

## City of Whittlesea Submission to:

# Parliamentary Inquiry into the adequacy of the Planning and Environment Act 1987 and the Victorian planning framework

The City of Whittlesea welcomes the opportunity to make a submission in response to the Parliamentary Inquiry into the adequacy of the *Planning and Environment Act 1987* and the Victorian planning framework.

The Terms of Reference cover a broad range of themes. Council's submission particularly advocates for stronger mechanisms to facilitate the provision of social and affordable housing, and better quality and diversity of housing supply to meet community needs. It also seeks greater clarity to guide protection of the Green Wedge, and advocates for better integration of environmental sustainability, vegetation protection and heritage protection outcomes with the Victorian planning framework.

The submission is consistent with previously adopted strategies and policies being implemented by the City of Whittlesea and reinforces our position as outlined in previously endorsed submissions to strengthen integration of the *Planning and Environment Act 1987* and the Victorian planning framework.

## Executive Summary

The submission draws on matters raised in previously endorsed Council submissions including:

- 10 Year Social and Affordable Housing Submission to the Victorian Government
- Homelessness in Australia to the House of Representatives Standing Committee on Social Policy and Legal Affairs
- Plan Melbourne Refresh: Discussion Paper Submission to the Victorian Government
- Draft Precinct Structure Plan (PSP) Guidelines Feedback to the Victorian Planning Authority
- Managing Victoria's Planning System for Land Use and Development response to the Victorian Auditor-General's office
- 30-Year Infrastructure Strategy for Victoria Submission to Infrastructure Victoria
- Inquiry into Environmental Infrastructure for Growing Communities to Parliament
- Planning for Melbourne's Green Wedge and Agricultural Land Review to the Department of Environment Land Water and Planning (DELWP)
- Protection of the Grassy Eucalypt Woodland letter to Hon Lily D'Ambrosio MP
- Kangaroo Management Plans in the Melbourne Strategy Assessment to DELWP

The submission primarily addresses the topic areas identified in the Terms of Reference and a summary of the discussions include:

### 1) High cost of housing

Despite a significant need, and Council commitment to facilitating social and affordable housing, opportunities are limited. Councils are unable to effectively facilitate the delivery of affordable housing in growth areas due to the limitations of the Victoria Planning Provisions (VPP). The *Planning*

*and Environment Act 1987* and the Victorian planning framework do not provide strong enough mechanisms to enable the planning system to effectively assist or mandate delivery.

Mandatory affordable housing provisions and inclusionary zoning are strongly supported to provide greater certainty and clarity to the development industry, and to meet community needs. In addition, the State Government needs to take a greater leadership role in building broader community awareness and acceptance, by advocating the benefits and need for the provision and distribution of social and affordable housing in all municipalities across the state.

A clearer and more consistent framework is required to assist in the navigation and implementation of affordable housing, including the means-test allocation and securing affordable homeownership options with mechanisms to ensure longevity of the affordable housing stock being delivered.

#### 2) Environmental sustainability and vegetation protection

Greater integration of the *Planning and Environment Act 1987* with the *Flora and Fauna Guarantee Act 1988* is required to enable application and protection on privately owned land. Also, environmental sustainability and climate change policies more broadly need to be proactively integrated with the planning framework, ensuring these are more explicit and are aligned with the most up to date available data.

The application and assessment of cumulative impacts and no net loss of native vegetation within the Victorian planning framework has significant gaps that need to be addressed. Further, Kangaroo Management Plans need to be better integrated with the Victorian planning framework. A strategic landscape-scale kangaroo management approach is needed, to avoid issues such as land-locking and the risk to human safety and animal welfare.

Greater integration and incorporation of Traditional Owners knowledge and perspectives into the *Planning and Environment Act 1987* and the Victorian planning framework needs to be encouraged.

Of key concern to Council, the future 1200-hectare Grassy Eucalypt Woodland (GEW) investigation area in the Whittlesea Green Wedge, remains a significant outstanding matter yet to be progressed by the State Government.

#### 3) Certainty and fairness in planning

Mandatory height limits and minimum apartment sizes - Accessibility and universal design criteria need to be embedded into the provisions to align with the building construction code to ensure accessibility and liveability throughout the life cycle of residents.

Protecting the Green Wedge and Urban Growth Boundary - Greater guidance and strengthening of the Victoria Planning Provisions is required to protect the Green Wedge, the 'right to farm' and to ensure the Urban Growth Boundary is retained, in line with Council's recent submission to the State Government *Planning for Melbourne's Green Wedges and Agricultural Land Review*.

#### 4) Protecting heritage in Victoria

Strengthening the way in which the Victorian planning framework protects heritage in Victoria by advocating for improved tools, guidelines and mechanisms to ensure proactive conservation, preservation and protection of all heritage in the municipality.

There is a need to ensure the protection of places of local heritage significance remains with local government, as the most appropriate level of government, albeit with better tools and funding support.

In addition, greater recognition and integration of archaeological resources into the *Planning and Environment Act 1987*.

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

There is a need to align the minimum standards for multi units and townhouses in the residential zones and ResCode, to the higher minimum standards for apartments. This will ensure a higher quality and greater diversity of housing stock is being delivered to support better outcomes for the community.

6) Any other relevant matters

The submission highlights the impact of the current cap on developer funded contributions for community infrastructure in growth area plans. This results in significant funding gaps that growth area Councils are not able to cover and in turn Councils are not able to deliver essential community and recreation infrastructure for new communities.

