

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Subcommittee

Inquiry into the retirement housing sector

Mornington — 5 October 2016

Members

Mr Edward O'Donohue — Chair

Mr Daniel Mulino

Ms Nina Springle — Deputy Chair

Participating Members

Ms Colleen Hartland

Mr Gordon Rich-Phillips

Staff

Acting secretary: Mr Patrick O'Brien

Witnesses

Ms Rosalyn Franklin, senior social planner, housing justice and advocacy, and

Mr David Kotsiakos, municipal building surveyor, Mornington Peninsula Shire Council.

The DEPUTY CHAIR — I would like to offer Mr O’Donohue’s apologies. He has had to go to Melbourne on unexpected business. He does apologise that he cannot be here for the last session. I will be taking over the chairing this afternoon. I would like to welcome our last contributors, Ms Rosalyn Franklin, the senior social planner, and Mr David Kotsiakos, the municipal building surveyor, from the Mornington Peninsula Shire Council. I would like to remind you of the conditions under which you are presenting at this hearing. All evidence taken at this hearing is protected by parliamentary privilege, as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but any comments made outside the hearing are not afforded such privilege. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament. Today’s evidence is being recorded. You will be provided with a proof version of the transcript within the next week. Transcripts will ultimately be made public and posted on the committee’s website. We have allowed half an hour for this session today. To ensure there is sufficient time for questions the committee asks that any opening comments be kept to 5 to 10 minutes.

Ms FRANKLIN — Thank you for the opportunity to speak. First of all I will say that the shire’s submission has been prepared — because of the time constraints that were involved — without the opportunity to have it presented to a council meeting. It has not been endorsed by the council so it has been prepared as an officer submission, but it relies on past council decisions and policies that the council has adopted. Those are particularly concerned with social and affordable housing policy. Council also has the triple-A — accessible, affordable and appropriate — policy. The council also has a positive ageing strategy; it supports ageing in place.

One of the things to know about the Mornington Peninsula is that it is on the fringe of the metropolitan area, and it does have an urban growth boundary. About 70 per cent of the peninsula is green wedge, which is protected by state legislation, state policy and local policy. That is important in terms of the peninsula’s settlement pattern and protecting that special character.

In developing its submission, the shire was not able to undertake any direct consultation other than notification of other parties in the housing sector. Council does have a housing committee involved with other stakeholders, some of whom are represented, and I understand they may be speaking directly to you in any case. I think there are issues for the shire, certainly in terms of the need for market intervention to secure social and affordable housing. There is a shortage of such housing on the Mornington Peninsula, as there is in many other parts of Australia but certainly down here as well. Parts of the peninsula have a high socio-economic profile, but certainly elements of the community here do have a relative disadvantage, and there is a need for housing which is affordable.

The role of all three levels of government is important. The role of local government is somewhat limited. It is noted that although local government has a role as a planning authority, ultimately changes would need to be put in place by the Minister for Planning, and there is metropolitan planning too that of course does have an impact. Nevertheless, local government initiatives are important, and some local governments, including the Mornington Peninsula, have been active in trying to negotiate developer contributions for social housing, whether that be on surplus government land or private land. But the success of this has been quite limited to date. It relies on goodwill generally. If it is to achieve anything significant, it really needs to be properly systematised by the state government.

I guess the question of additional land supply for housing on the Mornington Peninsula needs to be considered in four contexts, and that is that the peninsula town areas and villages with special character are generally protected with density provisions and two-storey height limits, except in town centres, where in some cases higher height limits are available. Council has been active in adopting structure plans for those major town centres of Rosebud, Hastings and Mornington.

The shire does have extensive areas of low-density residential zoning, particularly in the northern parts of the shire, around Somerville. But this zone is generally exhausted for its potential future subdivision, as is the general residential zone across the shire. Here I will just distribute these maps. It is just a map of the planning scheme, showing you where the green wedge zones and residential areas are across the shire. That can be seen by anybody online. It is noted though that the low-density residential zoned areas are the areas that are seeing the pressure for aged-care facilities, and they are open for other forms of residential development, like caravan parks and residential villages, to be established in those areas as well. The council does regularly review the

planning scheme and is in the process of preparing a housing settlement strategy. It is also waiting for the *Plan Melbourne Refresh* result from the state government.

