say, 'What do we think is an acceptable typical massing?' You look at whether you can codify that and put some rules around that, and then you say, 'Yeah, all right. Let's test this in a few unusual situations.' You attempt to break the provisions. You have to try and test deemed-to-comply provisions with essentially the worst-case scenario that you can do under the provisions and see what they look like. I think there is absolutely a valid exercise that, particularly if you are clear about what you are doing, you make that testing available – which has not happened in this case – you put it to the community, people can see what it looks like and there is a genuine process of consultation on that. That is absolutely a path you could go down.

I have a diagram in my book which talks about a bit of a bell curve of types of provisions. My view is the sort of codification is best addressed at really the sort of simpler end of the provisions – low-risk provisions – because once you have codified it you have to be sure that it is going to be all right in every instance. I personally think that is better for, certainly, single dwellings. It may even work pretty well – and this is what the testing would start to tell you – for up to two- to three-storey dwellings. If you think about classic villa, unit-type developments, you sort of do not care what they look like at the end of the day because they have got enough garden around them and over time the garden grows up. But when you get to more intense forms, you have much less of that sort of tolerance built in, so I am sceptical as to whether deemed to comply is the right approach. The other thing I would say is those are the kinds of applications that the planning system does add value through. So in terms of acceleration and making the planning system more efficient, I would be saying

you could probably preserve those in the system, and there are all these other things that are not in the scope of this inquiry that we could get out of the system to help speed the system up.

The other thing I would say is that, if you were to ask about my master thesis – and I talk about this in my book; my master thesis is on why Victorian planning reform has been so ineffective for 25 to 30 years – we have been obsessed with process-based reforms. This is essentially a version of that, because what it is doing is creating a special code-assessed stream essentially. You can qualify for a special process if you comply with certain codes. We have things like the VicSmart process to fast-track, and the legislation review they are looking at is talking about different streams of proposal. My view is that the best room for improvement is in improving the way rules are written, the way rules are designed and the way guidance is given in the system, because at the moment in Victorian planning there is not enough clarity. That is one of the genuine critiques of ResCode, which is valid. But we are probably all aware that in Victorian planning there are often height restrictions that say a five-storey discretionary height limit, and you routinely get seven and nine and whatever. So there is a whole lot of scope to improve the planning system in a lot of other ways.

There is absolutely scope to improve ResCode. The thing I would say specifically about ResCode too is that it is absolutely a valid argument that the neighbourhood character element has probably historically been given too much weight. That is not councils' fault actually, by the way. That is the instruction they are given by the state government in terms of how to do their housing work. Neighbourhood character is currently given a lot of weight; it could be given less. The difficulty is contextual response to design is really important. I think there is a real danger that the contextual response baby gets thrown out with the neighbourhood character bathwater in this exercise. That is a horrible analogy, but that is the risk. I have talked for a little while, so maybe I should stop.

The CHAIR: No, you are all right.

Stephen ROWLEY: The question of what you do is really complex. I could talk for multiple hours about how to reform the system. But it is not ResCode codification or we just let nothing happen. There are all sorts of avenues. I do not think our planning system has been well or thoroughly reformed over the past 20 to 30 years, and I think a lot of the paradigms that have been used for reform have been mistaken in ways I have spent a lot of time exploring in my book and elsewhere. There are a lot of avenues you could go down instead of this.

The CHAIR: When you say that you do not anticipate the changes actually accelerating the approval process, why is that? On the face of it, it would seem to be a far more cut-and-dry and simple approach.

Stephen ROWLEY: You are weighing up a procedural benefit against a procedural risk. The procedural benefit is a lot less things will go to VCAT. There is a strong incentive to go down this path for developers, so I think a lot of people will try to make sure that they comply. There is interestingly a whole question about whether in some areas that actually leads to underdevelopment, but that is a whole other thing. The procedural benefit is a lot less VCAT appeals, and that is a huge cause of delay and a huge cause of uncertainty. The other procedural benefit is just certainty and clarity for developers. If they are confident they meet the standards, they have got more clarity about how to proceed. Those are all benefits.

The difficulty is, as I was saying, if you have to be 100 per cent certain at every point of that assessment – as someone who did hundreds and hundreds of ResCode assessments over my career, countless ResCode assessments – the idea of being able to stand as a planning officer and talk to a member of the public and tell them whether or not they have an appeal right or not. Councils will have to do that at one point in the process or another. They have to be clear to the public: you can appeal or you cannot appeal. You have to be sure of absolutely every point in those ResCode docs. I just printed them out. That is that what I am holding up. You have to be sure of compliance with absolutely every point. If you start looking through them, if you look at the landscape standard, which is the one I had up largest on my slide, yes, it is 10 per cent of the site covered by tree canopy, but then there are a whole lot of things. Is the soil quality great? Is the soil size large enough? Is this one close enough to a building? There are all sorts of questions raised by that diagram about whether you are able to count the canopy outside your site, because it seems you can. Then can your neighbour count that canopy? Are we double-counting canopy? You start to get into really legalistic arguments about every point, and you have to check everything really carefully.

Do not even ask me how you accurately measure an existing tree. Proposed trees are really easy. This is what I meant about incentivising removal of existing trees. Proposed trees are perfect circles on a plan so you know how big those are, but existing trees have got squiggly little edges. It is not just an argument with council too. We have already seen this since the September 2023 codification changes. It is neighbours coming in and saying, 'Hang on, you calculated this wrong. That tree's a little bit smaller than you thought it was. The building's a little bit closer.' I had a colleague tell me that the neighbour came in disputing a setback because there was a bay window; they had measured to the wall, but there was actually a bay window that they should be measuring to. When you get these very legalistic interpretations, the councils are then vulnerable to challenge in terms of whether they have issued a permit incorrectly, and then you get into legal disputes. The procedural risk against that benefit is that councils have to be much slower, much more careful and much more legalistic in the way they approach the permits than they are now. That is why I am very sceptical that there will be the wholesale benefits in processing times that are suggested.

The CHAIR: Thank you very much. Mr Davis.

David DAVIS: So in effect what you are saying is the procedural benefits – theoretical, but in practice possibly illusory in aggregate?

Stephen ROWLEY: I am deeply sceptical as to whether there will be a procedural benefit because I am concerned about how unworkable the controls in their current form are. I mean, we will see. It is a gut feel, but I look at those controls as someone who had to administer these controls and say, 'Jeez, those are really, really difficult to administer,' and that I just expect will gum up councils.

David DAVIS: So if we accept your general sense – and I think there is a lot of obvious truth in it – the problem is then we have put this system in place which will then have all the negative consequences, and you have pointed to the moonscaping, so the loss of canopy and so forth, for little, if any, benefit.