Changes to the Infrastructure Contribution Plan (ICP) system in the *Planning and Environment Act 1987* and the Victorian planning framework are needed to provide the ability to apply a Supplementary Levy in circumstances where additional contributions are warranted for a precinct in the same way as it can be currently applied to fully fund transport projects, avoiding a funding shortfall for community and recreation infrastructure.

## City of Whittlesea Submission

### 1. The high cost of housing

#### Provision of social housing

The City of Whittlesea is experiencing rapid population growth. In 2021, the estimated resident population was 242,027 and is expected to grow to 388,417 by 2041, a projected 60% increase over 20 years.<sup>1</sup> This results in a significant need for the provision of additional social and affordable housing:

- Only 0.2% of rental properties were affordable for very low-income households in the 10 months to June 2021. In the Epping North/Wollert Area, there were no (0.0%) rental properties available for very low-income households over this period.<sup>2</sup>
- Almost one quarter (23%) of households in the municipality are classified as having very-low incomes.<sup>2</sup>
- Over 5,000 households renting in the municipality are experiencing housing stress (32.3%). This is more significant for households with low (69.3%) or very-low incomes (90.3%).
- The current deficit of affordable housing is approximately 3,800 households. This represents 4.8% of all households.<sup>3</sup>

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1 Forecast.id (2021) Population Forecast for City of Whittlesea, <https://forecast.id.com.au/whittlesea>

2 City of Whittlesea, based on ABS Census 2016 data and population projections from Forecast.id. <https://forecast.id.com.au/whittlesea>

3 City of Whittlesea, based on ABS Census 2016 data and population projections from Forecast.id. <https://forecast.id.com.au/whittlesea>

The *Planning and Environment Act 1987* and the Victorian planning framework do not provide strong enough mechanisms to facilitate an adequate supply of social and affordable housing in growth area municipalities like the City of Whittlesea.

It is noted that an objective of the *Planning and Environment Act 1987* is 'to facilitate the provision of affordable housing in Victoria' however, there are limited ways in which the Act and planning system can actually assist in the delivery of this.

The planning system needs to define the relationship between social and physical infrastructure planning and land use planning in the context of an affordable housing system. There is a historic disconnect between social planning, land use and infrastructure planning in Victoria. It is therefore important to address this gap to create a robust affordable housing system that maximises community outcomes into the future. Infrastructure Victoria<sup>4</sup> recognised this concern in their recently released *Victoria's Infrastructure Strategy*, in which recommendations 34 and 73 recommend revising the infrastructure contribution system so as to be applied more broadly, such as in growth area Councils.

Councils are unable to effectively facilitate the delivery of affordable housing in growth areas given the restrictions of the Victoria Planning Provisions. Despite a whole-of-council commitment to facilitating affordable housing, opportunities are limited which results in an insignificant amount of affordable housing dwellings being delivered.

In particular, the process of seeking social and affordable housing provisions in Precinct Structure Plan (PSP) processes should be strengthened. PSPs and infrastructure contribution guidelines do not permit the mandating and levying for affordable housing. Planning Panels have been critical of proposed affordable housing provisions in PSPs because there has not been a clear delivery mechanism for affordable housing identified or agreed on. Therefore, current PSP guidelines which encourage affordable housing are weak and lack a framework to guide implementation which is inhibiting the delivery of affordable housing in PSP areas and strategic development areas.

For growth area Councils, the inability to mandate social and affordable housing delivery as part of the PSP process is a major missed opportunity, as it is through this process where land value is created (and capable of being captured). It is extremely difficult to capture value at any stage other than the time when it is created.

### **Access for first home buyers**

There has been an increase in the number of developers expressing an interest in making affordable housing products available for purchase to low-moderate income household, either to accord with development guidelines, voluntary agreements, or from their desire to contribute to addressing the issue.

It is critical that the supply of affordable housing is not to be achieved by delivering smaller, poorer quality or located housing within larger precincts. Rather that affordable housing needs to be well located and well designed to meet the needs of the residents it intends to support.

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<sup>4</sup> Infrastructure Victoria (2021) *Victoria's Infrastructure Strategy 2021-2051* <https://www.infrastructurevictoria.com.au/report/contents/>

Without a clear and consistent framework, there are challenges concerning implementation. In particular, the means-tested allocation is a challenge for both developers and Councils to navigate.

Further there are also no mechanisms for ensuring the property remains as affordable housing beyond the initial sale. The Ministerial Direction requires the longevity of affordable housing be considered however, there is no guidance or acceptable approach for doing this. A future social and affordable housing system should facilitate secure affordable homeownership options with mechanisms to ensure that the longevity of the affordable housing is protected.

In addition, Council strongly supports the *Victoria's Infrastructure Strategy*, in particular recommendations 36 and 68<sup>4</sup> that specifically relate to changes to the Victoria Planning Provisions to deliver affordable rental housing and to ensure the delivery of a national average of 4.5% of social housing by 2031.

### **Mandatory affordable housing in new housing developments**

Council strongly supports mandatory affordable housing in new housing developments. In the absence of mandatory provisions there will continue to be uncertainty and lack of clarity, making it difficult for the development industry to factor in the cost of affordable housing, as well as being resource intensive for Councils to negotiate contributions. This uncertainty and complexity means the amount of affordable housing being delivered via a voluntary contribution is likely to be small and will not meet the current demand. Plan Melbourne<sup>5</sup> highlights the existing gap and need for the provision of social and affordable housing however, the current planning system is not set up to ensure its delivery.

