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

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The following is a submission in response to the Environment and Planning Committee inquiry into the adequacy of the Planning and Environment Act 1987 and the Victorian planning framework in relation to planning and heritage protection. The submission follows the framework set out in the terms of reference

(1) The high cost of housing

Many economic analysts argue that a lack of land supply and the cost of regulation are the main causes of high housing costs. Most such analysts do not understand land use planning systems. Recent analyses by the Grattan Institute in its report *Housing Affordability* (2018), and the Reserve Bank of Australia in the report *The Effect of Zoning on House Prices* (2018) illustrate this failure.

The Grattan Institute and the Reserve Bank argue that housing supply has not met demand because zoning rules have restricted supply particularly in middle ring suburbs, leading to housing price rises. Their approach ignores the differences in housing markets and different construction types. It simplifies the complex set of factors which influence the relationship between housing supply and demand, equating population growth in a linear way with demand. But not everyone wishes to live in a separate household; people might remain in their parents' home, or live in diverse forms of accommodation such as shared households. The Grattan Institute cites as fact the National Housing Supply Council estimate of a shortage of 228,000 dwellings in 2011. In contrast, many other studies, such as a 2017 ANU report (Phillips & Joseph, 2017) estimated that the Australian housing market experienced an oversupply of 164,000 dwellings between 2001 – 2017. Prices also sometimes rise with increased supply.

Similarly, claims that zoning restricts housing development in middle ring suburbs are incorrect. Zoning is only one of many factors which influence land value and housing demand. In a primarily monocentric city such as Melbourne, where access to quality services, infrastructure and high value jobs diminishes with distance from the CBD, location is a key component of land price. Much government policy increases land values. For example, the repeated government subsidies for new home buyers has been shown to quickly add to the cost of housing.

The RBA's estimate of zoning effect purports to show that the greatest impact on land price occurs in the CBD and inner suburbs, reducing with distance from the CBD. Yet, the CBD and some inner areas have the least restrictive zoning controls, leading to high rise development. The same zones are common throughout the Melbourne metropolitan area. Liberalization of the strongest controls has merged the impacts of zones. Even the application

of the strongest residential controls has still left large supplies of developable land in most suburbs. Between 2005-16, most new residential development in established suburbs occurred in residential zones while mixed use and commercial areas between 2011-16 provided almost 50 per cent of new housing. It is telling that about 9,000 mainly detached houses a year are built in middle and established suburbs on land where medium density housing is permitted, expressing citizen preference for house-to-house replacement, not zoning impacts.

For years in Melbourne, similar numbers of attached dwellings and apartments were approved in established suburbs as the number of inner-city high-rise and outer urban detached housing. Total new dwellings doubled from 2005 to 58,000 in 2017 as did the number of townhouses and low-rise apartments in middle ring and established suburbs, rising to 11,000 in 2017. High-rise apartment construction in middle ring suburbs increased from 600 in 2005 to 9,000 in 2015 (DELWP, 2018). Dwelling construction and subdivision numbers have continued to be high during the COVID-19 pandemic, but the years immediately preceding the pandemic provide a clear outline of normal trends. These show generally, pre-COVID middle ring high rise apartment construction at about 8,000 a year and low rise and attached apartments 10,000; inner area high rise 10,000; and growth area detached housing 16,000 and low rise attached housing 2,000 a year. Of the 32,000 housing demolitions, 9,000 were rebuilt as detached houses and over 20,000 existing lots were redeveloped as higher density housing. There is no 'missing middle' in new housing construction in middle ring and established suburban areas.

Land supply has been supplemented by continuing high growth corridor dwelling approvals. Melbourne continues to expand outward. Melbourne is growing by about 120,000 people a year at one of the western world's highest growth rates of up to 2.75 percent. Greater Melbourne is projected to grow from 5.0 million in 2018 to 9.0 million in 2056. While this growth is being spread across the city, the greatest population increases are occurring in Melbourne's growth corridor municipalities. At the end of the 2018 calendar year 45,300 broad hectare lots existed and 20,602 new lots were released for purchase in the growth areas. The amount of land released for housing in recent years has increased as has the proportion of growth corridor development compared to development in the established city. This proportion, set in the metropolitan strategy *Plan Melbourne* at a 30/70 ratio has recently changed to a 45/55 ratio showing the expanding rate of outer urban land release promoted by the government's recent decision to 'fast track' another 100,000 growth corridor dwelling approvals.

From 2018 to 2036, the highest growth is expected in the cities of Wyndham (203,900 people), Casey (181,800), Melton (173,300) and Whittlesea (141,100) at an average yearly rate of three percent a year, with some growth as high as 4.3 percent (DELWP, 2019). The Melton-Wyndham corridor will add 660,000 residents and Casey-Cardinia will add 500,000 by 2031. Total planned new development in nominated outer urban corridors will extend the Melbourne metropolitan area by about one-third by 2050, providing up to 422 000 new dwellings for up to 1,190,000 people (VPA 2018).