Stephen ROWLEY: Well, in my view I am not certain that you are getting those procedural benefits. That is right.

David DAVIS: The second point is in relation to heritage protection. I am particularly interested in this overlaying of planning schemes on these points, or planning overlays of various types, various layers of control that have got to be assessed. Let us say for the sake of it that it is in Glen Eira or Stonnington or somewhere like that, and there is some sort of local heritage protection. These provisions are going to mean that it is uncertain how that is going to apply – that there are different layers and potentially tension between layers.

Stephen ROWLEY: Potentially. I am less concerned with that in the context, to be frank, of the ResCode changes. You already have a situation where heritage overlays sit – well, ResCode basically is in all residential areas, and if you do not have a heritage overlay you can develop a fair bit more intensely than you can with the heritage overlay. So that is a tension we already manage. I think there is probably – I have not come here particularly to talk about the other reforms that are before the committee – more of an argument that –

David DAVIS: I am about to get to them.

Stephen ROWLEY: Well, I do not want to go too far down that road, but there is potentially an argument that if you have an extremely strongly pro growth zone overlaid across a heritage overlay that is limiting growth inherently, because it is essentially saying the building should stay, that there is a bit of a tension there that could get resolved by VCAT. I do not see that so much as an issue with ResCode per se, because it does not push as far and it is a more familiar kind of tension. You would understand ResCode kicks in once the building is gone. The other thing is, you would often be looking at a question of whether then the replacement building, for example, if it is a precinct control that sits appropriately in a heritage streetscape –

David DAVIS: That one building might not impact a streetscape, but then there is the next one and the next one.

Stephen ROWLEY: Those arguments would definitely get made, yes. I suppose it probably would increase ambitions for those sites. But again, those are arguments we are used to seeing play out in terms of how to put a replacement building in a heritage streetscape, so it is not necessarily a fatal concern for me.

David DAVIS: There is another point that I was keen to pursue with you. You have pointed to the problems with this system – and I might say I think you have made a very strong case – but what you are effectively saying is if you wanted a greater mode of a very predictable code-assessed type arrangement, you would go and test that somewhere. You would set up a couple of zones where you would run that for a couple of years and the bugs would be got out of it and improvements would be made. Is that the way you would go around implementing it?

Stephen ROWLEY: I was not specifically talking about testing it in a location. I was thinking you could do some desktop assessment. You could run it against proposals. You can essentially hire people to do design exercises to see what they can fit on an envelope with this set of controls. So you can do some theoretical testing in that manner. The approach that is actually similar to what you have suggested is something I have suggested in the past. I used to talk about the idea of giving councils the option of what I called the ‘facilitated form overlay’, and what I meant by that was give them the ability to put in their planning scheme a control saying, ‘We think buildings of about this size and shape are okay.’

David DAVIS: In this pocket?

Stephen ROWLEY: Yes, they would choose to apply it in a particular place, and if you gave this ability to councils, that would then give them more proactive ability to say, ‘Yeah, all right, these are the designs we’re trying to encourage, these are the forms we’re trying to encourage.’

David DAVIS: It is not in the beautiful heritage area; it is in this area there, and we could actually do a bit more there.

Stephen ROWLEY: They could choose where to apply it, and then the idea is that you could then theoretically use that as a testbed for, ‘Oh, this would actually work well in a particular area. Maybe we can roll that out more widely.’ So that is a model I have suggested in the past of how you could do something a little bit like what you are suggesting. I have always been told, and perhaps it is right – I remember I suggested this to people over the years and people said this to me – ‘Oh, I am not sure there would be much take-up of it.’ Maybe that would be right, but it would not hurt to try. All you need to do is put the tool in the planning scheme and see whether anyone uses it.

David DAVIS: I am conscious I have got 2 minutes left, but I thank you for that. My other point would be that with these zones – and there are 10 big ones and 50 smaller ones – before you roll this out you would actually want to have some assessment of capacity within those for schools, open space and a whole range of other public facilities. If you were rolling out a big number of people into an area, would you do that sort of planning?

Stephen ROWLEY: I am very reluctant to get into a detailed discussion of those zones, because that is not the primary concern I have come here with today – and I have not looked as closely at those zones and that whole aspect of that program. But broadly, yes, infrastructure needs are a big part of planning for activity centres.

David DAVIS: And just on the tree canopy risks – the moonscaping – I mean, we are now at a point where people talk about climate change, but even separate from climate change, if you remove vast numbers of trees in a particular pocket and put in a concrete, brick, dense development, it gets hotter. Do you see an issue with the heat island effect?

Stephen ROWLEY: Well, we have got *Plan for Victoria* canopy targets of 30 per cent, and I was concerned when I saw these diagrams and concerned about the lack of testing of, well, what do we think? Does this 10 per cent on private land – and 30 per cent is not directly a comparable number – I was concerned about the 10 per cent standard here and the lack of protections. I am happy to talk about the way existing trees are treated compared to proposed trees. Yes, I am concerned that we do not understand whether that is consistent with the *Plan for Victoria* 30 per cent objective, for example, which is concerning.

David DAVIS: Thank you.

The CHAIR: Thank you, Mr Davis. Mr Galea.

Michael GALEA: Thank you, Chair. Good afternoon, Dr Rowley. Thank you for joining us. You have quite literally written the book on Victoria's planning system. Thank you – it has been a very useful resource to have.

Stephen ROWLEY: Thank you.

Michael GALEA: I would like to ask you about section 38 revocations. You might be aware that there is currently a motion before the Parliament to revoke both VC257 and VC267. Now, in your book you do briefly discuss section 38 revocations, and you use an example from the West Gate Tunnel, which was a relatively localised planning amendment. Would it be fair to say that the revocation before the Parliament today to get rid of the activity centres and the *Townhouse and Low-Rise Code* amendments, if that was to go through, would be the single largest revocation of any planning amendment in the state's history?

Stephen ROWLEY: Probably, yes.

Michael GALEA: Yes. You are not aware of any other major things since the 1987 Act?

Stephen ROWLEY: If you look at the first edition of my book, I was really struggling to find an example. A colleague dug one out that happened years ago that I was not aware of, and that was mentioned in the footnotes of the first edition.

Michael GALEA: Yes.

Stephen ROWLEY: The West Gate Tunnel was a reasonably high-profile one.

Michael GALEA: Mr Davis gave you a nice example to use there, yes.

Stephen ROWLEY: That gave me an example for the second edition. It is not a mechanism that has been used much over the years, so I am sure what you are saying would be correct.