Where mandatory contributions for items such as public space and infrastructure are applied through a consistent process in the planning system, developers have proven to be able to make these contributions work within their business model. A similar approach should be adopted for the provision of social and affordable housing. Feedback from the development industry suggests many are not necessarily opposed to the concept of mandatory provisions, providing transitional arrangements are put in place so that these costs can be factored into the initial cost of the purchase of land.

Inclusionary zoning and/or overlays could require all developments, or at the very least, multi-dwelling developments over a certain threshold, to contribute to social and affordable housing in either built form or via financial contributions. Amending zone schedules to allow for social or affordable housing can also assist, where proposed land uses in proximity don't conflict with residential uses. Such changes will provide greater certainty and clarity to the development industry and help to meet community needs.

In addition, the State Government needs to take a greater leadership role in building broader community awareness and acceptance for the provision of social and affordable housing. In particular, by advocating the benefits and need for social and affordable housing to be provided in all municipalities across the state to meet community needs.

Overall, there are many different ways to achieve mandatory affordable housing but is essential to consider the need to ensure longevity of this affordable housing stock once developed. Although it may be provided as part of the initial development, there is no

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<sup>5</sup> Plan Melbourne 2017-2050 – Affordable Housing Strategy 2020-2030

<https://www.planmelbourne.vic.gov.au/highlights/housing-choice-and-affordability>

guarantee or tool to ensure it will always remain as affordable housing. Greater clarity and guidance is needed to ensure the longevity of affordable housing stock.

## **Other**

### **Integrated planning with the disability housing sector**

The social and public housing sectors do not currently provide appropriate models of housing for some residents with disabilities including those with complex behaviours and support needs. There is also a significant unmet need for accessible housing including across the Whittlesea municipality.

A social and affordable housing system should have stronger engagement and integrated planning with the disability housing sector as well as adopt principles of universal design. In addressing the immediate shortage of appropriate housing for people with disabilities, governments may need to adopt new thinking and strategies that challenge the conventions around housing vulnerable residents.

### **Dependable Person Unit (DPU) / Second Dwelling**

Changes that facilitate development of a small second dwelling on a site (ie. 'as-of-right' with some limitations) could assist in the provision of better housing affordability, housing choice and extended family arrangements. This option could require that the property cannot be subdivided unless the tests of Clause 55 and Clause 56 of the Victoria Planning Provisions can be met.

### **Car Parking and affordability**

Consideration needs to be given to the parking requirements applied to affordable housing developments, particularly those in areas rich with public transport (ie. close to train stations and tram lines). The provision of car parking contributes to the high cost of housing. Greater support could be given to maximum car parking rates (as opposed to the current minimum rates), promoting arrangements for onsite car share facilities and the provision for bike parking, the latter two being more cost effective and affordable modes of transport.

## **2. Environmental sustainability and vegetation protection**

### **Flora and Fauna Guarantee Act 1988**

#### Integration of the Act

There is a strong need to ensure that the *Planning and Environment Act 1987* has a link and reference to the *Flora and Fauna Guarantee Act 1988* to enable an integrated framework and encourage the protection of all flora and fauna.

The *Flora and Fauna Guarantee Act* protects Victorian biodiversity and its significant species on public and private land however, there is limited ability to apply this Act on private land. Aligning both Acts would better enable the application on private land by Councils.

Currently the planning system does not facilitate the protection of critical habitats (as determined under the *Flora and Fauna Guarantee Act*) nor facilitates the Public Authority requirements to consider potential biodiversity impacts when exercising these functions. Similarly, native animals that are 'not co-located with native vegetation' do not exist as far as the planning scheme is concerned. Protection is only afforded to them when the native vegetation is impacted. This has direct consequences for a range of *Flora and Fauna Act* listed species that can occur in degraded spaces (like Golden Sun Moth living in Chilean Needle Grass and Striped Legless Lizard in Serrated tussock).

#### Kangaroo Management Plans

The approval of Kangaroo Management Plans ensure that any proposed development will manage risk to human safety and animal welfare with respect to the presence or displacement of kangaroos on the property and surrounding landscape. This is an issue which generates significant community concern and distress, particularly in growth areas.

Kangaroo Management Plans need to be better integrated with the planning process and ensure a strategic landscape-scale kangaroo management approach, to avoid issues like land-locking. State or regional planning policy should be introduced to facilitate precinct level Kangaroo Management Plans which could be a best practice approach for addressing the issue.

The inclusion of a regional Kangaroo Management Policy at Clause 12 of the Planning Policy Framework of the Victoria Planning Provisions would reinforce integration with the planning system. This would allow the Department of Environment, Land, Water and Planning (DELWP), with input from the Victorian Planning Authority (VPA) and Councils, to create specific area based strategic plans that address kangaroo management issues.

### **Cumulative impacts and net loss**

#### A better mechanism to identify cumulative impacts

Although the Guidelines for the Removal, Destruction, or Lopping of Native Vegetation 2017 require a proponent to account for past losses on their properties, there still needs to be consideration of cumulative impacts, including of past developments, which may lead to a continuation in the decline of biodiversity, particularly to threatened species or communities. One way that this could be addressed is to identify past developments through the Native Vegetation Information Management (NVIM) tool.

#### Review of vegetation removal exemptions.

The majority of vegetation loss in Victoria is through permitted uses and exemptions. Continuing to apply exemptions as they stand is likely to impact the ability to achieve the overall objectives of 'no net loss' to Victoria's biodiversity.