The type and range of housing provided does not adequately meet Melbourne's housing needs. Housing products are dictated by the producers of housing. The lack of housing diversity and the high dwelling sizes often forces new home purchasers to pay high prices for dwellings they do not prefer. This lack of choice forces unnecessarily high home loans on many new home buyers, placing increased pressure on household budgets. A rise in home

loan interest rates can create an affordability crisis for many such home buyers. The National Housing Supply Council in 2011 noted two trends indicating the need for a greater diversity in housing. First, households of lone persons or couples without children are projected to grow in number at a far greater rate than those of families with children and in all regions; and second, most regions will see a greater increase in demand for flats, apartments and townhouses than for detached houses (National Housing Supply Council, 2011). Randolph (2004) similarly outlines a disjuncture that can arise between social needs and the dynamics that emphasise a narrow range of housing stocks. New suburban housing developments are increasingly marketed to a limited range of households, with little variety in housing choice and tenure. The communities being formed are therefore imbalanced, and will continue to be so, for estates of large single dwellings will be difficult to re-tool in later years for smaller households. Yet outer urban housing is still predominantly built as large detached houses. The relative lack of dwelling diversity unnecessarily increases the price for many home buyers by forcing them to buy more expensive and larger houses than required. There is a significant mismatch between the increasing size of outer urban houses and average household size. Between 1990 and 2008 the average size of outer urban houses grew by 39 percent reaching a mean size of 245m^2, larger than any other country (Santow, 2009). At the same time average household size is projected to continue to decline to below 2.3 people by 2026 (ABS, 2009-10). Large houses accounted for 44.7 percent of the market in 2007, a dramatic increase from 16.9 percent in 1990 (Goodman et al., 2010). Detached housing made up around 90 percent of new houses built and the proportions have not changed significantly. The vast majority of new dwellings (91.1 per cent) contained three or more bedrooms, with those with four or more bedrooms comprising 52.4 percent of the total (Goodman et al., 2010).

Average lot sizes are falling but the vast majority of lots are still used for large detached houses on separate lots of declining average size. In the 2006-07 period a third of new growth area lots released were below 500 m^2 but by 2018, the percentage below 500 m^2 had risen to 78 percent. This trend will continue in the near future with 83 percent of new lots expected to have an area of less than 500m^2. However 57 percent of these lots are between 300-500 m^2 in size and only about 20 percent of new lots are under 300m^2 suitable for townhouses or apartments, about the same number as lots between 500 m^2 and 650 m^2 (UDP, 2019). Unless the government insists that more varied house design is matched to smaller lots, such as through provision of more townhouses and smaller more affordable houses, this trend will continue the process of cramming large houses onto progressively smaller lots which often take up to 80 percent of the lot area. Average densities of Precinct Structure Plans are static. In the 10 years to 2017 the average density remained at about 17 lots per hectare. The area of land reserved for future release could accommodate many more lots if average lot densities increased, or alternatively, the area of land reserved for development could be reduced substantially and still achieve a large increased outer urban population.

Another factor compounding affordability for residents is the operating cost of larger houses. Gains in energy efficiency through building code regulations are outweighed by the growth in house size over recent years. Despite the introduction of building code regulations which comprised minimum thermal performance standards, water saving measures and the requirement to install either a rainwater tank or a solar water heater, energy use in new dwellings is higher than those of existing dwellings. The energy drain from lighting was addressed with a new '6-Star' standard, which from May 2011, limits lighting energy usage in new homes. However, the star rating system has no impact on the size of the housing constructed, Wilkenfeld (2007) concluded that "a major driver for increasing emissions from

lighting, and a restraint on reductions from heating and cooling, is the increasing size of dwellings – the average new dwelling is estimated to have a 30 percent larger net conditioned floor area than the average existing dwelling" and recommends placing "some restraint on floor areas". There is a positive correlation between house size and the number of energy consuming appliances (Newton, 2011).

The perceived higher resale value of larger homes and the way that the construction costs of new homes are calculated by per m^2 appear to be key factors promoting demand for larger homes (Moloney and Goodman, 2012). Pears (2011) analysed data which compared house size with cost per m^2 and concludes that larger houses appear to be better value for money when marketed as a cost m^2 because fixed costs that are independent of house size can be spread over the larger floor area. Pears concludes that buyers rarely factor in the long-term costs of maintenance for larger houses or the costs involved in heating and cooling them. A survey by the Organisation for Economic Co-operation and Development (OECD, 2011) showed that Australians are the least likely among western countries to consider energy use when buying a home, and the most likely to leave appliances on standby, or use cars for short trips. Making accurate, ongoing costings of maintaining and servicing larger homes explicit at the time of purchase through a mandatory disclosure system might shift buyers' understanding of the true value of purchasing a larger home (Moloney and Goodman, 2012). The challenge is to change the priorities of home buyers and home builders, and how large or small and houses are rated and assessed for sustainability.

The government's practice of locating such a large population in future decades on land far from adequate services and jobs, in poorly designed subdivisions with little housing choice, is the worse option for future urban development. Infrastructure Australia has shown that over four million people in outer suburbs live outside acceptable walking distance from frequent public transport. Accessibility is worst in Melbourne, with 1.4 million or 62 percent of people on the urban fringe disadvantaged. Most new outer urban growth is occurring in areas without adequate or planned provision of public transport, with only around 12 percent of all current trips made on public transport. High capacity heavy rail services only 4 percent of the area and 24 percent of the population of Melbourne's outer suburbs, yet these suburbs contain 44 percent of Melbourne's population.

1 (d) Factors encouraging housing as an investment vehicle

Such factors have been canvassed extensively in Australia. These include low interest rates, low capital gains tax, the use of negative gearing, high overseas migration and few restrictions on overseas investment in property and international financial flows. Interest rates for investors have not been set significantly higher than for owner occupiers. The Reserve Bank has not sufficiently controlled through prudential policies the amount of money available for investment in property. It is interesting to compare the policy on such matters of the Australian government to that of many American states. California, for example, provides tax concessions to owner occupiers but none to investors. This state has a large build-to-rent property structure compared to the proliferation of small scale individual property investors which characterise the Australian investor property scene. For decades, property prices in many European countries, such as Germany, remained relatively flat because governments regard houses as places to live instead of a source of rising wealth. Such differential outcomes are no accident but are determined by government policy settings designed to influence the investor property market.