I guess one of the issues that the shire does notice is that with regard to caravan parks and residential villages there are a number of legislative instruments — the Residential Tenancies Act, the Building Act, the Public Health and Wellbeing Act, the Retirement Villages Act, the Planning and Environment Act — all these pieces of legislation and also fire prevention issues as well. They all relate and have an interface, and at the moment that interface is not well developed. There is certainly a lot of scope for much, much better interface between those pieces of legislation. We would certainly like to see that through any review. Whether or not it is common terminology, at least, it does need to have coordinated provisions. I can go through some of the examples where it is not as coordinated as it could be, if you are interested in those examples. I can answer questions about that later on. I guess the importance of particularly having that coordinated with regard to the Residential Tenancies Act and the Planning and Environment Act relates to how planning schemes are reviewed and how development is established and what opportunities there are for additional housing, which does need to be established in the shire, which is certainly keen to provide more affordable housing. I think that its policies and planning scheme are about that point of view.

But there is also a need to protect the green wedge and the permanence of the urban growth boundary. There is the risk that the definitions, combined with the interaction of the Residential Tenancies Act, do not allow the Planning and Environment Act or planning permits to have appropriate controls over the duration of tenancies, so therefore you could have a caravan park established for tourism purposes outside the Urban Growth Boundary and after establishment, in reality, being used for permanent residence. Mornington Peninsula is valued for its recreational values, and that tourism is an important component of that. There now does need to be a balance drawn between what is developed for tourist purposes and can be operated for tourist purposes versus what the population and the community needs to reside permanently.

I am going on to building standards. The Shire's strong submission about that was that the application of Building Act standards should apply to caravan parks. I would invite you to question Mr Kotsiakos about that issue. Mr Kotsiakos, do you have anything to say about that?

Mr KOTSIAKOS — Nothing about that.

Ms FRANKLIN — In terms of information and disclosure the shire is not in a position to have much firsthand experience in terms of the Residential Tenancies Act so much as from listening to residents concerned about these matters. I imagine that the committee is doing the same and can draw its own conclusions about that. But in terms of information and disclosure, that is considered to be a particularly important matter, and we support reform in that area.

In terms of management, I think information disclosure would certainly assist, but the shire's submission does acknowledge that there are management problems — again an opportunity for reform in that particular area. Looking at the other submitters there, it was noticeable that the acknowledgement of management problems was there in some other submissions, particularly through residents, the Housing for the Aged Action Group and even the UnitingCare Harrison submission, which operates nine villages, did comment on that as well.

In the Property Council of Australia's submission it is noted that industry has made substantial efforts to improve the quality of management by Lifemark accreditation and the offering of a village manager diploma, but again, how far that extends is an issue. I noticed the Property Council of Australia did refer to the power of attorney provisions in the Retirement Villages Act, but that does not appear, for example, to be in the Residential Tenancies Act as a protection for people who reside in caravan parks or residential villages, which are not retirement villages, so there is scope for more consistency in protections across the various forms of built form.

Residents' rights, charges and levies — again the shire has made comments on those, but it does urge you to have a look at other submitters, like the Housing for the Aged Action Group, that have more in-depth experience in those areas.

Dispute resolution — the Shire has highlighted the need for an improved legislative framework as a first priority, but also looks to the retirement housing ombudsman as something that could enhance that situation and help with dispute resolution. With regard to looking at the other submitters on that, I just noticed that some of

the larger providers do not appear to acknowledge the need for better dispute resolution, but it has been acknowledged by the Property Council and then by UnitingCare Harrison. Their comment, if I can just read that, is that:

Over the years we have had a number of residents exercise their objections to various management decisions to CAV. Having a dedicated ombudsman to hear and determine the merits of such concerns will enhance residents' ability to be heard if they feel the owner/manager is disrespecting their contractual or legislative rights.

I think again listening to the firsthand experience of some of the stakeholders, this is an important thing to do for both residents and operators.

Lastly, just on the rating as the last issue from me, I say again that the shire has done a recent rating review and did not support a differential rate, even though it was aware that it is a matter of concern and some people would like to see it, particularly the submitters that have made submissions here. Just as a matter of information in relation to that, it is noted that in 2016–17 the shire has a new waste service charge. That is intended to apply to all properties and apply equally. It is recouping the full cost of waste services, which include not just collection and disposal but street sweeping, footpath sweeping and beach cleaning — the Shire has a huge coastal area — the state government's landfill levy and street and draining and collections.