Recommendations for improving exemptions include:

- Fenceline exemption - the use of clearer terms in applying the 'minimum extent necessary'.
- Farming zone exemption:

- should prioritise areas already cleared for new buildings – ie. ‘where there is practical opportunity to site the buildings or works to avoid the removal, destruction or lopping of native vegetation’ should be inserted;
- the exemption should not apply to properties covered entirely by native vegetation, where farming practices would not be practical or viable;
- Bracken exemption - this exemption should be applied to areas of ONLY bracken, or bracken among exotic species. A 25% cover should include bracken where it is part of a patch with other native vegetation.
- Weeds exemption – the nomination of a maximum extent of clearance allowed should state:
  - 0.5 ha of native vegetation;
  - 15 native trees with any Diameter at Breast Height (DBH);
  - 5 native trees with >40cm DBH.
- Utility exemptions - should be considered under the Guidelines for the Removal, destruction and lopping of native vegetation rather than under an exemption.
- Fire protection exemption – should ensure that any native vegetation removal is to mitigate genuine bushfire risk and not to maximise developable yield.

#### Achieving the ‘no net loss’ objective.

Most losses in native vegetation in Victoria is from the permanent removal of vegetation however, the gains are predominantly management gains. This means that under the current vegetation protection framework, Victoria is permanently losing vegetation and the ‘gains’ being generated are merely temporary management gains - controlling for threats such as pest plants and animals. As a result, the area of species habitat is going to continue to decline unless there is a fundamental change in the way that the protection framework accounts for losses and gains within the system.

To strengthen the ability to achieve the ‘no net loss’ objective we suggest the following changes;

- Review the exemptions to ensure they don’t undermine the no net loss objective;
- Strengthen the ‘avoid’ and ‘minimise’ principles prior to offsetting;
- Apply the Guidelines for the removal, destruction and lopping of native vegetation wherever possible.

#### **Develop guidance to support strategic planning relating to native vegetation protection and management**

The State Planning Policy Framework could be updated in consultation with Councils to provide a more supportive framework for the development of local planning policies relating to biodiversity protection.

Currently, developing or updating environmental overlays is costly, time consuming and slow to get approved due to the level of strategic evidence necessary. Consequently, municipalities that support large areas of significant environmental values worthy of protection, are often constrained by relatively small budgets, and do not have the capacity to apply the environmental overlays necessary to protect local biodiversity assets. The State Government should support the development of local planning tools (ie. overlays) that protect local and regional biodiversity by facilitating processes that help address these issues, such as:

- Reducing the resources required by adopting a more streamlined approval process to facilitate development and implementation of Environmental Significance Overlays;
- Providing templates and practical guidance to assist Councils with creating and formatting amendments.

### **Enable offsetting within the local council area**

The vast majority of vegetation clearance in the state is offset through the credit register as 'general' offsets. This offset arrangement allows for vegetation removal that can be offset anywhere in a Catchment Management region, which is often very large and diverse. Councils recognise that opening the offset market to the catchment scale was introduced to increase market functionality, however the impact on regional biodiversity has been significant.

General offsetting has resulted in vegetation removal in peri urban areas with the offsets being satisfied outside of the local area most often in regional areas. This means that vegetation is being incrementally lost in peri urban areas and offset in regional areas because it is cheaper to manage land in a regional area (due to land values and intactness of vegetation). Therefore, it is strongly recommended that bioregional offsetting be reintroduced and allow for the requirement for offsets to be satisfied within the Councils geographic area.

Additionally, we recommend the following further improvements to offsetting:

- Specific offsets for all vegetation removal within endangered ecological vegetation classes (EVCs);
- Specific offsets for all vegetation removal within the intermediate and detailed pathways;
- requirements for offsets to be secured within the municipality where vegetation removal occurs;
- Where specific offsets are not available, the removal of vegetation should not be permitted. The opportunity for negotiation by applicants should not be provided in this instance. Negotiating these offsets contributes to the potential extinction of particular species and habitats.

### **Recognise all conservation areas as essential public open space infrastructure**

The conservation of land to protect, enhance and create habitat for nature conservation and for the Growling Grass Frog (GGF) is a requirement of the Melbourne Strategic Assessment, the Sub Regional Species Strategy for the GGF and the Biodiversity Conservation Strategy (BCS). In implementing the BCS the City of Whittlesea has identified a number of issues which risks the integrity and long-term security of conservation areas. This has the potential to lead to a failure in delivering regional open space, contributing to the extinction of threatened species and communities, and ultimately undermine the delivery of the BCS.

Within the City of Whittlesea there are eight conservation areas to be protected and maintained to ensure the survival of threatened species and ecological communities under the BCS and *Environment Protection and Biodiversity Conservation Act 1999*. Proactive management of Conservation Areas is essential in ensuring the survival of these threatened species and communities. Land management of these areas typically occurs when land is purchased or transferred to the Crown or another public authority. Prior to being transferred,

management of the land has not been established as a legislative requirement, meaning that areas are becoming degraded and losing the values that they have been set up to protect.

Transfer to the Crown (at no cost to the State Government and subject to the State Government's agreement) occurs under the Urban Growth Zone schedules when landowners with parts of their properties identified for conservation in the Precinct Structure Plan apply to subdivide their land. Alternatively landowners can choose to enter into a Section 69 agreement of the *Conservation, Forests and Land Act 1987*. The Section 69 agreement will require the landowner to manage the land identified for conservation in accordance with the BCS. Critically these requirements can only be achieved when and if a permit application for subdivision is made. If no permit application is submitted there is no trigger for any land to be managed in accordance with the BCS. For land entirely encumbered by a conservation area there is no triggering event that may see the land secured with an agreement or managed. In addition to this some developers are demonstrating reluctance in transferring their land to the Crown at the end of the development process resulting in a loss of public open space and lack of appropriate management within the conservation areas.