1 (f) Mandatory affordable housing in new housing developments

The principle of mandatory measures for provision of public benefits as part of development approvals is well established under the Victorian regulatory land use system. Developers are required to provide, as appropriate, identified physical infrastructure, an open space contribution and an infrastructure levy. However, in Australia, the use of mandatory measures for the provision of affordable housing, is almost unknown.

Many countries use regulatory provisions in land use systems to achieve a broad range of public benefits, including affordable housing. Mandatory planning provisions for affordable and social housing are a long established practice in the United States, and less so in Europe. In the United States requirements are applied to private sector planning and building approvals. European countries have a tradition of direct provision of housing for low income groups, although more recently some have employed a range of inclusionary zoning policies.

Mandatory inclusionary zoning has been applied in the US to over 500 cities and counties from the early 1970s in Maryland, New Jersey, California, Massachusetts, Illinois and New York city, in cities such as Boston, San Francisco, Sacramento and San Diego. It has been most widely applied in California by over 80 cities and counties (Kautz, 2016). Under this approach to providing public benefit, developers are required to provide a proportion of new developments to house low and moderate income households, usually between 10 – 25 per cent. Eligibility is defined in terms of a proportion of rent to income or as a proportion of average income. Mandatory public benefit then becomes a condition for the right to develop. Factors such as minimum project size, defined target populations, in-lieu fees, density and other bonuses, and time of application vary between jurisdictions. San Mateo, California, is a typical example of a jurisdiction providing no density or other bonuses and is based on inflexible provisions.

Some states, county and local authorities apply mandatory requirements, other provide density bonuses above defined development scales. Some mandatory schemes, such as Chicago zoning laws, require a developer constructing 10 or more units on land rezoned for residential use to designate up to 20 per cent of units at below market rates, or make a cash payment (Mock, 2015.) About 35 per cent of ordinances provide no incentives to developers although up to half the cities using inclusionary zoning allow discretionary density bonuses (Kautz, 2016).

Some mandatory inclusionary zoning schemes, such as the 2016 New York city zoning code, work by requiring public benefit through affordable housing from developers benefiting from rezonings or other forms of approvals for greater height or density. The New York model provides for up to 40 per cent of new housing in such circumstances to be affordable. In practice, there is little difference between rezonings and permit approvals, so this model could be applied to Australia. The New York model has proved to be very controversial because it would allow the extension of towers across areas of the city where they are currently excluded, benefiting developers far more than the public (New York Times, Dec. 10, 2015). The only such Australian use of the planning system to achieve affordable housing is in South Australia which requires 15 per cent of units as affordable to be provided but only through the rezoning of public land.

Broader mandatory planning requirements are essential if the planning system is to be used to achieve affordable housing. Height and density controls are essential elements in such an

approach. A mandated height control allows the approval authority control over density and height bonuses for affordable housing. However, Australian planning provisions generally exclude such mandatory controls, substituting preferred height and density controls. This, in practice, prevents the use of the planning system to achieve affordable housing objectives. Australian developers widely ignore preferred heights and are generally supported by the government, local councils, and appeals authorities. For example, discretionary height controls after 1999 in the Melbourne CBD were ignored in over two thirds of applications. The lack of regulation has prevented public authorities from being able to gain substantial public benefit from the large increases in height and in land value as part of the extensive Melbourne high rise boom since 2005. This failure has allowed developers to reap all the benefits from the lack of regulation.

Mandatory public benefit also can become a form of price control by capturing a portion of land prices which have been inflated by liberal zoning or other land use measures. Some commentators have argued that mandatory requirements shift the costs of subsidised social housing to buyers and renters of other dwellings as developers add the profits foregone and costs to the price of other units. However, this argument has been strongly contested (Kautz, 2016, Calavita, 2006, Mallach, 1984). Developer profits can absorb cross subsidies; elastic housing demand will prevent developers passing on costs; and mandatory public benefit requirements will most likely force a reduction in land price. Including mandatory requirements in land use provisions will force developers to pay less for land, reducing land price and controlling land speculation (Kautz, 2002). Conversely, providing an incentive through a technique such as a discretionary Floor Area Uplift makes the public pay in two ways: first, it provides a public subsidy and, in effect, a public payment for ill-defined benefits which should and can be provided as mandatory measures built into the approvals process; second, the height bonus will lead to further detrimental public impacts. The public pays for detrimental impacts, losing both ways. Perversely, incentives and bonuses keep land costs high.

European experience has shown that government introduction of regulated planning requirements will lead to developers paying less for land as a source of funding, reducing landowner windfall profits and reducing land prices (Green, 2004). The U.K. experience demonstrates an interest in collecting a share of betterment in value for public benefit (Cullingworth and Nadin, 2002). But in Australia a lack of regulation has been a major factor fuelling high land price increases, apartment prices, higher apartment blocks and tower numbers. Government liberalisation of the planning regime has led to windfall profits through land price rises yet government has received little public benefit from the process it instigated. Mandating affordable housing provisions in this process would lead to a portion of profits accruing to public benefit through the approvals process. Housing price is sensitive to buyer expectations, with the result that unregulated apartment sizes fell in order to control apartment price as land price and development costs through higher construction have increased (just as outer urban developers have responded to price sensitivity by lowering average lot sizes while maintaining the same average house size).

