

**Combined Residents of Whitehorse
Action Group (CROWAG) Incorporated.**

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The Committee Manager
Legislative Council Environment and Planning Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

By electronic lodgement <https://www.parliament.vic.gov.au/epc-lc/article/4810>

Re: Inquiry into Protections within the Victorian Planning Framework

CROWAG thanks the Committee for the opportunity to submit a community view on relevant aspects of the above inquiry.

CROWAG is a peak body within the *City of Whitehorse* representing the interests of its affiliate organisations and individual members, advocating to Council and State Government for appropriate development across the city, the protection of trees, landscape, and heritage and for improvements in Council governance.

This submission has been endorsed by the CROWAG committee.

We address the following *Terms of Reference*

- (2) Environmental sustainability and vegetation protection.
- (3) delivering certainty and fairness in planning decisions for communities,
 - (a) mandatory height limits and minimum apartment sizes.
 - (b) protecting Green Wedges and the urban growth boundary.
 - (c) community concerns about VCAT appeal processes.
- (4) Protecting Heritage in Victoria.
 - (a) The adequacy of current criteria and processes for heritage protection.
 - (b) (g) penalties for illegal demolition and tree removal.

(2) Environmental sustainability and vegetation protection.

With the *Blackburn and District Tree Preservation Society*, and other affiliates, we have long held that there are inadequate protections for trees and especially canopy within the Planning Framework and within Council regulations. According to the Whitehorse Urban Forest Strategy 2021-2031¹. Tree canopy in Whitehorse has fallen dramatically over the past decade. In 2014 canopy cover in Whitehorse was 20.28% and by 2018 had fallen to 18% and is declining on a trajectory of 1% every two years. In excess of 60% of canopy trees in Whitehorse are on private property. This is frightening.

The Council aspiration is to achieve 27% canopy cover by 2031, impossible with 2022 estimated canopy cover of around 16%. Council outcomes are unachievable without State Government intervention to protect trees. State government authorities and councils now know in detail the benefits of tree canopy and preservation. Worldwide research advises that vegetation cover in general and canopy trees in particular provide significant benefits in an urban area:

- a) They provide passive cooling that moderates summer heat island warming and the flow-on human impacts of heat stress and additional costs associated with mechanical cooling of buildings.
- b) They provide shade that cools pavements and road surfaces making active transport more attractive.
- c) They provide amenity by way of aesthetic appeal and softening of hard surfaces and building bulk
- d) They improve air quality by transpiring oxygen into the air
- e) The greenhouse gas, carbon dioxide, is stored in the wood and leaves contributing to greenhouse gas reduction.
- f) The best canopy trees are the ones we already have. Their replacements require decades to reach maturity, and only a small percentage will achieve that status.²

The State also has lofty ambitions for tree canopy and biodiversity, but its regulations and the minutiae in law and weak compliance, work against these.

Our primary focus is on issues to do with the Whitehorse Planning Scheme for which we have lobbied Whitehorse Council and the Minister for Planning, The Hon Richard Wynne MP (Minister). Poorly regulated vegetation controls through the planning scheme contribute to poor outcomes.

¹ <https://www.whitehorse.vic.gov.au/things-do/parks-playgrounds/parks-and-bushland-reserves/urban-forest#:~:text=The%20urban%20forest%20objectives%20aim,ground%20when%20viewed%20from%20above.>

² '10 Reasons to Plant More Trees', the Whitehorse City Council

Key issues for CROWAG are:

- a. Residential infill development and the tendency to build larger houses, negatively impacting the urban residential tree canopy leaving inadequate space for replacement canopy trees.
- b. Illegal removal of trees (without a permit).
- c. Removal of trees on the basis of flimsy, spurious grounds, relying unreasonably on developer's arborist recommendations.
- d. Lack of a fit for purpose compliance and enforcement regime to ensure vegetation management achieves state and local government policy objectives outlined in documents such as Plan Melbourne and the Whitehorse Planning Scheme.

In relation to the above, CROWAG wrote to the Planning Minister in December 2018 (Attachment 1a and 1b and response) highlighting the loss of tree canopy and the inadequacy of the compliance and enforcement regime in Victoria and soft touch implications for removing trees illegally.