Both the BCS and the Sub Regional Species Strategy for GGF identify the need for statutory planning provisions to enable the protection and management of conservation land. The BCS and Victorian planning schemes are therefore an appropriate mechanism for improving and identifying options to achieve more effective management and transfer of land for public open space and conservation purposes.

### **Public acquisition of the Grassy Eucalypt Woodland Reserve**

The future 1200-hectare Grassy Eucalypt Woodland (GEW) investigation area in the Whittlesea Green Wedge as described in the Melbourne Strategic Assessment, remains a significant outstanding matter yet to be progressed by the State Government.

The GEW are Nationally significant ecological communities and the establishment of the GEW Reserve is necessary to enable the long-term survival of this *Environment Protection and Biodiversity Conservation Act 1999* critically endangered vegetation community.

The delivery of this Reserve is a commitment between the Commonwealth and Victorian Government under the EPBC Act and the Biodiversity Conservation Strategy for Melbourne's Growth Corridors 2013. To date no land within this reserve has been secured or acquisition processes commenced by DELWP and consequently the viability of this critically endangered ecological community is at risk.

In 2020 the State Government introduced the Melbourne Strategic Assessment (MSA) Levy to assist with funding the obligations of the Biodiversity Conservation Strategy 2013 including acquisition of the land for the GEW and other conservation reserves. Whilst the MSA levy has been introduced, the State Government has not outlined a timeframe for acquisition of land for the GEW.

As a matter of priority, the State Government should make good on their commitment to secure/purchase this land not only for the City of Whittlesea, but also the adjoining Councils and their communities.

### **Incorporating Traditional Owner knowledge and perspectives into planning**

The *Planning and Environment Act* and the planning framework more broadly should help to further Traditional Owner aspirations and goal of self-determination. The Victorian Traditional

Owner cultural landscapes strategy outlines some objectives that are applicable to the *Planning and Environment Act*. In particular, Objective 3 enabling Traditional Owner cultural landscapes planning; and Objective 4 embedding Traditional Owner knowledge and practice into policy, planning and the management of Country.

### **Environmental sustainability and climate change**

Greater strengthening of the Victorian planning framework and in particular, State planning policy is needed to proactively support climate change adaptation. Council notes that DELWP has two current initiatives: ESD Roadmap and Cooling & Greening Review which may potentially introduce stronger state policy. Council encourage and support these initiatives to ensure better integration and clearer guidance.

Currently, there is a disconnect between high level policy positions on climate change, both by State Government and Councils, and the day-to-day decisions that are being made within the built environment. Given the urgency with which climate change must be addressed at the local and state level, and the need for transformational adaptation, there is a clear imperative to elevate climate change within the planning system to a position that is commensurate with the threat it poses.

Failing to include, as part of legislative obligations, robust and comprehensive references to climate change, and to highlight the key role that decisions made within the planning system have, can compromise support for climate action. Climate change considerations need to be made explicit in the planning system so that the longer-term impacts and impacts on future generations are considered sufficiently among other interests and obligations that decisions makers need to consider in the planning system. It is recommended that the importance of considering climate change in decision-making is made more explicit, rather than relying on generic references to sustainability.

Policy benchmarks and standards need to be kept up to date in alignment with the best available data and climate change science. The application of the precautionary principle points to a need to not make minor changes, but to review all facets of the system and to activate requirements for climate change responsive outcomes at all levels.

Responses to climate change need to be integrated to contribute to both mitigation and adaptation actions for transition to a net zero and climate resilient future. While the current planning system talks clearly to the delivery of energy efficiency, it is recommended to go further to acknowledging planning's important contribution to net zero emissions outcomes.

## **3. Certainty and fairness in planning decisions**

### **Mandatory height limits and minimum apartment sizes**

Planning regulation relating to both apartments and units/townhouses needs to align with the changes to the National Construction Code (and Victorian Building Regulations) relating to accessibility to ensure suitability for people with disabilities as well as all life cycles.

The Victoria Planning Provisions need to ensure apartment sizes and multi-unit developments all offer good liveability in terms of apartment size and storage that are suitable for people throughout their entire lifecycle (ie. including families). For apartments to be considered a real alternative for low density dwellings and to be able to accommodate a growing population, they need to appeal to more than just downsizers or singles/young people. Accessibility needs

to be considered in the early stages of the design to provide a diversity of apartment options to suit the community at all stages of life.

### **Protecting Green Wedges and the urban growth boundary**

In 2021, the City of Whittlesea made a submission to DELWPs *Planning for Melbourne's Green Wedges and Agricultural Land Review*. It is understood that the outcomes of this review may be announced in the coming months which may address the issues raised, in the meantime, Council's submission raised the following key issues:

- There is a lack of clear direction and guidance as to what the current planning provisions want the Green Wedge and rural land to be 'protected' from (Clause 14.01-1S of the Victoria Planning Provisions) resulting in inconsistent decisions that damage the Green Wedge and rural land and reduce the efficacy of the Urban Growth Boundary (UGB).
- Clause 14.01-2S makes reference to economic sustainability and climate change resilience of agricultural land but lacks detailed explanation on what and how this can be achieved.
- Greater guidance is needed to protect against inappropriate subdivision of Green Wedge or rural conservation land resulting in small lot sizes that encourage a peri-urban lifestyle or rural residential living.
- Council supports DELWP recommendation for the provision of an expert advisory panel that can act as a voluntary/mandatory referral. This would greatly increase the ability of Councils to protect the Green Wedge and retain the strength and efficacy of the urban growth boundary. However, further consultation on the implementation of any advisory panel should be consulted with affected Councils.
- Greater guidance via a new planning practice note for use and development within the Green Wedge, in particular, more detailed guidelines for the assessment of non-agricultural use or development.
- Update the Victoria Planning Provisions to encourage appropriate siting, design and scale of sensitive uses and developments to avoid conflicts with agricultural uses and protect 'right to farm'. Such policy would provide the leverage necessary to avoid future potential conflicts, by ensuring adequate buffer/separation distances are allowed for.
- Further consideration needs to be given as to how the guidance and interpretation of the 'in-conjunction' test for dwellings and sheds, can be improved to ensure legitimate, fair and reasonable outcomes.
- Amend the schedule to Green Wedge zones to allow site coverage, setbacks and building heights to be mandated for developments associated with discretionary uses. Council strongly supports guidance on setbacks and site coverage for developments.
- A hard boundary needs to be maintained through the UGB, policy and the planning provisions being implemented. Alternative approaches to support this hard edge such as the use of public open space i.e. the Quarry Hills Regional Parkland and the Grassy Eucalypt Woodland (GEW) investigation area reserved for Melbourne's north.
- A clear UGB provides long term certainty and clear strategic direction about where housing and other urban uses should be located. The current UGB has not been applied consistently and has resulted in a sense of uncertainty within the local community and some land use speculation/land banking around the perimeter of the Township. This has resulted in increasing pressure to extend the Township boundary to support additional residential development.

## 4. Protecting heritage in Victoria

### The adequacy of current criteria and processes for heritage protection

While the *Heritage Act* was reviewed and updated in 2016, heritage provisions in the *Planning and Environment Act 1987* similarly need to be reviewed and updated to be brought in line with current conditions and community expectations.

Consider the following matters with regard to heritage provisions in the *Planning and Environment Act 1987* and the Victoria Planning Provisions:

- Protecting heritage other than ‘place’ - cultural heritage landscapes, and views. Aboriginal tangible and intangible heritage (already protected by the *Aboriginal Heritage Act 2006* and *Regulations 2018* but needs to be better integrated in the *Planning and Environment Act 1987*).
- Ensure the *Planning and Environment Act 1987* incorporates the criteria of heritage values of a place and definitions as established under the *Burra Charter*.
- Review and update Planning Practice Notes relating to heritage protection (Numbers 7 and 45 for example) which do not provide current, accurate advice.
- A new Planning Practice Note to provide guidance on heritage outcomes is essential. This needs to cover: development guidance such as the Office of the Victorian Government Architect, *Heritage and Design*; guidance on preferred and interim uses, including prohibited/discouraged uses of heritage places; guidelines for Conservation Management Plans and dry stone walls; and land use planning and heritage in the Precinct Structure Planning process.
- Consider applying the ‘no net loss’ principle to heritage conservation in the way that it is applied to native vegetation.
- Ensure the planning system is proactive in regulating maintenance to an acceptable standard, other than the demolition by neglect legislation.
- Maintenance of heritage places by developers to stop further deterioration should be an action for Stage One of any development permit; significant time between the first stage of a development and the final stage can be disastrous if heritage protection is not negotiated at the beginning.
- Provisions to support the adaptive re-use of heritage places which are aligned with climate change, global initiatives for sustainability, waste reduction, etc.
- The process for nomination to the Heritage Overlay is currently lengthy and there are examples of heritage losses that have occurred because of delays. For example, remove delays for approval of interim protection when needed by making that decision possible at the local level, rather than requiring Ministerial sign off.
- The lack of integration of protection for built historic cultural heritage with protection of tangible and intangible Aboriginal cultural heritage creates artificial barriers to a greater

understanding, valuing and promotion of the entirety of Victoria's heritage. Determine how to effectively protect the totality of our shared heritage.

### **Possible federal involvement in heritage protection**

The federal level is not the most appropriate level at which to protect places of *local heritage significance*. The Commonwealth manages the National Heritage List, together with the Commonwealth Heritage List, which replaced the former Register of the National Estate, which was closed and archived in 2007. Places on the National Heritage List are places of outstanding heritage value for Australia as a nation, while the Commonwealth Heritage List are heritage places that are owned or controlled by the Commonwealth of Australia. A place on the National Heritage List is protected under the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Protection for places of local heritage significance must remain the role of Councils, where understanding of the social, cultural economic and environmental circumstances in the environs of the place is well understood and where the sentiments, aspirations and meaning for the local community are taken into consideration when protecting the heritage values of a place.

### **Separating heritage protection from the planning administration**

Greater promotion and understanding of the values of heritage places, landscapes and localities are critical to the success of an integrated planning framework and the future of our cities, town, communities and neighbourhoods. Heritage cannot be understood in isolation from other forms of planning. Such a narrow focus shows a lack of strategic vision and hampers innovative outcomes and solutions which should take account of the contributions heritage places make to community identity, sense of place, beautiful environs, sustainability and adaptive re-use, recognising change over time and the nature of the historical continuum, shared history and what has meaning and value for all Australians.

Greater resourcing, support and guidance are critical to assist Councils in the effective implementation of heritage within the planning systems. This could include resourcing and/or funding to assist heritage protection in the form of co-fund heritage expertise/advisors, co-fund heritage studies which are very costly.