The lessons from international experience are clear. Mandatory measures such as inclusionary zoning and mandated affordable housing requirements, both planning and building, are essential to achieve affordable housing components in new developments. Regulated planning systems can also control land price rises. Deregulated planning systems encourage developers to bid up the price of land and to constantly raise building heights as a form of compensation. Height and density controls limit this tendency. Regulated planning

provisions can be coupled with economic measures, applied variously to investors and home owners, and value capture and betterment levies, to provide a considerable public benefit in the form of affordable housing from private building approvals.

(3) Delivering certainty and fairness in planning decisions for communities

3 (a) Mandatory height limits

The Coalition government's introduction of new planning rules for residential zones in 2013 finally introduced height limits and other mandatory measures promised by the Labor opposition in 1999. In particular, a mandatory height limit and prohibition of multi-unit development in the Neighbourhood Residential Zone, coupled with the application of the Heritage Overlay, served to effectively protect the heritage of pre-World War 2 housing particularly in the inner and middle ring suburbs. A height control in the General Residential Zone also served to improve the quality of development. These achievements did not limit the high growth of apartments and attached housing in the established suburbs (see '1' above) despite claims to the contrary by the development industry and the Grattan Institute. These measures conformed generally with the scenario in the RMIT Melbourne at 8 Million (2016) report which showed that the existing suburbs of Melbourne together with limited growth corridor housing of 20 per cent of total housing could provide housing for a population of 8 million people by 2050.

The Labor government abolition of mandatory residential height controls, raising of discretionary height controls together with removing the prohibition on multi-unit housing in the Neighbourhood Residential zone is already promoting the widespread demolition of heritage housing. The liberalisation of these planning controls has also contributed to an increase in the price of land in existing suburbs as higher returns from development were quickly built into land price. A tendency for a greater financial capacity by developers has meant that developers are outcompeting residents wishing to purchase and live in existing dwellings.

The impacts on land price and heritage is also seen in the government's refusal to allow the introduction of mandatory height controls in the Commercial 1, Activity Centre and Mixed Use Zones in Melbourne's traditional strip shopping centres. These centres usually contain rows of largely intact Victorian shops not protected under the Heritage Act despite collectively contributing a critical element of the built heritage that defines Melbourne's identity and economic performance. Many are affected by a Heritage Overlay. However, this is a weak discretionary provision and subject to interpretation. These zones are all highly permissive with few prohibited uses. Crucially, no mandatory height controls apply in these zones. Preferred height limits are commonly exceeded of ignored. Again, the lack of height limits directly contributes to increased land price as developer competition for land requires ever higher developments to recoup the cost of investment in land. The result is the progressive redevelopment of Victorian strip centres and the replacement of diverse, interesting built environments with a single use in the form of residential apartments.

Again, most other developed countries do not permit such extensive loss of commercial and residential amenity. The built form of traditional centres makes a crucial contribution to citizen identity and sense of well-being. Their economic contribution is also important through attracting tourism and visitor use. Amenity attracts, and these heritage precincts

attract vibrant restaurant, social and retail activity. Such centres are often linked closely to professional and other employment activity in adjacent neighbourhoods, attracting informal and formal business activity.

The RMIT Melbourne at 8 Million study

This study investigated whether the retention of Victorian era shops in traditional strip centres would significantly lessen the supply of dwellings for a future Melbourne by 2050. The conclusion drawn was that the protection of these heritage buildings would not be a significant factor limiting land supply.

The RMIT report examined the potential dwelling yield from lots existing along tram corridors to a distance of 7 km from the CBD, not including the CBD and immediate brownfield areas (such as Southbank). It calculated yields from buildings with a heritage overlay in suburban residential areas and along tram routes, other buildings built prior to 1945 without a heritage overlay, and all other buildings constructed since 1945 with and without a heritage overlay. The report also calculated the effect of excluding development from residential housing affected by a heritage overlay along tram routes. It found:

1. The redevelopment of all buildings affected by a Heritage Overlay (HO), including in residential neighbourhoods, and along tram corridors could produce a supply of 208,688 dwellings using lot size yields under the adopted scenario.
2. If this potential was not used (in the 208,688 potential dwellings), most of the foregone potential would be on lots in residential neighbourhoods affected by a Heritage Overlay, located mainly in the Neighbourhood Residential Zone (NRZ).
3. The number of lots with a heritage overlay along tram corridors under 2,000 sq mt = 3,291 producing a potential dwelling yield of 36,230 dwellings under the scenario rules of 4-6 story height limits and up to 90% site coverage. This total included not only the heritage shops but a range of other building types such as existing dwellings and other commercial and industrial buildings along the tram corridors but outside the shopping precincts.
4. Just under half of this potential yield of 36,230 dwellings, or 15,843 dwellings, came from pre-1945 buildings (including but not only Victorian shops). This demonstrates clearly that the protection of the Victorian era shops removes only a small amount of potential new development from the required figure of 1.6 million new dwellings for Melbourne by 2050. Excluding Victorian shops from land supply calculations has a major heritage benefit for a small loss of dwelling supply.
5. In summary, protecting all pre-1945 buildings (including in residential neighbourhoods) affected by a heritage overlay reduces the total potential metropolitan dwelling supply by under 15 per cent. Preventing redevelopment of pre-1945 heritage buildings only along tram routes reduces potential dwelling supply by 3 per cent. Narrowly defining buildings to be protected to only Victorian era strip shops significantly further reduces the amount of development foregone.
6. Significant redevelopment could still occur along tram corridors while preserving Victorian era shops. Many buildings even inside the traditional retail centres were built after 1914 or 1945 (for example, 1950s era showrooms) and large numbers are located outside the retail centres along the tram corridors. The report calculated under its scenario that 29,822

new dwellings could be provided along tram corridors from lots without a heritage overlay plus post-1945 buildings with a heritage overlay from redevelopment in 4-6 story apartments.