We also requested that the Minister consider NSW tree protection laws as a model. **The Environmental Planning and Assessment Act 1979 (NSW)** provides that the maximum penalty for illegal tree removal or destruction in breach of the Act is a fine of \$1.1 million and a further fine of \$110,000 for each day that the offence persists. Breach of a Tree Preservation Orders (TPO) is a criminal offence.

- e. Related to the above, one of the longest running and consistent policy failures of state government has related to the establishment of VicSmart and its impact on tree removals. Residents of Whitehorse and those across Victoria are witness to the normalisation of the abuses of VicSmart applications for single tree removal. Residents in their hundreds in Whitehorse, who have complained to council about trees being removed against planning agreements and/or VCAT determinations, are too often advised that this '*was a VicSmart application.*' That means multiple tree removals, one application at a time for tree removal, and they are approved almost automatically. CROWAG wrote to the Planning Minister and MP's in May 2021 seeking to close loopholes in VicSmart for single tree removal and ensure better compliance tools are available for the retention of tree canopy through meaningful enforcement.
- f. *Whitehorse City Council* is repeatedly advising community groups that its 'hands are tied' by planning scheme constraints on so many planning matters. Local community interests are no longer adequately or democratically heard.
- g. Too frequent approval of planning applications with minimal or no changes by Council officers. This appear to be partly born of a sense of fatalism by Council because of overriding state planning requirements.

- h. Secrecy seems to have also invaded the process, encouraged by COVID safety precautions and limited opportunity for face-to-face discussions with Council officers.
- i. Inadequate time for communities to respond to development proposals is a perennial problem in Whitehorse. Too often, council notices on site fences and on websites and allowing two-week for objections, fail to seriously enable community feedback and require residents to do in two weeks, what developers have spent months preparing for. That timing is also exploited with timing of notifications coinciding with school holidays, easter breaks etc. This is grossly unjust and should be altered to increase opportunities for residents' input to planning and heritage protection. Policy must be consistent with the Local Government Act 2020 so that Councils are required to allow for more community engagement and participatory democracy. These principles should also apply to planning decisions.
- j. CROWAG also has concerns that Councils are given inadequate time to research and consider development applications so as to support state and local law and regulations.
- k. CROWAG also has concerns about the impact election funding by developers has on democracy in Victoria. To thousands of taxpayers there seems to be too many odd decisions made at all levels of government and within departments to raise concerns and there are too many instances of possible corruption.

RECOMMENDATIONS:

- a. That in its decision making, VCAT gives greater weight to environmental sustainability and vegetation protection, such that it ranks equal to, or higher than, urban consolidation and the pressures to accommodate a higher population. Documents such as the Government's biodiversity strategy, Protecting Victoria's Biodiversity – Biodiversity 2037, Plan Melbourne and Whitehorse Planning scheme contain policies that imply equal weight, but it is not applied in practice.
- b. That Councils be given powers to set mandatory planning standards such as height limits, lot sizes, minimum apartment sizes, and site coverage by buildings.
- c. That the statutory timeframe for Councils to consider applications be increased from 60 days to 90 days and extended for VicSmart applications.
- d. That payments in money or in kind by developers or their agents, to any prospective or declared candidate for election, be banned with substantial penalties for breaches.
- e. That *Yellow Notices*, of proposed development posted at sites and on Council websites be applicable for a minimum of four weeks to allow more time for residents to respond.

(3) delivering certainty and fairness in planning decisions for communities,

(a) mandatory height limits and minimum apartment sizes.

Height limits should be able to be set by Councils on the basis of robust strategic analysis. Box Hill is an example where mandatory height limits have been proposed by Council but never gazetted and the result is unreasonably tall buildings overshadowing streets and public open space, with visual bulk adding to poor on street amenity with wind tunnels, congestion, and poor walkability. Buildings erected outside of Major Activity Centres should not exceed the height levels specified in the Residential Growth Zones, that is, 4-5 levels if the liveability of Melbourne is not to be destroyed.

(b) protecting Green Wedges and the urban growth boundary.

Only comment here is that we support protecting both.

(c) community concerns about VCAT appeal processes.

Key issues for CROWAG are:

- a. The lack of transparency and third-party rights to information relating to planning applications that impacts their community or the neighbourhood in which they live and limited opportunities to lodge objections, particularly VicSmart applications.