Public transport was also mentioned as something which some of the operators feel that there might be double dipping on. I would just point out that local government does not actually fund public transport; that is a state government-funded service as you would be aware. The public transport down here on the Mornington Peninsula is rather limited, so the Shire is very active in advocating for better public transport services and does, for example, supplement that activity also by offering a dial-a-bus service, which is available for any local resident to access once a week to the local shopping centre.

So in conclusion, the need for reform of the housing sector for older people is really quite apparent. It is a complex reform environment and the committee's willingness to consult all stakeholders is appreciated.

The DEPUTY CHAIR — Thank you. I would like to just ask you to briefly flesh out a little bit. You talked about the common terminology and how the interface between pieces of legislation needs to be improved. Could you just give us a couple of brief examples of what you mean by that?

Ms FRANKLIN — Yes, I can. For caravan parks, for instance, you have got the definition in the Victorian planning provisions, which is basically the definition that applies to all planning schemes. That definition of a camping and caravan park is:

Land used to allow accommodation in caravans, cabins, tents, or the like.

So it does not make any references to whether or not they are holiday-makers, permanent residents or part-time residents. I should also have mentioned to you that we have a very high number of holiday houses in the shire. It is difficult to work out exactly what it is, but the last two censuses — not including the 2016 one — certainly showed that to be approximately one-third of vacant dwellings in the census count. So camping and caravan park is not defined, as I said, to include just holiday-makers.

The planning scheme also includes a residential village definition and a retirement village definition. It also has a group accommodation definition, which is a number of dwellings on the same land. The residential village is, and I will read this one:

Land, in one ownership, containing a number of dwellings, used to provide permanent accommodation and which includes communal, recreation, or medical facilities for residents of the village.

That can be any age in a residential village. A retirement village is fairly similar. It is:

Land used to provide permanent accommodation for retired people or the aged and may include communal recreational or medical facilities for residents of the village.

Under the Residential Tenancies Act a caravan park means:

... an area of land on which movable dwellings are situated for occupation on payment of consideration, whether or not immovable dwellings are also situated there ...

So it can be movable and permanent dwellings in a caravan park. That is further complicated by the part 4A parks, which are separately defined. A part 4A park is an area of land where sites of land are available for occupation under a signed agreement, and part 4A dwellings may be situated on those parks and have common areas and facilities available for use. I will not read the rest of that. You can see that there are definitions that are different, and it is awkward. For example, what could happen with a camping and caravan park is you could have a camping and caravan park granted a planning permit on the grounds that it might be required for tourist use, but you cannot put provisions on that that would necessarily then work in practice if circumstances changed and people were moving in permanently. There are issues around that. The planning schemes, the VPPs, have tried to address that through an in conjunction with provision and through leasehold provisions, but it is very difficult to interpret the uses between a residential village and a caravan village, particularly when they are on the Mornington Peninsula, which has a tourist focus as well. Perhaps it is easier in some areas that do not have that tourist focus.

Each case basically needs to be considered on its merits, and often those cases might go to VCAT for consideration of things like that. That interaction with the planning scheme is important and also the Residential Tenancies Act too, because whether or not holiday-makers need the same protection as somebody who is permanently living there is another question that would arise.

Ms PATTEN — Thank you. Firstly, I believe the shire got great congratulations from the Peninsula residential parks and villages group — obviously you have been doing some good work — and probably rightly so. The number of permanent residents down here, going from your submission, has doubled from 460 to nearly 1000. Obviously this has been an ongoing issue for the Council down here for the last 10 years. While I know you have outlined the difficulties of dealing with the vagaries of the definitions within the Acts, what I would like to know is what the shire has done in a positive way to help with the regulation and to help with that growing number of permanent residents who are living in various forms of parks. Obviously you have been doing something right because some people are saying nice things about you.

Ms FRANKLIN — That is always nice to hear. Yes, the shire has been active since its AAA housing policy came into being, which really, I think, has a history of at least about 12 years. Do not hold me to that, but it is in that range. The shire has been active in terms of advocating to the state or other bodies, where — —

Ms PATTEN — Have you been doing anything practical here, whether it is in planning or building? I mean advocacy is great, but — —

Ms FRANKLIN — Okay, apart from advocacy, certainly when particular planning permit applications come in, council as the responsible authority has to look at those things. In relation to rooming houses, council has been trying to be on the front foot there to make sure that we do not have the problems that have perhaps emerged in other areas where there have been unlawful rooming houses established. We try to make sure that the situation about rooming houses and the approvals that are needed are there. If one is established and it has not quite got there, we will try to work with the operator to make sure that all the necessary approvals are put in place, so that the additional housing in that rooming house can be secured and provide that additional housing. That is certainly one positive thing that we have been doing.