The RMIT study did not include the potential dwelling yield from an alternative redevelopment scenario for Victorian era shops along tram corridors. For example, RMIT prepared a potential zone change for the City of Yarra council and residents which provided for the protection of the first 12 metres of existing shops and allowing redevelopment to 11 metres behind. This would allow flexibility for retail uses and for some redevelopment to the same height as the Residential Growth Zone while preventing forms of facadism. Most such lots face a rear lane providing direct access.

3 (b) Protecting green wedges and the urban growth boundary

Fifty years ago, a regulatory system of green wedge protection was put in place for the Melbourne hinterland. However, later deregulation has led to the incremental loss of much green wedge land to development. Most notably, between 1995-2001, over 4,000 of green wedge land was rezoned for residential development and a substantial area of land in the broader peri-urban zone subdivided. The Brumby Labor government rezoned 43,000 ha of green wedge land, and the Baillieu Coalition government a further 6,000 ha. Today, the green wedges and peri-urban areas are under renewed threat of development.

The original rural zones were based fundamentally on protecting rural values. These values were clearly defined and included agricultural, landscape, habitat, water and other environmental and natural resource attributes. All residential, retail, commercial, industrial and other urban related values were prohibited. Restaurants, retail sales, tourist and accommodation, schools, religious centres and rural industrial uses were regarded as inconsistent with this core protection ethic. The government made clear that it intended to reduce landowner expectations for subdivision because, it argued, rezonings raised expectations, led to cumulative pressure for subdivision which, in turn, raised the value of land so progressively making rural land uses uneconomic. Development led inexorably to incremental development until the rural characteristics to be protected were lost.

In 2003, the Bracks Labor government initiated a decisive shift back to the concept of protection by establishing both a legislated urban growth boundary (UGB) and stronger protective provisions in green wedge zones. Despite this, parliament has overridden the intent of the 2003 legislation and expanded the UGB three times. In addition, the 2003 legislation allowed a wide range of urban related uses to be considered in the green wedges and broader peri-urban areas despite some minimum land size and maximum development size restrictions.

The international debate on green belt land uses is over whether zones should be multi-purpose or homogeneous. Multiple rural uses provide multi-purpose rural landscapes. Such uses include many different forms of agriculture, outdoor recreation, biodiversity protection, water use and other environmental uses with benefits to the health and well-being, economies and social harmony of nearby urban populations. However, broadening the concept of multi-purpose uses by injecting urban related uses includes uses which are inconsistent with rural preservation, threatening the traditional purposes of green belts. Such urban uses will eventually destroy any green belt where they are permitted. The only defence is strong regulatory prohibitions on urban uses of any kind to prevent incremental losses eventually merging inconspicuously into devastating landscape change.

Current government review of green wedges

The two main threats to the future of green wedges are further expansions to the UGB and the incremental approval of urban related uses and developments in the green wedge and broader rural zones. The UGB seeks to confine urban development to the area inside the boundary. But allowing urban related uses and developments outside the UGB is an expansion of the urban growth boundary by stealth.

The uses able to be considered in the Green Wedge Zone that are most inconsistent with the preservation ethic are: caravan park; exhibition centre; function centre; group accommodation; materials recycling; place of assembly, place of worship, primary school; research and development centre; research centre; residential building; residential hotel, restaurant; restricted place of assembly; secondary school; solid fuel depot. This is a substantial list. None are appropriate for a green belt. Approvals for many of these uses are proceeding and will transform large areas of the green wedges even if the UGB stays in place.

This serious situation is compounded by faults in other zones which apply to green wedges such as Green Wedge A zone and the Rural Conservation zone. The Green Wedge A zone was originally intended simply to be applied to rural-residential or large residential lots in places such as the Dandenong Ranges that could otherwise be subdivided under the standardised residential zones. But a broader use of the Green Wedge A zone is allowing the range of urban related uses to be considered on extensive areas. Some urban related uses in the Rural Conservation zone are allowed without the restrictions which apply in the Green Wedge zone because nobody has bothered to amend the Rural Conservation Zone to include these controls.

Broader peri-urban zone

Melbourne now has an inner peri-urban zone consisting of the green wedges and rural land in a true green belt to the borders of the Melbourne Statistical Division as mapped in the Melbourne 2030 plan, and an outer peri-urban area extending to about 150 km from the CBD. These areas comprise the total peri-urban area. The spatial and demographic characteristics of this broad peri-urban area should be planned carefully. But there is no evidence that the government is concerned with any differences, special concerns or inadequate planning provisions.

