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DAREBIN

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Submission to Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing

November 2019

Note: this submission has not been endorsed by Council. It will be considered by Council on 2nd December 2019.

Darebin City Council submission

Planning mechanisms for affordable housing

Introduction

Darebin City Council welcomes the opportunity to provide input to the Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing (the MAC) with an officer-level submission.

Council is deeply committed to increasing the supply of affordable housing in Darebin. Recent analysis undertaken by Council indicates that 28 per cent of all new housing must be social housing to meet demand. Land prices in Darebin are increasing, pricing out growing numbers of households from the local housing market.

Over many years, Council has consistently advocated for mandatory provisions for affordable housing in the planning scheme. Council welcomes the steps taken by the Victorian Government to strengthen the role of the planning system in facilitating affordable housing, including introducing an affordable housing definition into the Planning and Environment Act 1987. Similarly, Council welcomes the establishment of the MAC.

However, as detailed further in this submission, Council is of the view that the existing mechanisms are inadequate, having delivered very few outcomes and having limited capacity to respond to demand. The voluntary system cannot be relied upon to meet the challenges of responding to affordable housing demand.

In addition to utilising the planning system, Council is of the view that there is critical need for substantial, ongoing investment in affordable housing. There is no reliable source of funding for housing associations or government agencies to supply social housing. In the absence of such funding, the planning system can only ever be expected to deliver a minor amount.

Council's experience regarding this matter is detailed in the attached document, in accordance with the MAC's terms of reference. Council would welcome the opportunity to participate in further consultations regarding this matter.

Council officers support MAV's request that the MAC speak to individual councils regarding these matters. Councils are best placed to advise the MAC on these matters and hold a wealth of knowledge and experience in both policy and implementation.

Background

Council notes that the changes to the *Planning and Environment Act 1987* came into effect on 1 June 2018, and as such, there has been a relatively short period of time to understand their efficacy.

Notwithstanding this, Council has not secured any affordable housing contributions through the current framework. This likely reflects on the framework's lack of efficiency and limited potential, as further detailed below.

Council has made attempts to utilise the framework, and engaged an Affordable Housing Advisor, in collaboration with Moreland City Council, to build capacity and advise on affordable housing negotiations. Despite this, the framework has not delivered any affordable housing dwellings, nor any commitments to deliver such dwellings.

Like other contributions frameworks, affordable housing contributions must be complemented by other sources of funding. The planning system can, and should, only ever contribute to a larger supply of affordable housing funded by state and federal government.

Council would like to refer the MAC to the large volume of research and evidence that has been produced in relation to this issue, including for the Victorian context.

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Response to MAC terms of reference – 4a

4a Advise on the efficacy of Victoria's current planning policy settings and mechanisms for affordable housing contributions via the planning system, taking into account:

- *the scale and distribution of affordable housing need, and*
- *the supply of affordable housing likely to be realised through the planning system under current policy settings*

This will include consideration of the outcomes to date of the introduction of the voluntary framework which came into operation on 1 June 2018 and its potential to meet the demand for affordable housing.

Based on its experience and knowledge of housing policy Council considers that the current planning policy settings and voluntary mechanisms are not effective and have limited potential to meet the need for affordable housing in Victoria.

Scale of need

The scale of need for affordable housing in Darebin, and across Melbourne, is significant. Council has recently undertaken analysis of this demand, as detailed below:

- In 2016, an estimated 6,275 very low- and low-income households in Darebin were in need of social housing. This represented 10.74 per cent of all households.
- In this same year, 2,486 dwellings were available as social housing, representing 3.92 per cent of all dwellings.
- The social housing supply gap was 3,789 dwellings in 2016.
- By 2036, estimated social housing need will be 9,321 dwellings, representing 10.33 per cent of total dwellings.
- To meet current and future demand, an additional **380 social housing dwellings per year are needed**. This represents **28.71 per cent of all new housing supply**.

As demonstrated by the figures above, the demand for social housing is significant. Nearly 1 in 3 new dwellings needs to be social housing in order to meet demand.

While the current framework can, in theory, be applied to developments of any size and nature, in practice, such negotiations usually arise in high density, large-scale developments. Currently, only 6.2 per cent of Darebin's housing stock is high density. While supply of high-density housing stock is likely to increase, the quantum of affordable housing that can be delivered through this is unable to meet demand. The volume of developments to which the current framework is applicable is therefore limited.