### **Establishing a heritage tribunal to hear heritage appeals**

Under the current approach, members of the Victorian Civil and Administrative Tribunal (VCAT) must be acknowledged and accomplished heritage professionals, jurists, advisors, practitioners, or similar. The appointment of a heritage tribunal would resolve the concern that many Councils have when appearing before VCAT which is about the experience and credentials of the sitting members with regard to heritage place protection. The appointment of a heritage tribunal must be integrated with planning process and ensure holistic decision making.

The heritage tribunal would also have to meet with enough frequency that it could hear heritage matters in a timely fashion, without the delays that cause Victoria to lose its valuable heritage places and assets.

Alternatively, it could be incorporated as 'heritage experts list' within a VCAT Panel where heritage expert list members would have professional development training in all matters,

including heritage planning to ensure well informed and integrated decisions are made. The 'expert member' would be an acknowledged and accomplished heritage professional. Ensure any professional involved in hearing heritage appeals is trained and up to date with provisions of the Burra Charter and assessments of heritage significance.

### **Appointment of independent local and state heritage advisers**

The return of a co-funded heritage advisor program would be welcome by Councils. When Heritage Victoria stopped providing grants to Councils to support local and state heritage advisers for both Council officers and owners of heritage properties, inevitably a large number of Councils did not continue to provide the service. This is critical to heritage conservation in Victoria.

The heritage advisor funding program should be reinstated as a valuable use of state resources. Matching funds could be required from recipient Councils. This will address the ongoing poor profile for heritage - it is chronically underfunded, ignored until the last moment, addressed as the final issues for permit applications, or pushed to the final stage of multi-staged developments and handled as an afterthought and/or an impediment. In addition, funding to support landowners on how to undertake alterations/renovations/developments that are sympathetic to the heritage value and preservation is fundamental to ensure quality outcomes.

### **Role of Councils in heritage protection**

Heritage is core business for Councils under the *Planning and Environment Act 1987* and in implementing the Victoria Planning Provisions (Clause 43.01 the Heritage Overlay and Clause 52.33 Post boxes and dry stone walls). It is noted that the State of Heritage Report 2020 (Heritage Council of Victoria), provides a carefully researched summary of the many areas where heritage and Councils need greater support, guidance and recognition for the fact that Councils manage over 190,000 heritage places in Victoria. By comparison, just over 2300 places are listed on the Victoria Heritage Register, managed by Heritage Victoria. The greatest share of responsibility sits with Councils while the funding is deeply inadequate to address the need. And that excludes legal fees that Councils may face for appearances at VCAT, Planning Panels or the Supreme Court.

It is also important to recognise that heritage management in inner city metropolitan Councils is very different than heritage in regional cities, growth area Councils, and rural Councils in Victoria. The 'principle of fairness to all Victorians' is not reflected in the inequities the residents experience and some Council and Shires face when trying to deal with heritage protection and management.

Many growth area, rural and regional Councils have a large numbers of heritage places, outdated heritage studies, lower staff numbers, deteriorating heritage places owned by Councils, while facing the urgency of dealing with many other community matters. The result means that decisions about heritage protection and conservation are placed well at the end of the line for resourcing and funding. As an example of the problems arising from the current planning framework, such Councils need to protect hundreds of dry stone walls (Clause 52.33) yet DELWP advice is that each individual wall must be assessed for inclusion on the Heritage Overlay with its own HO number. The expense of that approach means that only a handful of Councils have dry stone wall protection in the local planning scheme.

Further support should be provided at Councils level to:

- Update out of date heritage studies and undertake gap analysis;
- Provide timely decisions in line with statutory timeframes when nominating heritage places;
- Bring older Statement of Significance into line with new requirements of the Heritage Overlay;
- Provide for heritage advisors and other specialist advice such as material and collections conservation, engineering heritage, etc;
- Establish a source for broader strategic heritage advice from DELWP and VPA including a designated heritage unit and to ensure all practice notes and guidelines are proactively updated and reviewed;
- Other specialist advice such as legal opinions to support council positions to conserve heritage.

### **Penalties for illegal demolitions, tree removals and tree poisoning/damage**

Illegal demolitions, tree removals and tree poisoning/damage need to be clearly defined with threshold and triggers clarified and integrated within the *Planning and Environment Act 1987* and the Victoria Planning Provisions. Greater fines alongside improved enforcement provisions and tools are required to stop illegal demolitions and tree removals. For example, enable the ability for Councils and other Authorities to install signs on land highlighting the deliberate destruction/poisoning of trees, as is the City of Whittlesea's current practice.

Clarity and greater ability for compliance and enforcement of illegal vegetation removal, tree poisoning/damage and taking of threatened flora or fauna from private land should be pursued under the *Planning and Environment Act 1987*. Integration of the Act and the planning provisions to be legally enforceable with enough resources to enable effective implementation. In addition, is recommended a change to the penalty units associated with breaches to be adopted as the financial benefits of doing the wrong are not in any way commensurate to the uplift in land value.

### **Other**

#### **Archaeological place protection**

Currently the *Planning and Environment Act 1987* does not address assessment of impacts on sites of non-Indigenous archaeological heritage. Currently Aboriginal archaeological places are protected by the *Aboriginal Heritage Act 2006* and *Regulations 2018* whilst Archaeological places/sites are protected in Victoria's *Heritage Act 2016*.

Failure to address protected sites in land use planning legislation is an oversight which does not align with heritage legislation that recognizes archaeological resources as being part of our historic cultural heritage. Archaeological sites not associated with a Heritage Overlay and/or not known for other reasons remain vulnerable. The recent excavation of many buried archaeological sites in the Melbourne CBD illustrates how little we know about what exists underground – and therefore, how great the need is to recognise archaeological resources in the *Planning and Environment Act 1987*.