The green belt areas outside the green wedges (in areas such as the Dandenong Ranges, Upper Yarra Valley, Mornington Peninsula and Eltham) and the outer peri-urban area (in areas such as Macedon Ranges) face many problems which the current planning system is making worse. Apart from the inadequacies of the Green Wedge and Rural Conservation zones, the main issues are existing land fragmentation, inappropriate township development and misapplication of planning provisions to land. Extensive land fragmentation exists because of historically inappropriate subdivision. Much of this was controlled in areas such as the Dandenong Ranges through specially written zones and the use of mandatory lot restructures and tenement controls. However, standardised planning provisions through the Victoria Planning Provisions removed these controls. Labor also introduced new rural zones to Melbourne's outer peri-urban area in 2006 which addressed many inadequacies of the Kennett government zones but these were substantially weakened by the Baillieu

government. Although in power since 2014, Labor has not redressed the problems associated with the green wedge and rural zones.

Massive existing lot fragmentation exists. For example, over 50,000 lots exist without dwellings in the rural municipalities in the outer peri-urban area. These lots are a time bomb. Their development will ruin rural landscapes and production over a large area. Standard zones were also imposed onto townships. Residential zones similarly are a time bomb, allowing subdivision and multi-dwelling development. Townships in Yarra Ranges and to the north and west of Melbourne, for example, include a number of rural zones (which prohibit multi-unit development) and residential zones (which allow it). Mornington Peninsula uses primarily residential zones, and attempts to control development through the use of overlays. In both types of cases, extensive township subdivision is occurring often with serious environmental impacts such as the loss of vegetation and increased car use. Subdivision is expanding township boundaries with worst quality suburban type development. The 2003 UGB and green wedge legislation included legislated boundaries to all townships in the Upper Yarra Valley. The same type of boundaries should also be applied to other peri-urban townships, including coastal towns.

Rural zones introduced between 1997-99 under the new format planning schemes widely misapplied the planning provisions under the VPPs, using the weakest zones and avoiding the use of the strongest overlays. Most councils have been allowed to maintain such inadequate planning despite the requirement for regular review of planning schemes. Again, the planning agency appears uninterested in fixing any of these three types of problems.

Ultimately, precaution should be the guiding principle governing development. The UGB should never be expanded, all urban related uses should be prohibited from Melbourne's green belt and broader peri-urban areas, development prevented on multiple existing lots, further rural and township subdivision severely restricted and inflexible township boundaries applied. Melbourne will pay dearly in future decades for extensive peri-urban subdivision and development which removes food production capacity, further diminishes biodiversity and destroys landscapes. Few impacts are more permanent than housing and other forms of development. Future generations would thank the current generation for not obliterating their right to decide their own futures.

(3)(c)(d)(e) The following addresses the committee's overall brief to examine the adequacy of the Planning and Environment Act 1987 and the Victorian planning framework in relation to planning by addressing the adequacy of the Planning and Environment Act particularly in relation to 3(c)(d) and (e) of the brief.

Structure of planning schemes

The Act is lengthy and much amended. However it is structured clearly. Periodically, development interests have lobbied the government to vary the basic structure of planning schemes, permit and amendment approvals. Section 6 provides a structure based around uses or developments which are exempt from the need for a permit, or which are regulated by requiring a permit or are prohibited, classified into section 1, 2 and 3 uses in schemes. Decisions about discretionary uses are intended to be based on state and local policy. Attempts to break down this structure into permissive structures which give prima-facie approvals to applications, eliminate prohibitions or remove the boundaries between these

sections by allowing prohibited section 3 uses to be considered as discretionary section 2 uses should be resisted. The existence of discretionary uses requiring permits assumes that permits may not be granted. This possibility ought always to be retained.

In effect, governments have periodically lessened the regulatory impact of planning schemes by including vague and permissive policy, and by designing zones with few prohibitions and an increasing number of 'as-of'right' uses not requiring permits. Increasingly, exempt categories of uses and developments and code assessed categories are being built by stealth into zones and other parts of planning schemes. However, the basic structure should be retained to allow for a return to a more regulated planning philosophy. Similarly, the Division 2 provisions from sections 21-28 should be retained. These provide important controls by local councils over the amendment process. Other controls such as the Part 3A recognition given to the Upper Yarra Valley and Dandenong Ranges regional strategy plan serve an important function and should be retained. Pressures to remove or lessen these should be resisted.

Victoria Planning Provisions

Part 1A outlines the central place of the Victoria Planning Provisions (VPP) in planning schemes and section 7(1) and (2) that state standard provisions must take the form of the VPPs. The content of almost all the basic elements of planning schemes are determined by the VPPs. Councils can attempt to influence planning decisions by selecting and applying the most applicable zone or overlay to land, developing local policy and by limited other measures such as by including schedules to some provisions. However, even the use of these measures is strictly controlled by the planning agency and the government by, for example, preventing the use of mandatory policies or other measures such as quantified, mandatory height controls.

The use of statewide, standardized planning measures, applying to all planning schemes through the VPPs dates from the introduction of the VPPs and their application to new format planning schemes in the 1990s. This standardisation conflicted markedly with the original intent of the Planning and Environment Act and its application to planning schemes on its introduction in 1987. This Act initiated a trend to the localisation of planning administration. Government would initiate planning measures on matters of state and regional significance, while councils would administer and sometimes the develop zone controls. Matters of state, regional and local significance would be clearly defined, particularly through policy sections.