Michael GALEA: So it would be rather extraordinary in a historical context. Thank you. And supposing that were to have gone through, for example, you are focusing on townhouses, so VC267 today. That was gazetted on 6 March. It was operational from 31 March. However, applications could be made from the point of 6 March, from the gazettal date. Is that correct, generally?

Stephen ROWLEY: I would have to refresh my memory on that. I have not had a need to look at the way the transitional provisions work. I remember that there are provisions about applications lodged before a certain date that keep going under the old controls. I cannot remember how it worked in that intermediate period.

Michael GALEA: My understanding is applications can be made, but please do correct me –

Stephen ROWLEY: I am sure applications are being made. I am just not 100 per cent sure what the transitional provisions are. I have not had a need to work through the mechanics of that.

Michael GALEA: I am very happy to be corrected on notice if that is the case. Thank you. But irrespective, we have had at least a couple of weeks, possibly longer, where applications could have been made. If an application has been made and this amendment gets revoked, what happens to that application?

Stephen ROWLEY: Unless there are transitional provisions – but by nature a revocation does not have transitional provisions – you would drop back to the old scheme. Any planning application is decided against the scheme as it exists on the day. So except where amendments have transitional provisions, it is always the case that a planning application in train is at risk of the planning scheme controls changing under it.

Michael GALEA: Of course. And you explained how it operates as a check and balance, but also the flip side of that is it does lead to uncertainty, doesn't it, for people who are applying under these new provisions?

Stephen ROWLEY: Yes.

Michael GALEA: Thank you. Suppose the motion were to be amended and rather than wholesale removal it was just that we are going to pick a few lines out here and there. How would that operate, and how do you

avoid unintended consequences, if you can at all, from doing that – from cherry-picking parts that you do not like of a particular amendment and then just revoking those parts?

Stephen ROWLEY: It is extremely tricky. The analogy that occurs to me is you are trying to make alterations to a plane while in flight. That is also sort of true of the controls themselves. You are essentially making changes to a planning system that is currently in use. That is one of the dangers of a very dramatic set of changes that, as I have said, I am concerned have not been carefully tested. But yes, as soon as you start, you are then piling on probably the risk of unintended consequences that I think already exist under this amendment, and there are then potentially other risks of unintended consequences if you start changing it. So yes, that is a fair observation, I think.

Michael GALEA: Thank you. In your presentation I think you suggested that under the previous arrangements Victoria's community appeal rights were much more widespread than they are elsewhere. Is that a fair assessment to make?

Stephen ROWLEY: Certainly historically, I would say that was the case. Victoria has had traditionally quite wide third-party notice and review rights. It has been narrowing, and it is difficult to do a precise quantitative assessment of how they compare. But for example, in some other jurisdictions you go to – I think it is the Land and Environment Court in New South Wales, and even though that is a bit more approachable than a regular court, my understanding, not having practised in New South Wales, is it is probably still a bit more intimidating than VCAT is, for example, for people to go to.

It is about the availability of rights. It is also a little bit about the way VCAT handle them, and VCAT do a pretty good job of making the system accessible. So there are a lot of components to that, but I think broadly, traditionally, we have had quite widespread community appeal rights. This would be a very big change to that. It has been 30-plus years where for medium-density housing proposals the community have had the right to object and appeal. To constrain those rights, this would be the most dramatic change I can remember in terms of the constraint to those rights.

Michael GALEA: The same timeframe you mentioned – we have had this discussion with the department earlier this morning as well, but your book also talks about the long-running objective towards densification of existing built areas as opposed to continuing sprawl. As a representative of those regions that is something that I am very excited about, doing that in a much more sustainable way. Can you talk to me a little bit about the context of those objectives, particularly where it dovetails with the *Plan for Victoria* objectives and previous plans with that 70–30 split, or the 50–50 as opposed to the 70–30 that we have seen?

Stephen ROWLEY: I am happy to. It is a little hard to know where to start. It is a very broad question. It is an absolutely laudable objective. We have lost the '20-minute neighbourhood' language with *Plan Melbourne* going away, which is I think a little bit unfortunate, but it has certainly been the continuity of the basic concept of consolidating in established areas and consolidating near infrastructure. That is all really solid and remains a really important objective.

I think the challenge related to ResCode is where there absolutely is a need to reform ResCode. I think there is an opportunity cost question here if we are pursuing the wrong type of reform. One of the problems with ResCode is it is very rooted in the 90s. I mentioned villa units before and I think they are a great form of housing, but there is an argument in a lot of contexts that those will be underdevelopments. I think it would be great if we had a new code that was designed from the ground up to be better at assessing particularly three- to four-storey forms, because traditional ResCode and I believe codified ResCode are not very good at assessing three- to four-storey forms. That is one of the key reforms I would like to see in that space. I may have strayed a little bit from your question. You might want to remind me.

Michael GALEA: Just in terms of the historical move towards densification as an ideal outcome with planning schemes.

Stephen ROWLEY: It absolutely should be supported, yes.

Michael GALEA: I take that to say that you would be in support in principle of measures which provide more housing in activity centres in those dense areas around railway stations as opposed to 'Let's have three more suburbs beyond Clyde North'.

Stephen ROWLEY: Yes. One reason why I get a little bit frustrated by some of the debates in this space is if people are saying we need to get rid of community appeal rights, for example, to achieve this densification, I do not think we have explored that ground very well at all. I think there is much more scope to design better housing options that will allow good infill, that will get good canopy outcomes, for example, and that will get denser forms. But we have not done the basics of design work. I talked about rule-setting being the thing that we have neglected in Victorian planning. We have not done the good code design that would allow us to get to those outcomes. There is a lot of scope to be getting good medium-density outcomes and increasing supply of three- to four-storey buildings with good tree canopy, but I do not believe these changes are that reform.

The CHAIR: Thank you. We will leave that one there for the moment. Ms Crozier.

Georgie CROZIER: Thank you very much, Dr Rowley, for being before us. Most interesting. Can I just go back to a couple of those issues that you have raised. You said you are very concerned about the changes not being carefully tested, I think you said. Just to take up the point about revocation, if it is not being done properly, there is a place for revocation nevertheless, would you agree? You were discussing with Mr Galea about the extent of a potential revocation. There is a place for revocation if things are not done properly.

Stephen ROWLEY: Yes, I think it is a legitimate part of the process. I do not want to get too sort of hifalutin and academic here, but the philosophical case for revocation I think is that planning schemes are a form of legislation. You can be charged with breaching a planning scheme. Fundamentally there needs to be a recourse to the legislative body rather than having the whole thing sit completely in subordinate legislation that cannot be touched by the government of the day. That is philosophically why I think the mechanism is there. I do not philosophically have a problem. I accept that there are challenges and it is a drastic step to take, but I think it is a legitimate part of the system, yes.