In a democratic society transparency of decision making should be a cornerstone of good governance. Lack of third-party rights lead to abuse of process, lack of trust in decision making and wasted resources.

- b. Lack of information for residents of an approved planning application. For a resident in a street where the sound of a chainsaw heralds the removal of a large tree, with no information relating to the removal, the response is often an urgent call to a council compliance officer. The officer arrives on site and determines if there is a permit to remove. If there is, the removal proceeds in compliance. If there is no permit, the removal usually continues with an on-the-run assessment by the compliance officer, providing permission to proceed. The resident who made the call may be advised that there was no permit, and the matter has been dealt with. The tree has been lost and the ramifications for the owner or tree contractor are unknown. A totally unsatisfactory result.

CROWAG has been in discussions with council seeking a better system that provides on-site information about permitted tree removals. Just like the yellow sign advertising a planning application, a follow up sign of a different colour could replace the yellow sign that indicates approval of the development with a brief description of the proposal and tree species and their number from a landscape plan that are

permitted for removal. This sign would demonstrate the process is legitimate, advise locals of the decision and mean that everyone who has an interest is informed. Similar to a notice to demolish it would provide transparency. CROWAG has developed a full-size mock-up of such a sign and would be happy to make a presentation about its use.

- c. Unintended consequences of VicSmart applications relating to tree removal. Government and local councils have for decades been aware of growing concern amongst community groups that VCAT seems to back 'developers' disproportionately and unreasonably. That criticism is too often greeted with contempt, as an attack on a statutory body which is almost heresy. Government needs to change its approach to listening, to and engagement with taxpayers and examine the numerous inadequacies within VCAT processes, their application of law and handling of conflicts between state and council regulations and aspirations.

See correspondence between CROWAG and the Planning Minister in December 2018 (Attachment 1a and 1b) highlighting the loss of trees.

- d. Reduced local autonomy for councils in planning matters needs to be reversed in the following ways:
 - i. That Councils be given powers to set mandatory planning standards such as height limits, lot sizes, minimum apartment sizes, and site coverage by buildings.
 - ii. That the statutory timeframe for Councils to consider applications be increased from 60 days to 90 days.
- e. VCAT decisions are inevitably weighted toward urban consolidation and accommodating larger population objectives ahead of environmental sustainability, vegetation provisions or heritage values. This is despite those values being identified as key outcomes in the planning schemes. There needs to be a rebalancing of the relative weight given to the environmental sustainability, vegetation provisions or heritage values to ensure existing amenity is not traded off for higher densification. There can be both with careful planning.

RECOMMENDATIONS:

- a. That a clause be inserted into Section 84B of the Planning and Environment Act requiring VCAT to give effect to the planning policies of local Councils.
- b. That VicSmart be abolished or substantially amended to prevent abuses and actions counter to state and local government law.
- c. That the weighting of VCAT decisions is rebalanced to give more weight to environmental sustainability, vegetation provisions or heritage values.

(4) Protecting Heritage in Victoria.

(a) The adequacy of current criteria and processes for heritage protection.

CROWAG would like heritage protection given more prominence in the planning scheme. Like environmental sustainability, neighbourhood character and vegetation protection, heritage is treated less favourably in decision making than urban consolidation and accommodating a larger population.

Heritage, including houses, buildings, structures, and landscapes are our links to the past. In Australia, heritage is not valued as it is in other countries. European cities for instance attract many visitors to see and experience historic towns and buildings. Their people have recognised the important links with the past.

Where heritage has been recognised as important and identified on heritage registers it deserves to be respected.

RECOMMENDATIONS:

- (a) That a better compliance and enforcement regime be developed to protect recognised heritage structures, places, and landscapes, with significant penalties that provide a disincentive for non-compliance.
- (b) That heritage protection be given more weight in planning and VCAT decisions
- (c) That incentives be provided to owners of heritage sites and buildings so that they can be cared for to the extent warranted by heritage value.

(g) penalties for illegal demolition and tree removal.

See our comments above, Key issues for CROWAG, under Environmental sustainability and vegetation protection.

Yours sincerely,

Ross Gillespie

President CROWAG