The Melbourne Metropolitan Planning Scheme (MMPS) had been administered by the Melbourne and Metropolitan Board of Works (MMBW) and local councils from the 1960s. This comprised one planning scheme for the Melbourne Statistical Division. But between 16 February, 1988 (Day 1) and 30 October 1989 (Day 2), Ministry for Planning and Environment allocated relevant MMPS zones and other provisions to local planning schemes, in effect developing 52 separate metropolitan planning schemes in a policy neutral manner and using a standardized format. From that date local councils assumed the powers formerly held by the MMBW and gained the same planning powers held by non-metropolitan councils. The State Government maintained control over state and regional policy, over approval of scheme amendments with the hearing of objections subject to the advice of independent panels, and general legislative and overall control through the Planning and Environment Act.

Centralisation through the introduction of the VPPs removed council control over matters of legitimate local significance. The existence of such a state centralised system has empowered successive governments to increase the level of state control to an unprecedented level. Even under the system administered by the MMBW, councils constituted the board and exercised strong strategic influence. The MMBW also delegated the administration of much of the statutory approvals to councils. The current system should be revised to enable greater control by councils over matters of legitimate local significance. This control should involve a greater strategic role and power to increase regulatory controls over heritage protection, height controls, density levels and even amendments to standardised planning provisions. This would require the government, together with councils and communities, to define respective roles over matters of state and local significance.

Ministerial powers

The Kennett government increased ministerial powers in the early 1990s. No government since has reinstated earlier limitations on power but governments generally exercised these powers with some restraint, particularly by tending to maintain powers of public comment. However, during recent years, the government has fundamentally shifted power to itself and centralised authorities at the expense of local councils and public participation particularly through the Division 3 powers under section 185A and section 20 powers. Section 20(4) powers are being used extensively to allow the minister to intervene to approve amendments without notice and deny the public the right to make submissions or for these submissions to be independently assessed by a panel and further considered by local councils.

A large number of general amendments have applied these powers to government projects such as the Suburban Loop Authority and the rail crossings and railway construction, but are also being applied to specific private sector developments. The minister is subverting the decisions of councils and planning panels, and excluding third parties from participation in decisions on an unprecedented scale. Ministerial powers are being used extensively to ‘fast track’ and exempt developments from planning processes and sometimes from requirements. These powers are sometimes being justified by the need to promote development because of the COVID pandemic. This justification is spurious. For example, the government is ‘fast tracking’ 100,000 new outer urban dwellings despite the rate of development exceeding the government’s own plan, *Plan Melbourne*, by almost 90 per cent. Similarly, high rise and other multi unit approvals remain high without such government removal of normal planning processes.

The legislative test for the use of section 20(4) powers is whether the Minister considers that compliance with requirements for notification and consultation is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate. This is a draconian, unfettered power that is not appropriate in a liberal democracy. This test should be altered by providing a legislated test which defines the elements which would justify a minister’s intervention. The criteria “the interests of Victoria or any part of Victoria” should be similarly defined. The unfettered power of a minister to decide that section 17, 18 and 19 powers are not warranted should be removed.

Role of local councils

It is proper that the State authorise the preparation and exhibition of amendments otherwise the government can be 'ambushed' by an amendment well down the path to approval. However, authorisation should be based on a clearly articulated delineation between state and local responsibilities. Amendments defined as properly local should be authorised without state interference. The problem with authorisation is that the State routinely authorises amendments which conflict with State policy, such as for developments in green wedges, but prevent local councils from initiating amendments which are properly local in type, such as to provide height limits in the Commercial 1 zone. Again, these problems can be avoided by a proper delineation of authority between matters of State and local significance and a State recognition of the proper role for councils to initiate amendments on locally significant matters.

Section 1A(2)(c) requires that councils must consider any social and environmental effects. This wording should be altered to the original wording replacing 'must' with 'may', so placing primacy on environmental impacts as originally intended by the Act.

In preparing amendments, councils are required to undertake extensive and costly strategic work to justify even simple amendments. Such studies are routinely done by consultants and are beset with value positions. It is not necessary, for example, for an inner urban or middle ring council to spend hundreds of thousands of dollars to prove that nineteenth century shopping strips, or Victorian or Edwardian housing has sufficient heritage value to justify the introduction of a heritage overlay. Similarly, Goldfields era towns are being denied approval for amendments to protect heritage through the introduction of a heritage overlay or the Neighbourhood Residential Zone. Even when such studies are completed, regulatory protection provisions such as mandatory height limits are denied, further emphasising the value bias of studies and government decision making.

The common cause of limits on council's proper role in local planning is the nature of the Victoria Planning Provisions. These prevent councils from developing planning measures which adapt land use planning to local conditions and problems. Such adaptive planning was recognised by both the Hamer Liberal and Cain Labor governments. For example, zones were developed matched effectively to land use problems in sensitive areas such as the Dandenong Ranges and Mornington Peninsula. Such zone provisions controlled dwelling construction in high fire prone areas which also contained high biodiversity value. The VPPs treated areas as diverse as the Dandenong Ranges and Mallee townships identically. It is telling that the section 14 duties of responsible authorities exclude any reference to a council's potential role in initiating new statutory measures to regulate uses and development.

Design of the VPP

The design of the VPPs also places great strain on the planning system and further limits the role of councils. The VPPs are intentionally designed to deregulate the planning system based on discretionary uses and increasingly on 'as of right' uses. Vague and general policies are often accompanied by conditional and qualified statements. These can be interpreted differently and require value judgements in the making of decisions. This means that council

decisions are often overturned at VCAT or by panels which express different value positions from those of councils or communities. Such value judgements are often disguised behind interpretations of deregulated policies but nevertheless reflect unstated bias.