Georgie CROZIER: Given the extent of these changes, as you said, there are I think you said concerns around the community appeal rights and just the extent of those. I really want to just explore a little bit more your comments on that, because with many of these changes I think the community and certainly councils were blindsided about the extent of the changes. Just to go to your point about community appeal rights that have not been explored, why has that not been done? Why has, as you said, the basic design or the code design not been done? Why have the community appeal rights not been further explored through this process, do you think?

Stephen ROWLEY: I think to a certain extent that is for others to answer in terms of why they did not do more consultations, for example. I will say a version of the controls was sent out to councils during the process. I have read some of those council submissions. Councils raised a lot of really valid concerns that I do not think were sufficiently addressed in the final controls. I did not hear your sessions this morning; I did not listen, but I imagine people from government would have said, 'Well, there was consultation. They were shown to councils,' and that is true as far as it goes.

Georgie CROZIER: Well, I read a letter from the council just to actually say they were literally blindsided by this, so I made the point to government.

Stephen ROWLEY: The final version of the controls was not seen before the final announcements, for example. The thing that I am also aware of in this space, in terms of just the community getting their head around it, is it is really complex. I literally explain these things for a living; I do training and I have worked in planning education. The system is getting harder and harder to explain. I was doing ResCode training yesterday; it was really exhausting and really tiring and really hard to explain the provisions, and it is harder than it was 10 years ago because the provisions are getting more complex. So there is an understanding problem in terms of the community's understanding of these provisions. But having said that, again, they were consulted by some councils, I do not believe all, receiving copies of the provisions and being allowed to comment on them. But they were not released for community comment as, for example, the original ResCode was. The advisory committee report that I read a quote from earlier – that was a publicly released report based on a publicly released draft of ResCode, and there were multiple drafts to that. There were actually a couple of different advisory committee reports on ResCode –

David DAVIS: and changes made.

Stephen ROWLEY: There were changes made, yes.

Georgie CROZIER: To go to your point about the complexity – and you just highlighted that with what you do on a daily basis as a living – for the community to get their head around it and for council to be able to understand the complexity of the changes, do you think there needed to be more time from government to allow community to have a say in this large-scale change?

Stephen ROWLEY: Yes, and I think the other thing that is really important in terms of the community getting their head around it is – I have talked about testing before, but to me that is inextricably tied to visualisation: the exercise of understanding what it looks like, understanding what it looks like in particular streetscapes, being able to show the community drawings of what it looks like. To me if the premise of the controls is: we are going to give greater clarity and certainty about housing outcomes; we are going to give developers greater clarity and certainty; we are going to give the community greater clarity and certainty, and because you have got that clarity and certainty about housing outcomes, you no longer get appeal rights because we have been through a process, we have tested it, we have consulted, we have drawn the diagrams and we have shown people what they look like, and now we have resolved that as a policy question and you no longer get to test that application by application by application. If you went through that process and you visualised it that way and you took the community on the journey that way, I think that would be far more valid to then remove those appeal rights than in a scenario where the community has not seen the controls, the controls are now in and we do not have visualisations beyond a few things like the landscaping one I highlighted before, we do not have visualisations of what they look like, we do not have the strategic justification. Councils get pushed for strategic justification for all their amendments, so we do not have the underlying explanation of how they are arrived at, how they are tested. We do not have those visualisations; I think that is really concerning.

Georgie CROZIER: But none of what you described happened.

Stephen ROWLEY: Look, I would not say none. None is an absolute. But certainly the public element of it was extremely limited. As I said, there was not a general public consultation. In terms of the testing, I have not seen enough of the testing to be confident. I am still concerned. I do wonder whether, as these things are approved and the minister signs off the amendment, how clear is the minister on what the outcomes look like if there are not these visualisations for the minister? This goes back to the housing statement. When it was originally suggested and they put it in the housing statement that they wanted to codify ResCode, was there a clear enough understanding of what those outcomes would look like if you used ResCode as the starting point for codification rather than, for example, developing a new code from scratch?

Georgie CROZIER: So just on that visualisation, could you just explain to the committee what that entails?

Stephen ROWLEY: I have done my own unsophisticated version of it, which is the diagram you saw before.

Georgie CROZIER: Is that it?

Stephen ROWLEY: It is essentially that sort of exercise. You could do a more sophisticated version. You could actually design buildings within those and show what they look like.

Georgie CROZIER: The reason I ask that is – would that be normal process for the minister to have that information presented to them when they are making these very extensive and huge decisions?

Stephen ROWLEY: We do not, as members of the public, get a very good line of sight on what information is put before the minister. Ministerial briefs are not routinely in the public realm.

Georgie CROZIER: No. We fight for those.

David DAVIS: We have asked for them on this occasion.

Stephen ROWLEY: The other thing I would say is that traditionally in Victoria we have not been as good as I think we should have been at doing form-based codes. This idea of presenting diagrams that show form as the starting point we have probably never done very well in Victoria across the board. I am not sure if that answers your question, but I would not say it is normal for the minister to have diagrams in front of them of what the buildings are going to look like when they make a decision on an amendment.

Georgie CROZIER: But it would certainly help the minister and the community.

Stephen ROWLEY: It would be helpful, yes, of course.

Georgie CROZIER: Thank you.

The CHAIR: Thank you. Dr Mansfield.

Sarah MANSFIELD: Thank you, Chair, and thank you for appearing today. We did hear earlier from the department that the consultation with local government planning departments had been extensive at every stage of the process. Also what I have certainly heard and what I think other members have heard is that at least with respect to the extent of the exemptions this did come as a bit of a surprise to some councils – but we can ask councils about that further. I did want to focus a bit on the exemptions under VC267. There are exemptions, for example, to considering local policies like ESD or green requirements. The department said that any gaps between the standards in the code and the standards in local policies can be looked at but should be picked up by the building code. Would you agree with that?

Stephen ROWLEY: No. The ESD point is a really good one. It must be 20 years – I am cautious about putting an exact date on it as I do not want to mislead the committee; you can check what the timeline is. But councils have long pushed for greater standards in the planning scheme. It was, again, approximately 20, maybe 15 years ago that there was certainly a pushback and there was a VCAT decision, I am pretty sure it is called *Hasan v. Moreland*, where the tribunal said sustainability controls are probably a matter for the building system. The idea is that building is more consistent, it applies to everything and it is broader based. In my view the debate in the planning profession has gone through a long journey of saying, ‘No, no, you need these things to be in planning schemes as well,’ because it is in the planning scheme phase that you are sorting out the envelope of buildings and you can get passive design and you can sort those things out in the system, and that needs to be in the mix at the stage where you are also working out impacts on neighbours and all those sorts of things. I felt that that argument had been won in the profession and there was an acceptance that it needs to be adequately represented in the planning system, and we have been waiting for statewide controls to catch up, frankly, with where local policy has pushed. I think if we get to a scenario where we are saying, ‘Oh, no, no, no, we’ll put that back to the building system and we’ll turn off council controls and we’ll rely on fairly limited ESD provisions that are in these provisions,’ I think that will be a step backwards.