In the absence of guidelines in the *Planning and Environment Act 1987* to mandate investigations, the exposure of undocumented archaeological resources can lead to delays to

development through unanticipated finds, additional costs, expanded project scope, physical restrictions, redesign and other issues which may result from inadequate planning, poor risk management and lack of knowledge about archaeological requirements.

The aims of recognising archaeological resources in the *Planning and Environment Act 1987* would be to:

- Identify for government authorities, property owners, developers and archaeologists when land use planning activities will have impacts on sites that contain significant historical archaeological remains and deposits;
- Require that management plans be developed which determine the identification, significance and appropriate management of archaeological sites and items included in the impact areas;
- Encourage consistent standards and approaches for management of archaeological resources;
- Provide Councils and other state authorities and agencies with a mechanism that allows more timely consideration and integration of archaeological requirements into planning processes;
- Assess existing resources in an inclusive rather than piecemeal approach from the outset of any permit process;
- Utilise the *Burra Charter* and other cumulative knowledge based on past archaeological projects to inform assessments;
- Contribute to the Heritage Victoria's VHI database of archaeological sites in the state, providing for state level protection;
- Contribute to our understanding of the character and nature of the historic cultural heritage of Victoria as contained in archaeological remains;
- Determine the cultural significance of archaeological places in a systemic and consistent manner, at the local, state, or national level;
- Undertake assessments and provide recommendations for the appropriate future management of places affected by land use planning;
- Provide certainty for owners, applicants and developers about their legislative obligations to protect archaeological resources in Victoria;
- Provide certainty for people in Victoria that archaeological resources are being protected and managed appropriately.

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

A recent initiative by DELWP to "improve the operation of ResCode", made no changes to the objectives driving the quality of housing (outcome) and, arguably, lowers the bar on achieving the standard by introducing "deemed to comply" and removes any opportunities for regulators to negotiate a better outcome.

This is a lost opportunity for delivering quality housing and a diversity of housing types in residential zones. The content of the ResCode standards are outdated and need to be proactively reviewed and improved to bring them up to date.

The failure to update ResCode poses a potential risk to the quality and diversity of housing in Victoria. An example is the Better Apartment Design Standards, where the provisions set higher standards than those contained in ResCode (Clause 54 and 55). This could potentially

impact both the quality and diversity of housing, as it effectively acts as an incentive for developers to default to building multi units/townhouses (rather than apartments) because of the lower performance standards and cost of development, resulting in poorer outcomes for all Victorians.

To address this, the following recommendations are made:

- Remove the incentive to develop multi units/townhouses (with their lower development standards) that has resulted from the introduction of the Better Apartment Design Standards and Clause 58, by ensuring the two forms of housing provide an equivalent standard of amenity for residents.
- Given the time that elapses between planning and building permit, reflect the changes to the National Construction Code (and subsequently, Victorian Building Regulations) which will introduce accessibility standards equivalent to Liveable Housing Design Guidelines Silver and Gold specifications. This would affect B3, B25.
- Ensure the greening strategies adopted by Councils (and including current Cooling and Greening initiatives by DELWP to implement Plan Melbourne) talk to the enhancement of urban amenity and creating more opportunities for urban greening. For example, the significant trees and landscaping objectives at Clause 54.03-6 and 55.03-8 in the planning provisions have no aspiration to increase greening. Rather, it seeks a continuation of whatever existing landscape character is already established in an area and the proposed “improved” ResCode does nothing to change this. Although additional specific variations to Schedules to the Zone have been updated to provide greater greening, ResCode needs to be updated to support broader urban greening strategies.

## 6. **Any other relevant matters**

- In December 2020, City of Whittlesea sent a letter to the Minister of Planning, Hon Richard Wynne outlining a range of concerns in relation to the impact of Infrastructure Contribution Plans (ICP) in the new growth areas. Across the City of Whittlesea’s growth areas, there are 25 new community centres and 27 recreation facilities identified in approved growth area strategic plans to service new communities where Council has been identified as the responsible Delivery Agency. However, funding limitations created by the cap on community and recreation levies results in a significant funding gap that needs to be met by use of rate payer funds and in turn significantly impacts the ability of Council to deliver these critical public facilities in a timely manner.

The ICP system provides no ability to apply a Supplementary Levy in circumstances where an additional contribution may be warranted for a precinct in the same way as it can be for transport projects. This results in a cumulative shortfall across multiple new suburbs in the City of Whittlesea’s growth areas.

The current cap for community infrastructure within the *Planning and Environment Act* and the Victorian planning framework is severely impacting growth area Councils with the ability to deliver essential community and recreation infrastructure to new communities. Charter 29 (a group of accredited professionals related to planning, architecture, urban design and environment) have reinforced this concern and provided recommendations in their recently released report ‘Growing Pains – The Crisis in Growth Area Planning’.<sup>6</sup>

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<sup>6</sup> Charter 29 (September 2020) - *Growing Pains – The Crisis in Growth Area Planning*.  
<https://www.charter29.com/s/Charter-29-Report-200904-as-printed-and-mailed.pdf>

- Greater support and provision for innovative housing development models to be enabled. Some examples include the Community Housing Sector along with examples of market-innovation such as Nightingale, Assemble Communities, Property Collectives, Y-Se Housing. These groups are more likely to actively foster community, push environmental standards and greatly exceed minimum regulatory standards.
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