Reliance on goodwill and concessions

In addition, the existing framework relies upon the willingness of developers to enter voluntary negotiations. While there are developers who are willing to do this, the reliance upon such willingness results in uncertain outcomes and a lack of predictability. Council has encountered the following when seeking to enter voluntary negotiations:

- A perception that the delivery of affordable housing (especially social housing) is the responsibility of state and federal government.
- Concern that accommodating social housing tenants will impact negatively on private dwelling sales.
- Concerns around owners' corporation management of social housing.

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- Expectation that registered housing associations will be able to purchase (either at market price or with a minimal discount) dwellings that are made available.

Council acknowledges that some of the concerns held by developers are legitimate and warrant further investigation by the MAC. Council is firmly of the view that the delivery of affordable housing is not a primary responsibility of the private sector, but a role of state and federal government. This does not mean that there is no role for the private sector, but rather that its role complements state and federal government initiatives.

The voluntary negotiations that take place also have the potential to undermine other planning objectives. For example, Council may consider concessions for car parking, additional open space provision, or amenity (i.e. increased height, decreased setbacks). These concessions mean that other objectives (i.e. off-site amenity) could be compromised.

The current framework also means that any affordable housing contributions are separated from merits-based reviews of planning controls (i.e. VCAT or planning panel). Because councils are advised to secure Section 173 Agreements prior to decisions being made, there is no opportunity for the contribution to be considered on its merits. However, the concessions made to incentivise the affordable housing (e.g. reduced car parking, increased height) can be considered and may ultimately not be supported.

Lack of transparency

In addition, under the current framework, these negotiations are made between officers and the proponent, and can result in a lack transparency. The trade-offs are not, as a matter of course, consulted upon or made clear to the broader community. This raises issues of how decisions are made, and who decides what is or is not an appropriate concession or incentive.

This also raises the issue of how affordable housing contributions are protected into the future, when such concessions have been made. For example, should affordable housing contributions be provided in perpetuity, or for a limited period? If the affordable housing is no longer provided, how are the concessions that have been made treated? They are often non-reversible. The exchange of affordable housing for other items raises challenges in the ongoing management of both.

Challenges and lack of clarity in planning controls

Council has sought, through numerous amendments, to implement planning controls that reflect affordable housing agreements. This has not been supported by DELWP, even where there is developer consent for a specific contribution. Officers have been directed to use a Section 173 Agreement to formalise agreements.

The separation of affordable housing from other planning controls, via a Section 173 agreement, results in disjointed decision making and planning controls. Council has been advised that a Section 173 agreement is to be signed prior to any decision being made (in the case of rezoning, prior to exhibition, in the case of permit, prior to decision). However, this has not proven workable. Proponents cite the cost of developing such agreements and the risk that the future decision may not be in their favour. They are also often unwilling to sign until decisions are made and Panel or appeals processes are exhausted (to quantify value in uplift).

In contrast, there may be cases where concessions are granted but affordable housing is not provided or required. This could occur where a decision is taken by VCAT or a planning panel, where the affordable housing decision is separated from the broader planning decision.

Rationale for voluntary contributions unclear

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The rationale for deciding to make the current framework voluntary is unclear. There are other contributions within the planning system that are mandatory: open space, developer contributions. It is not clear why affordable housing is treated differently to these other types of contributions. Feedback to this effect has consistently been provided to DELWP prior to and after the implementation of this framework.

Council is of the view that the private sector will only ever, even with mandatory provisions, be able to provide a relatively minor contribution to the supply of affordable housing. For the supply of affordable housing to meet demand, there will need to be substantial, ongoing direct investment in the delivery of affordable housing by state and federal governments.

Response to MAC terms of reference – 4b

4b Consider the benefits and costs, opportunities and constraints of any alternative models and options to enable planning mechanisms to contribute to affordable housing. This will include consideration of mandatory requirements, any other options, any associated regulatory legislative impacts and the impact on key stakeholders (developers, local government, housing providers, community)

The clear alternative to the current voluntary contributions framework is a mandatory contributions framework. Such a framework could operate in multiple ways, including Inclusionary Zoning, through a particular provision, or via an overlay. The benefits, costs and impact of such a framework are detailed below.

Benefits

There would be multiple benefits to such a mechanism, foremost the delivery of housing for those in need. This is something that is not guaranteed under the current framework, given its voluntary nature. As noted above, the scale of the problem is significant and growing, and there is a desperate need for the planning system to play its part in responding to this.

Another benefit is that such a system would provide certainty to both developers and Council. It would remove the need for sometimes protracted negotiations over affordable housing outcomes and would also mean that other objectives are not compromised in the pursuit of affordable housing (as noted above).