Sarah MANSFIELD: Thank you. I also raised with them that in the exemptions there is no longer a requirement under these ResCode changes to consider an adopted but not yet gazetted planning scheme amendment or overlay. We were talking about the example of a flood overlay, and they said that would not be a problem because it would be picked up by overlays in the building framework. We did not really get to talk about other examples, but I guess, in your view, is the exemption to consider adopted planning scheme amendments or overlays appropriate, and could there be any unintended consequences from this?

Stephen ROWLEY: I think there is a risk of unintended consequences, yes. I think we are talking about – beyond this amendment I am concerned that there is this general push to turn off that broader discretion, which in my view is an important safety mechanism to catch unexpected things that arise. There is also a whole other thing about Australian case law that is very restrictive in terms of the discretion people have, even under the existing controls. But things like the idea that our flood mapping in the building system is sufficient and reliable and clear enough that we can rely on it being correct and that we should not have a general discretion to consider a flood issue that is apparent but not correctly addressed in the planning scheme or the building system I think is really concerning. In the current context, where we know climate change and these things are getting more intense, all of our flood mapping work is under pressure and there are all sorts of scurrying with the various authorities get the material up to date and that sort of thing. I think it is really concerning.

Sarah MANSFIELD: Just on the potential cumulative impact of all these exemptions, do you have any comment on what that might look like?

Stephen ROWLEY: Well, it is clearly done so that councils cannot apply a general sort of discretion to consider some aspect of the merits, whether reasonably or unreasonably, that live outside of the standards. In my view it is a good feature of the system, that it provides that general ability to catch something unexpected that arises. I think there is a much larger discussion about the breakdown of trust between the state government and local government. What you are basically seeing is a lack of trust in local government to assert reasonable

planning powers responsibly. I think that is really unfortunate. We could have a very long discussion about the state and local government relationship.

Sarah MANSFIELD: We had another inquiry into that, yes. I read with interest your blog about the tree canopy coverage changes under the new ResCode. You made reference to the lack of benchmarking or baseline data in order to be able to assess what impact these changes will have. Can you expand on that a bit?

Stephen ROWLEY: What I just mean is that we have got a 30 per cent canopy coverage in *Plan for Victoria*. Now, that is across the whole metropolitan area, that is not on private land. Clearly a lot of canopy is going to be achieved on street trees and in parks and all sorts of different places, but it would be great to understand – you know, there is not even an explicit link to the ResCode thing where it just says, ‘Yes, we believe it should be 10 per cent on private land.’ You could then break that down: what you need to achieve on redeveloped land to achieve 10 per cent across private land generally. So there are all those sorts of problems. It is not clear enough to me whether when they had that target in *Plan for Victoria* they thought they needed to increase or decrease the amount of tree canopy currently achieved. I am extremely confident, as a long-time practitioner using the current controls, that the amount of canopy achieved will be less under these controls. So if the assumption was you needed to increase canopy achieved on private land to achieve the *Plan for Victoria* goals, then this is going away from that. Again, we do not have testing to see the case against that proposition, so you are just trusting – that is my very strong, I suppose you would say, intuition or judgement based on many years of doing ResCode assessments, but I am absolutely convinced we will get worse tree canopy and particularly worse landscaping results under these controls than under the former controls.

Sarah MANSFIELD: Yes. I did ask about that this morning to the department, and they indicated that there were adequate provisions under the new ResCode around vegetation retention, a landscaping plan, soil quality and a bunch of different things that they felt actually maintained good protections of that.

Stephen ROWLEY: I have heard that this has been said in various information sessions about the tree canopy standard, and I could not disagree more vehemently – they have literally removed an objective that encouraged retention of existing trees. They have removed the entire landscaping standard in terms of general landscaping, unrelated to the tree canopy question; they have removed all that. There seems to be an argument that, ‘You can require a landscape plan to your satisfaction and therefore you can require landscaping.’ But the council has to make that decision as to whether the landscaping plan is to its satisfaction against the valid considerations under the scheme. Because they have turned off all these general discretions, as you have alluded to, they cannot be considering a landscaping standard, for example, that has now been removed from the scheme.

Under the old landscaping standard, if you had a really good tree on the land, there was an obligation to essentially consider that tree and design in a site-responsive way to retain it if you could, and then there was an argument about whether it was a significant enough tree to warrant that. That is all gone. We can talk about ‘Councils could do this or couldn’t do this,’ but the fact is those aspects of the controls have been removed and the new controls in my view actively incentivise removal of existing trees.

The CHAIR: Okay. Thank you. Mr Batchelor.

Ryan BATCHELOR: Thanks, Chair. Dr Rowley, thanks so much for the thoughtful and detailed evidence you have given us today. It is very appreciated. At the start of your presentation you whacked up your visualisation which, without verballing you, you described as unsophisticated. Did that diagram take into account things other than the built mass? Did it look at things like how overshadowing rules, overlooking rules, internal structures and ventilation and those sorts of things would impact on what the built form would look like – in how you constructed that diagram? Or was it just a kind of first iteration of those things?

Stephen ROWLEY: So only limited weight – that is certainly true. What I did was I looked at the setbacks, I looked at the site coverage and I essentially worked out how deep the building would be. I did a little spreadsheet and, as I explained – there is a blog post that explains those diagrams a little bit – the garden area becomes the main constraint on that envelope. Within that envelope, it is true that, yes, there then might be various aspects of design that might then affect the buildings. That said, I have done a lot of ResCode assessments. I used to do a lot of work for Brimbank. Out west they have got a lot of residential growth zone areas. Residential growth zone was sort of a testbed for what the codified ResCode looked like. They used to

get a lot of building forms that were not unlike – I mean, they obviously looked different because they had roofs and they had windows and they had decks and stuff.