VCAT and planning panels are often described as an undemocratic interference in local decision making. Certainly, their decisions overwhelmingly favour the proponent. The system is excessively legalistic, disadvantaging individual and community objections. However, the ultimate cause of these problems is the difficulty in interpreting the planning provisions. The VPP has repeatedly been shown to be achieving the opposite of the government's intentions, that is, it has led to less certainty, greater complexity, expense, delays and inconsistent decision making. The government is attempting to remedy these faults by further decreasing regulation through exemptions, 'fast tracking' planning, and reducing the number of prohibited uses, introducing code assessed applications, and the need for permits. However, quantified, measurable and mandatory policies and other provisions would overcome differences in interpretation, increase certainty and eliminate most of the current problems associated with the administration of the VPP.

Amendments to permits and to applications

The provisions allowing amendments to permits and applications unreasonably favours the applicant and disadvantages potential objectors. Under section 57(B) it is not necessary for a council to require readvertising any amendments to an application after notice has been given. This may disadvantage potential objectors to the new application but who did not object to the original application. Applicants commonly alter applications before tribunals or panels and such amended applications are accepted and heard without the need for further notice. Often such amendments are substantial or are likely to cause detriment. All these faults should be rectified.

Section 72 enables applicants to amend a permit. This unreasonably advantages applicants and disadvantages objectors by enabling a matter which has been decided to be reconsidered at a later date. Issues which were considered in the grant of the original permit then may be reconsidered and arguments accepted which were originally rejected. This section is sometimes used to remove or alter conditions which were attached to a permit and may have been the reason for the decision to grant. The issue of a permit should finalise any application. This section makes a mockery of the permit issuing process and should be repealed.

Finally, applicants may make repeated applications on substantially the same matter, only marginally varying the original application until a council or VCAT or a panel finally agrees. A common tactic is for developers to seek an outsized scale to a development application only to 'compromise' to the scale it preferred. This is planning by attrition, able to be afforded only by the affluent against the voluntary labours of community groups and affected individuals. Once an application is decided, the Act should prevent the same application from being resubmitted, or a slightly modified application for a period of at least two years.

(4) Protecting heritage in Victoria

The main regulatory control for the protection of built heritage is provided by the Heritage Overlay. It is discretionary in three ways: firstly, it need not be applied to any building or

land, secondly, its provisions are not quantified or measurable and so open to interpretation; and thirdly, regardless of its wording its provisions need not be used to reject an application. These are weaknesses and have led to extensive loss of heritage.

On the first, heritage studies are required if DELWP is to consider approving the use of overlays. These studies are expensive and time consuming. Their cost is a considerable impost on all councils, particularly smaller councils with fewer financial resources. Heritage consultants differ in their interpretation of heritage value. The government need not accept the findings of heritage studies. As a result, the heritage overlay is not applied to many buildings or classes of building with heritage value. For example, some heritage studies accept the value of 1920s housing while others do not. Industrial heritage is under valued. Many studies use criteria which lead to exclusion of significant numbers of buildings, for example, excluding buildings as having heritage value in neighbourhoods which are said not to be intact. The concept of 'intactness' depends on value judgements.

On the second, the often vague and general wording of the overlay is interpreted differently. For example, clause 43.01 purpose, includes the following objectives: to conserve and enhance heritage places of natural or cultural significance; to ensure that development does not adversely affect the significance of heritage places. Such objectives are constantly interpreted differently because of varying interpretations of what it takes to 'conserve' or 'adversely affect' a building.

Many of the decision guidelines compound such inadequacies. For example, clause 43.01-8 decision guidelines includes the following: whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place; whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place; whether the demolition, removal or external alteration will adversely affect the significance of the heritage place; whether the proposed works will adversely affect the significance, character or appearance of the heritage place. Notoriously different interpretations are applied to such clauses. The widespread use of facadism, leading to the demolition of all a building except for its façade, and the construction of medium and high rise buildings on the sites of buildings subject to a heritage overlay, is testimony to the value systems of councils, VCAT and panels that decision guidelines do not mean what they seem to mean.

All these faults could be rectified by the use of language which removed the difficulties of interpretation, defining clearly the problem to be avoided and the required outcome. The heritage overlay itself, should be framed in clear and measurable and mandatory language to reduce or eliminate differences in interpretation. And while it remains a discretionary clause it need not be applied. The use of mandatory provisions, such as a height control in a schedule may overcome this last problem. Alternatively heritage provisions could have mandatory application by being inserted as clauses into zones or made a particular provision.

The application of the heritage overlay is often focused on individual buildings instead of on classes of buildings such as Victorian shops in traditional shopping centres. The designation of rows of Victorian shops as of heritage value should not require expensive studies to demonstrate what is self evidently worth protecting.

The Heritage Overlay is inadequately related to the Victorian Heritage Register and associated processes of Heritage Victoria. Clause 43.01-2 requires a permit under the heritage overlay to subdivide a heritage place which is included in the Victorian Heritage Register. However, the need for a planning permit should not be limited to subdivision. The heritage overlay is, in effect, a second order and inferior protection mechanism to the use of the Heritage Register. The Heritage Register itself is also limited, excluding many important buildings by focusing excessively on individual buildings, excluding precincts and too rigorously applying such concepts is building condition and intactness.

Ultimately, one system of heritage protection should be broadened in scope, administered and applied by one body, Heritage Victoria. A system of measurable, mandatory provisions would eliminate much of the current work load and cost and should be applied to an expanded range of heritage buildings and precincts without the need for expensive and unnecessary studies. Such a system would provide certainty to all and greatly increase the level of heritage protection.