Council also does supported housing. It does own particular properties it makes available for housing — for example, Fusion. It is not retirement housing, but that is some youth housing that is made available. Council does not actually own any housing that is necessarily used for aged people, but it does operate the committee — getting the stakeholders together with the supported housing network — and it has been supporting the group that you had speaking to you today as well.

Mr MULINO — Thanks for your submission. You have raised a number of arguments in relation to some of the regulatory gaps and inconsistencies in relation to mobile homes, particularly those used as a permanent residence. We received some interesting evidence at our first day of hearings around some of the trends in that sector, and in particular the way that some homes that are categorised as mobile are actually for all intents and purposes very permanent and are not mobile in a practical sense. I take on board a lot of what you submit in relation to the regulatory arrangements. I am just wondering what are your observations in relation to any trends? Are you noticing that that is more of a trend, that more of the homes that are classified as mobile are in practice really much more permanent? Is that something that you observe or take data on?

Ms FRANKLIN — I think on the peninsula too that it needs to be seen in the context of the function of housing, because we have a lot of housing too on the peninsula that is used for part-time residents as well. So it is not necessarily just a few weeks; it might be people living in two particular places. But, yes, from the anecdotal and other evidence we have been able to assemble that there are certainly more people living in these parks on a permanent basis.

Mr KOTSIAKOS — Over the last 10 years the majority of our permanent living caravan park set-ups started out as the traditional holiday peg site caravan park site and they morphed into permanent living set-ups. Most of them would be at least 40 per cent permanent occupants now across the peninsula. I suppose part of the reason I am here is I see a very great anomaly in the legislation between this form of village that you see here and those more holiday park villages in the structures that are erected in there, in that because of the definitions within the planning scheme, building regulations and Residential Tenancies Act so forth those buildings/cabins are all classified as transportable units and do not require building permits. So there is absolutely no construction standard controls. There is no requirement for energy efficiencies in any of those, which is different from the ones that are built in these sorts of environments. The cabin could have virtually no insulation, so the running costs for heating and cooling for the residents is just through the roof. I just cannot fathom why that is the case when we have a building permit system in Victoria.

As you are probably aware, the Building Act is going through some revision of a period of mismanagement by the old building commission, but the consumer protection provisions in that have really been enhanced considerably, and those provisions are being phased in at the moment. I think that if we got rid of that silly definition of ‘transportable’ and ‘do not have to comply with anything’, and got across to ‘if it is a cabin where people sleep, eat, watch TV, it needs a building permit’, it would go a long, long way.

Mrs PEULICH — Rather than a building permit perhaps some sort of basic compliance standards? Are you proposing that each one of those has to apply to council for a permit?

Mr KOTSIAKOS — That would be mine. We already have a system here in Victoria. It operates relatively well. Cost-wise you are looking at about 1 to 1.5 per cent increase in the cost of a cabin for the building permit. It gives you builder warranty insurance, and makes sure all of the energy efficiencies are in there.

Mrs PEULICH — Is there a simpler way of elevating the standard without having to bog it down in council planning processes? Because let me tell you, as a keen follower of local government — and I commend you, and thank you for being here during caretaker mode in particular — the biggest complaint that I get is about councils and the length of time that it takes to get things through. So I am not sure that I would really want to be seeing it being funnelled into that system, but perhaps there might be some basic standards that these buildings need compliance with?

Ms KOTSIAKOS — Every time I have seen where a different form of regulatory program has tried to be introduced, it does not seem to work as well. The public becomes used to ‘You have to get a planning permit. You have to get a building permit’. But that is the process.

Mrs PEULICH — Thank you. If I may, I have a question of Ms Franklin — excellent presentation, and thank you. You mentioned about the three levels of government and their various roles and responsibilities in relation to the provision of housing, of which affordable housing is obviously a very important component, given the escalation in cost. I like to look at a slightly bigger picture — that is, that the cost of housing in the private sector is what is causing a lot of the demand in these other sectors and causing a lot of the problems as well. In relation to the responsibilities of the three levels of government, you have got land supply and the laws that govern that; the cost of construction; the cost of compliance; problems in the administration of the public housing sector, where there is a mismatch of occupants and residents or dwellings; length of tenure; and rooming houses. The demand for rooming houses — for really, really low, affordable housing — is chronic in parts of my electorate, which includes the south-east and places like Seaford and so forth. Then obviously there is retirement accommodation, the various levels of, plus the more mobile homes that we find in caravan parks.