The diagram I did is for a north–south block, and it would look different on an east–west because you have to set further off the south boundary, but it goes to your question of overshadowing because generally, particularly if you have got traditional single houses, you will rarely fail on overshadowing. That is just because the overshadowing standard is very dependent on the size of the adjoining open space next door. For example, I do not think overshadowing would be a limit on those envelopes. Overlooking, you can either screen the balconies, screen the bedrooms – although perhaps one positive change is you no longer have to screen the bedrooms, so you might just get the overlooking, so I would not expect overlooking, for example, to be a significant strain on that envelope. But yes, it is clearly an unsophisticated exercise, and I would absolutely be interested to see whether there was more sophisticated design testing done.

Ryan BATCHELOR: You also talked a little bit about complexity in the system up to this point. I just want to make sure I am clear on your evidence that even prior to these changes the system was getting increasingly complex. Is that your evidence?

Stephen ROWLEY: Yes.

Ryan BATCHELOR: What do you think the driver of that has been?

Stephen ROWLEY: Do you mean in ResCode generally or across the board? Are you happy for me to answer either way?

Ryan BATCHELOR: Well, I think you are trying to give us most evidence about ResCode, so why don't we try and focus on that?

Stephen ROWLEY: Well, one of the things that has happened with ResCode is a reliance on zone schedules to codify changes to it rather than, for example, the use of local policy. That has in my view been a mistake, because one of the things that we could have done with local policy is encourage councils to draw diagrams. You could put diagrams in local policy and say, 'Hey, these are the kinds of forms we want' and give that sort of clarity. By asking people to put it in schedules, you almost sort of dismember the controls, because you are saying, 'Here's a number about overshadowing and here's a number about setbacks and here's a number about open space,' and you are reducing the guidance you give to a series of separate, constrained numbers rather than showing how it comes together into a housing product. In the ResCode space I think that has been a real concern.

The other thing that is more broadly a problem across the system is the lack of trust in local councils that has led to micromanagement of the way they manage things. For example, you do not trust councils to do simple applications quickly, you set up streams with complex rules to qualify – 'This is relevant to ResCode under clause 54', 'For single-dwelling controls, that is now partially VicSmart, which is the fast-track code' – and so you spend a lot more time at council then carefully working out which stream something is in or arguing with applicants about which stream something is in rather than just going, 'Okay, this is a shed. Let's just approve it.' The ability to cut to the chase is reduced when you micromanage process in that way.

Ryan BATCHELOR: Do you think that is because we have had consistent examples from councils where planning applications that would otherwise meet strategic goals, such as putting 84 townhouses on an old school site, get rejected against the advice of planning officers because they have a flat V-pitched roof? We are kind of at this point where some of the lack of trust has been a little bit warranted, hasn't it, given the planning decisions that some local councils have been taking?

Stephen ROWLEY: There is of course poor decision-making at councils.

David DAVIS: Sometimes.

Stephen ROWLEY: Sometimes. The issue is how do you respond to that. It gets to be a really complex discussion. One of the things I would say though is this goes to my question about the focus that we should have had for the last 20 to 30 years about how guidance and policy are expressed in the scheme. The scenario you just put to me was a redevelopment of a school site that clearly accords with the objectives of planning.

The problem in our system is no two people ever have the same answer as to whether something clearly accords with the objectives of our system. In principle the idea of codifying what the right balance of densification and character looks like is exactly the road we should be going down, and that is how you resolve that. By focusing on the decision-making guidance and the decision-making rules, you can remove that ambiguity where council's take that this should be a refusal and perhaps your take that it should be an approval are equally valid and have to be sorted out at VCAT. If you can codify the guidance better, if we loop right back to the first things I said, a codified set of controls is absolutely a worthwhile goal to pursue because it achieves that, but codifying based on a sort of 90s-originating, early-2000s medium-density villa unit control and working backwards to generate your code was absolutely not the right way to do that.

Ryan BATCHELOR: The last point I want to touch on is clearly I think you are saying we should do more to promote three- to four-storey building development. Where? That is my big question. Where are the right kinds of places to be supporting three- to four-storey buildings in our city?

Stephen ROWLEY: I am conscious of the time, so I will give you two very glib answers: one is in well-located locations, but the other is sort of everywhere. There is scope for medium-density product that if the market will support it, you could just have everywhere. The kind of code I visualise for three to four storeys – and I do look at the old six packs a lot. There is a model that takes the best of those elements. What you are doing is you are probably shrinking down the site coverage compared to what you get under ResCode. ResCode buildings cover the site a lot. You have a smaller form, a higher form. You encourage people to have more smaller units, so we have more lower-cost units, and you get better tree canopy outcomes. A code that looked like that you probably could apply everywhere because the outcomes would be much better, but you need to design it carefully.

Ryan BATCHELOR: Thanks.

The CHAIR: Thank you. Mrs McArthur.

Bev McARTHUR: Thank you, Chair. Thank you, Dr Rowley. I am going to ask you to comment on a position the minister has taken. She set up her own standing advisory committee, but it appears a particular important recommendation has been totally rejected. The relevant extract has been relabelled from a 'walkable catchment zone' to a 'housing choice and transport zone'. What she recommended was this: if the walkable catchment zone is applied, do not apply it to areas where (a) the heritage overlay or the neighbourhood character overlay applies and (b) other planning controls or constraints on development apply such that the scale of development envisaged under the walkable catchment zone would not be appropriate. Why would the minister reject her own standing advisory committee's key recommendation?

Stephen ROWLEY: I do not think I want to be –

Bev McARTHUR: Maybe not 'why', but would you like to comment on that recommendation by the committee? Is it important?

Stephen ROWLEY: I will apologise in advance because I am going to give you a very qualified and careful answer. As I said, I have not been following that side of things that closely, I have not read that advisory committee recommendation, so I want to be really careful about commenting on that. The basic idea that you should be careful about applying a high-growth zone, I think what that was talking about was applying a high-growth zone on a location where you cannot really achieve that growth, or it is going to be odd.

Bev McARTHUR: And it is affected by heritage.

Stephen ROWLEY: The housing choice and transport zone is talking about three to six storeys, I think, from memory. So you can imagine, if you have got one- and two-storey buildings in a heritage precinct covered by a heritage overlay and one of them gets demolished, it becomes an odd outcome potentially to have that building pop up in that street. So that, I imagine, is the kind of thinking, but I probably do not want to go further than that, because I have not looked closely at that recommendation. I am certainly not going to speculate on the rationale the minister had in making a change or not making a change.

Bev McARTHUR: The general comment would be: why set up a standing advisory committee and reject the recommendations?