The endorsement of an arbitrary contribution, without any further justification than 'this is what the developer agreed to' is difficult to defend and justify, particularly in the face of public scrutiny. If there were a standardised, mandated contribution for developments, both developer and councils would have certainty as to the expected outcome. There would be an established system for appealing decisions and considering the merits.

If supported by recurrent funding that enables housing providers to purchase dwellings (at a discounted rate), mandatory contributions can provide developers with guaranteed pre-sales and provide the remaining private development greater certainty. Affordable housing requirements can also stimulate economic activity. In Australia, the last major injection of funding was part of the National Economic Stimulus Package, which successfully prevented Australia entering into a recession. The economic benefits of mandatory contributions are likely significant and should be given serious consideration and analysis by the MAC.

The case for mandatory controls

In March 2016, Council received a planning scheme amendment request on behalf of two landowners to rezone approximately 1.5 ha of underutilised industrially zoned land. Council supported the rezoning request and officers negotiated community benefits in the form of affordable housing (for one site), public open space and other community infrastructure (for the second site). These agreements were drafted in the requirements of the DPO and agreed to in principle by the proponents. On 15 May 2017 Council resolved to seek authorisation from the Minister for the draft amendment but added a resolution that the DPO require more affordable housing (higher percentage) across both sites than what was previously agreed to by the proponents. This highlights the arbitrary nature of the voluntary contributions and the challenges in implementing such approaches through Council decision making processes.

DELWP did not support writing the affordable housing requirements in the DPO and Council was advised to negotiate a s173 agreement with the proponents outside of the planning provisions. In the absence of any state wide mandatory affordable housing requirements, Council attempted to negotiate with the proponents over a period of 2 years, engaging two affordable housing experts as well as legal representation. The quantum of affordable housing Council expects on the site has been difficult to reach an agreement with both land owners. Further, the length of time that has elapsed since the original planning scheme amendment request was submitted has meant that the affordable housing outcomes sought for the sites have become more untenable for the developers.

The request for authorisation was refused by DELWP in August 2019 and the development did not proceed.

If a mandatory scheme had existed to guide this rezoning, both Council and the developers would have been certain of the expectations and outcome, and the development could have proceeded in a timely manner.

Costs

The cost for delivering affordable housing through a mandatory scheme will need to be absorbed at some stage of development, either by the developer or another party. Different parties have different capacities to absorb this cost, and this should be considered by the MAC.

With enough lead time, a mandatory requirement would be factored into development planning and financing and would have limited ongoing effects to development feasibility.

There is evidence to suggest that, over time, the housing market will adjust to these costs and the residual land value (i.e. the amount that a developer is willing to pay for a parcel of land) will decrease by the amount required to fund the affordable dwellings¹. This would only occur if the requirement was consistent across all development. In this instance, the party bearing the cost is the landowner.

Housing associations may also bear the cost of affordable housing contributions, if they are required to purchase dwellings under a mandatory scheme. Housing associations have

¹ Refer Spiller, M, Mackevicius, L and Spencer, A “[Development Contributions for affordable housing: theory and implementation](#)”

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extremely limited capacity to purchase dwellings, given the scarcity of state and federal government funding. A mandatory scheme will not function effectively if housing associations are expected to bear the cost of purchasing dwellings without government funding.

Developers may also bear the cost of affordable housing contributions by taking a reduced development profit. This is likely to occur particularly in the first stage of implementation of a mandatory scheme, after which time the market is likely to adjust, as noted above.

Council considers that private landowners and developers have the greatest ability to absorb the cost of affordable housing contributions. Housing associations, in the absence of significant funding, will be unable to bear this cost.

In the same way that open space and developer contributions are a part of a larger pool of funding for open space and infrastructure, so too must affordable housing contributions be complemented by ongoing funding from other sources.

***4c** Consider how such models (whether current or alternative) could be implemented taking into account the housing market cycle and impact on housing prices in different sub-markets and areas and appropriate risk management strategies.*

Council would recommend that a staged implementation approach be taken to enable developers and other stakeholders sufficient time to prepare for any impacts that may arise.

Mandatory provisions may only be applicable in metropolitan contexts, where residual land values are able to absorb the cost of contributions. As noted above, the economic impacts of mandatory contributions can be positive, and this should be considered in determining the appropriate time for implementation. It is also critical that the introduction of such measures does not result in other matters being compromised, specifically environmentally sustainable development and high-quality design.

Ultimately, addressing the affordable housing crisis requires political leadership and conviction that must come from our elected leaders. There is a need for all levels of government to commit to and fund affordable housing delivery. The provision of affordable housing has become a politicised issue, and it will not be resolved without political action.