Can you comment on where you see the biggest glitches and the biggest contributors to increased costs of housing across the three levels of government? What can we do to actually make housing more affordable, both in the private and public sectors, and address some of the issues here?

Ms FRANKLIN — How I would like to respond to that is, looking at the environment at the moment with regard to the federal government and the state government, I think all three levels of government and the community recognise that there is a problem in terms of the affordability of housing. I think the affordability of housing does need to be improved, and that seems to be a common understanding. I think in response to that we have both the federal government and the state government at the moment looking at ways that they can reform what they do to achieve that, and the complexity of an investigation into that sort of a system is something that really needs to be done on a very complex level. I think probably from local government's perspective we can certainly respond to that in saying too much has been left, in some ways, to local government to get us to this point now where we have people who really cannot afford housing, and we in local government will often see that first.

Mrs PEULICH — You get the flashpoints?

Ms FRANKLIN — Yes, often that is the case, but other agencies also see that as well — the ones who are directly involved in the provision of homelessness services and so forth. We have reports from those agencies being involved in the network. In response to that I would say that the council, in its policy to date, has not recommended any particular measure — for example, if you are referring to matters of negative gearing or matters of the provision of particular types of housing or other sorts of financial mechanisms — so I cannot advocate for a particular change.

Mrs PEULICH — A follow-up question: back in the late 1990s there was a fairly major inquiry into positive planning for ageing, and I was actually a part of that inquiry. It was very well received. It was a blueprint document. The figures at the time were that the preference of most people advancing in their retirement years was to actually age in place — to stay within their own homes. Now, there are obviously some impediments there — in particular, the cost of downsizing, capital gains tax and the like. As a social planner do you have some figures around what the preference of your community is about where they should age? Is it still the preferred aim or goal of people to age in place, and what do you see some of the constraints to that?

Ms FRANKLIN — Yes, I think that certainly from the council's perspective, council as representative of the community does have a policy of positive ageing that does support ageing in place, but obviously within that there is also the need for other types of housing and supported accommodation as well, so that needs to be balanced out.

Mrs PEULICH — Do you have a figure?

Ms FRANKLIN — I have not got a figure as such. We have not done a proper survey of the population. Before I finish speaking, if I can just respond to your comment before about the planning and the building side of it, I think I just need to clarify that what David was talking about was a building permit, and that is very different to a planning permit. A building permit does not have to go to council at all. It is private building surveyors that administer those permits.

Mrs PEULICH — Thank you for the clarification.

Ms FRANKLIN — In that context the caravan park itself, for a new one, would potentially require one planning permit at the outset.

Mrs PEULICH — Thanks for the clarification.

The DEPUTY CHAIR — We just got one last question before we wrap up.

Ms PATTEN — Thank you. I appreciate that the council does not support differential local government ratings for retirement villages such as this, but we have certainly heard a lot of evidence that that is what the retirement villages and the residents feel, and that they do feel that they are paying double for certain services that are being provided in-house as it were. But I understand that you do not support that. I just wondered if you could give me some examples of where you do support differential local government ratings, so agriculture, or are there other areas where the shire does support that?

Ms FRANKLIN — The council has historically had rate rebates for sustainability and also a farm rate. That is to support, I guess, the operation of the green wedge and the importance of that — encouraging agriculture

and that sort of a framework. There is also a rate rebate for heritage buildings as well. I think they would be the only ones.

Mrs PEULICH — Everyone likes lower rates.

The DEPUTY CHAIR — I would like to thank Ms Franklin and Mr Kotsiakos today. It has been great to hear the response from council on the more legislative and planning side of this story, so I thank you very much for your contribution today.

That is our last contribution. I will be throwing it open to the floor in just a moment. But if anyone would like to read the transcripts of today they can go to the parliamentary website, and they should be up within about two to three weeks. Go to the Parliament website and go to the committees page of the Parliament website, click on the Standing Committee on Legal and Social Issues and the inquiry into the retirement housing sector. It will be under 'Hearings and transcripts'. Just keep an eye out for that if you would like to revisit what has been said today.

Witnesses withdrew.