Perhaps, Dr Rowley, you might like to comment on the fact that clearly the cost of development now is intense because of the taxes, charges, regulations and requirements that the government places on developers, hence the fact that we do have an enormous number – thousands of developments – that have been approved or houses that have potentially entered the market but will not be built because there is no market for them, essentially. But if we go down that path of development, is it going to be the case, do you think, so that they can get something to market, that developers will build the cheapest possible building? And if standard B31 clause 55 on design detail is removed, how can councils and communities object to a cookie-cutter, prefabricated cement box-type dwelling like we might have seen in Eastern Bloc countries?

Stephen ROWLEY: I want to step through that carefully. There is a little bit in there. The start of that question was talking about a debate which is really important, but I am not the best person to answer. There is a longstanding debate about the extent to which housing supply is going to be realised or constrained by planning controls and if you just up the amount of things that can be approved. There is a whole other argument that I think others should talk to.

In terms of the minimum compliance, clearly the market will push a lot of developers to provide really good product, because it might sell better, right? So it is not as if every building looks awful in this world, but it is the nature of the control that they need to be tested against the worst outcomes that can happen under the control, and that needs to be understood, because by definition in a deemed-to-comply control you are saying that those results are okay. For example, my reading of the way the street integration standard works – so one of the things that ResCode did was it stopped older blocks of flats that just faced sideways, and if you look at older blocks of flats, you used to see blocks of flats that had a straight brick wall. That was very hard to do a quantitative version – a codified version – of, but they have had a go, but it only requires a direct line of sight from a window, and in my reading it does not require it to be in the front elevation, so there is now no requirement to stop people going back to that older form that you used to see, and I have got photos on my website of it, of just a vertical straight brick wall. And we need to be willing to accept these poorer outcomes. That is what a deemed-to-comply control is. I think you should be careful about being too cynical about developers always going for the worst outcome. They will not. They will produce a lot of lovely buildings/

Bev McARTHUR: At the moment they are producing fabulous outcomes, but nobody can afford to buy them.

Stephen ROWLEY: They will potentially produce a lot of lovely buildings, but you also do need to understand that the nature of a deemed-to-comply control is you are saying that the worst outcomes under that control are okay. That is literally what a deemed-to-comply control does, and you have to be willing to accept those poor outcomes.

Bev McARTHUR: So just going to that, we know that in Camberwell, for example, a townhouse will have a \$1 million to \$3 million price tag, so would that be affordable housing for young people, which is part of the desire of this tall towers operation?

Stephen ROWLEY: Well, for the wealthy – I grew up in Camberwell –

Bev McARTHUR: We will not hold that against you.

Stephen ROWLEY: so I am not taking a pot shot at the people of Camberwell. Perhaps the wealthy young people of Camberwell can. I mean, look, the argument, to be fair – clearly that development is not necessarily an affordable development for the average young person. There is always an argument that the housing supply trickles down through the housing supply ladder. I am not the best person to speak, frankly, to the housing economics of how that all plays out.

Bev McARTHUR: Can you comment on the extra infrastructure costs that are going to be applied to local government and therefore ratepayers as a result of these tall towers projects?

Stephen ROWLEY: I think the short answer is probably no. Clearly as we are increasing housing density we need to be providing infrastructure for it. That is not in itself a reason to be preventing good housing densification outcomes, but it is clearly something the government needs to be doing alongside getting the housing settings right.

Bev McARTHUR: Do you know of any work that has been done to quantify the costs that are going to be involved in, say, changing all the drainage systems, the sewerage systems, the parking space – which is obviously going to be non-existent in some areas – let alone building the schools that are needed and other infrastructure?

Stephen ROWLEY: I am aware through the industry that there is some work being done about new development contribution models and the like, but I do not really have any line of sight on exactly what is happening.

Bev McARTHUR: Yes, well, we are aware that developers at the moment have 15 taxes applied to them, but that is not going to cover this infrastructure that is required, so ratepayers are going to be forced to pick up the bill. But you have not seen any work that has quantified that total cost.

Stephen ROWLEY: That is not something I have got a –

Bev McARTHUR: A handle on.

Stephen ROWLEY: No.

Bev McARTHUR: Okay. I think my time is up.

The CHAIR: We might leave it there. Thank you, Mrs McArthur. Ms Watt.

Sheena WATT: Dr Rowley, thank you so much for presenting to us today and also for your presentation earlier. I must confess it was quite small on the screen and I was not able to follow most of it, so I did want to ask if that is being made available. Perhaps the Chair might know, or someone may know the answer to that.

Stephen ROWLEY: I mean, I provided it through the secretariat, so I assume it is.

David DAVIS: Matt has circulated it, Sheena.

Sheena WATT: Great. Thank you. I appreciate that.

Stephen ROWLEY: I apologise for that. Limited to three slides, I was shrinking things down.

Sheena WATT: Well, my eyesight is challenged. I want to perhaps go to the point raised by Mrs McArthur about the cost of infrastructure investment, because one of the concerns that I am particularly hearing from the communities northern metropolitan way, up north around Beveridge and others, is the incredible cost of the infrastructure investments required. Do you have any sense on overall cost and how that is driving up housing prices between established suburbs versus growth suburbs on the infrastructure changes required for the uplift in capacity of housing? Is there any evidence or anything that you could point to?

Stephen ROWLEY: The short answer is no. I am not really an expert in that space. It is probably an answer to the question I was asked a moment ago, though, too. One of the reasons why I do not think you should be constraining – you need to be doing that infrastructure work, and it is potentially a valid critique that the infrastructure work has not kept up with the extremely strong push for more housing. But as a general statement and all other things being equal, it is going to be usually more expensive to provide infrastructure in a new greenfields area where there is nothing compared to leveraging off existing infrastructure, and also more sprawling areas have greater infrastructure costs than more compact areas. So in a very general way I would say you would expect that, again all other things being equal, consolidation and denser development is going to decrease your infrastructure costs. That is why I loop back to saying you do not necessarily want to be constraining good housing outcomes because you have not got the infrastructure right yet. That I think is probably putting the cart before the horse. But in terms of the more specific question you are asking, I do not think I can answer that.

Sheena WATT: No, no. Look, I appreciate that. You mentioned earlier – I cannot recall whose question you were responding to – the changes to 20-minute neighbourhoods, because something that we have heard a lot about from growth area communities is access to 20-minute neighbourhoods. You mentioned something about it being dismantled, shifted, changed under *Plan Melbourne*. Could you talk to me a little bit about that, because I do have some questions about 20-minute neighbourhoods and essentially infill densification.

Stephen ROWLEY: All I was referring to there was that *Plan for Victoria* – so *Plan Melbourne*, the 20-minute neighbourhood was the central structuring idea of that document, and it goes right back in fact to the initial draft, which was under a coalition government. One of the positive things I think was that a version of *Plan Melbourne* persisted from one government to another, which does not normally happen, which is great. So we have had for a decade this 20-minute neighbourhood concept as a key idea, and it is not in *Plan for Victoria*, and I think that is a bit of a loss. That was all I was referring to there. Again, I would not want to overstate that because the general principles – we could get into a whole critique about *Plan for Victoria* and what some of the gaps might be – I think it would be fair to argue, are still in there in terms of access to services, consolidating and the like, but certainly the words ‘20-minute neighbourhood’ are gone.

Sheena WATT: Weren’t there some sort of underlying thoughts around 20-minute neighbourhoods and what that means for quality of life and access to services, medical care, schools and other things that meant that it had such prominence in former documents? I am just trying to understand: what was 20-minute neighbourhoods meant to achieve? Why is it being elevated as such a good thing? I am keen to understand it as a concept, and is it something we should be considering particularly with respect to some of this?

Stephen ROWLEY: The reason I liked it as a concept for planning strategy was, as I said, these concepts have been embedded in planning strategies with varying degrees of effectiveness for as long as I can remember, but I think it is a good piece of communication, notwithstanding the fact that some conspiracy theorists got hold of this concept around the world and seem to get all het up about it. I think it is a good piece of communication, and it is an idea that people can relate to, just the idea that you have got your local needs in your local area and you can visualise that, you can think about what a neighbourhood that looks like that looks like. This is well away from what I came here to talk about, but I think the loss of that language is just a little bit of a shame because it is a good way to communicate a planning concept as to what a good community is.

Sheena WATT: Yes, it is about creating good community. I am then reflecting on those communities that have good access to shops, jobs, transport, walkability, public and active transport and others, and what it is that we are trying to do with the housing statement, particularly around the next decade ahead.

Looking to particularly the questions on the environment, I am just going to go to the question that I asked earlier, which was around standards and standard changes around sustainability, climate and also solar. Do you have any comments on the changes that are being proposed, access and improved uptake of solar, what that will mean for the building codes, what we could be considering when it comes to greater uptake of solar, and what apartments and higher density might then look like?

Stephen ROWLEY: I must admit I had not looked especially closely at that aspect of the controls, so I probably do not have a very – are you talking about the maintenance of solar energy generation areas on rooftops, for example, in the ResCode?

Sheena WATT: Yes, and changes with the ResCode around that.

Stephen ROWLEY: It is a good thing to reflect in the controls, so that is a positive addition. I mean, it has to be measured in the context of you would want to compare – I think you have to think about the fact that there are also potentially these disruptions of existing council ESD policies that are being turned off? So that is a potential disbenefit in the same space to think about, but just taken in isolation – again, I have not looked closely at it and am not an expert in the area, so in terms of it being a sufficient measure, I have not been down that rabbit hole – in principle the idea that there is a measure that encourages planners to think about that is positive.

Sheena WATT: And that that would in fact be a part of the new townhouse code to include access to greater uptake of solar by making places on rooftops and the alignment of the building in consideration to it – I will not go into it, but perhaps –

Stephen ROWLEY: It is a positive that it is there.

Sheena WATT: It is a positive thing. We have talked about how quickly we can now unlock housing, potentially, with the townhouse code. If these amendments are expected to deliver over the long term lots more homes for Victoria and there is that housing supply, I just want to know what your thoughts would be about the impact on housing supply if this was in fact revoked?

Stephen ROWLEY: It is hard to predict. I am not completely convinced that it will unleash an enormous amount of additional supply, partly because I do not think you will necessarily get the efficiencies that you thought. So that is of concern. I think the other concern – which I have not really spoken about, so I know I am sort of mentioning it at the death – is that there is a real concern about opportunity cost here. When you do a reform like this it takes a long time to play out. You are stumbling around trying to fix up mistakes and the government are falling behind it for a few years, and it will be several years before you get another chance at a review of these provisions. That is why I say when you are thinking about housing capacity outcomes it is important to not just consider codified ResCode versus the status quo. It is important to consider codified ResCode versus a better code that is more effective that we are now not going to be doing, because we are lining up behind what I think is a foolish error. This has been coming for a long time. There was a discussion paper in 2021 about this, and you could see codification of ResCode coming five years away. It is something that I believe we have already lost five years to – this pursuit of what I think is an ill-advised idea. If we just keep rolling with it, we will lose another four or five years before we get around to really having a go at going, ‘Oh, yeah, codified ResCode didn’t really do it.’ We need to design a better code for three- or four-storey buildings, for example, that will unlock both better outcomes but also I believe get better supply outcomes.

Sheena WATT: Thank you.

The CHAIR: All right, we have got a couple of minutes left. I am going to have the first shot and then give it to the others. You are the father of the planning scheme or planning system in Victoria, I think it was described to me. I guess we have got a number of scenarios that people have alluded to. One is the possibility of a mass disallowance motion – sort of the nuclear option. There is a perhaps not very satisfactory selective disallowance option. There is a retention of the status quo option in terms of the new status quo. In an ideal world, what would be your path forward, recognising some of the issues that we have discussed today?

Stephen ROWLEY: I do not envy you your position in that revocation is a really unsatisfactory outcome. What I would say though is that this is something I have been trying to dissuade government and people in the department from doing, as I said, for five years. When the paper came out in 2021, I think it was, I wrote a really long critique of that. This is an idea that just has taken hold as an easy way to do a residential reform, and it has been a misdirection of resources. We should have been doing a better designed medium-density code that better achieved housing supply outcomes, better achieved tree canopy outcomes and better protected neighbourhood rights, and I do not think we needed to throw community appeal rights away as part of that.

Whether it is in the form of a revocation motion or just a shock to the system, I really hope the government can be persuaded to reconsider this particular model of what a codified residential development code looks like. I have not been able to persuade them. I do not know whether revocation will; I do not know whether something short of revocation will, but this is a misdirection of our effort. We are going to continue spinning our wheels on misdirected planning reform if we keep trying to pursue this particular design option. It has been profoundly frustrating for five years to watch this particular car crash coming. The car has now crashed, and I do not know how we get out of it, because there has been so much investment in this model as being, ‘This is how we are going to fix the residential development code.’ Because we have devoted all those resources to this particular model, there is not unfortunately an alternative proposal on the table, and that is in my view incredibly disappointing. But we are not going to get a better proposal on the table while we keep pursuing this option.

The CHAIR: I think we are going to leave it there. I am sorry, Mr Davis. Can I firstly just thank you very much for your contribution today, Dr Rowley. It has been fascinating. I just note that you will receive a copy of the transcript to review in about a week, before it is published on the website. We will now take a break for 10 minutes, and then we will be back.

Witness withdrew.