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Resident third party objections and appeals against planning applications: implications for higher density and social housing

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Resident third party objections and appeals against planning applications: implications for higher density and social housing

Abstract

This report is the first output of a research project that aims to examine two models of public engagement in planning approval processes - Third Party Objection and Appeal Rights (TPOAR) and Fast tracked planning - to see how they impact on housing supply, resident perceptions, and realisation of planning goals.

Keywords

against, planning, applications:, implications, higher, density, social, housing, objections, party, resident, appeals, third

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Resident third party objections and appeals against planning applications: implications for higher density and social housing

authored by

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ACRONYMS

| | |
|-------|---|
| COAG | Council of Australian Governments |
| DAF | Development Assessment Framework |
| DPCD | Department of Planning and Community Development (Victoria) |
| HDH | Higher Density Housing |
| ICAC | New South Wales Independent Commission Against Corruption |
| LGAs | Local Government Areas |
| NSW | New South Wales |
| NHSC | National Housing Supply Council |
| NIMBY | Not In My Back Yard |
| PPAR | Planning Permit Activity Reports |
| SA | South Australia |
| SEIFA | Socio Economic Indicators for Australia |
| SES | Socio Economic Status |
| SEQ | South East Queensland |
| TPOAR | Third-party Objection and Appeal Rights |
| UDP | Urban Development Program |
| VCAT | Victorian Civil and Administrative Tribunal |
| VPP | Victoria Planning Provisions |
| WA | Western Australia |
| WAPC | Western Australian Planning Commission |

EXECUTIVE SUMMARY

Project aims and policy context

Higher density housing (HDH) and social housing are critical aspects of compact city and affordable housing policies in Australia. Moreover, population growth, falling household size and increased competition for land and resources ensures the continuing centralisation of HDH in planning policy and practice in the future (Productivity Commission 2011). However, there is growing evidence that HDH has been subject to significant resident opposition. This has raised new questions around the place of participatory planning approaches in development assessment, and in particular, the role of third party objection and appeal rights—the key focus of this project.

While third-party objection and appeal rights (TPOAR) are associated with greater public participation in planning, the use of TPOAR to oppose HDH potentially has significant impacts on housing supply and the achievement of compact city and social housing policies. The extent to which TPOAR should or could be incorporated into development assessment has received national policy attention through the Council of Australian Governments (COAG), while the Federal Government has already worked with state and territory planning authorities to remove TPOAR in the roll-out of its 5 billion dollar Social Housing Initiative. However, removing or streamlining TPOAR limits the rights of residents to influence development. It also raises more fundamental concerns around democracy, planning and rights to the city. This can result in both negative perceptions of the planning process and electoral backlashes which in turn lead to uncertain planning contexts.

As the stakes for compact cities and affordable housing outcomes are raised, this paper outlines a research project to assess the efficacy and equity of different levels of third-party objection and appeal rights in the context of compact city and affordable housing policies. The aim of the project is to expand the evidence base regarding participatory planning approaches and housing supply. To these ends, the project firstly compares the impact that different levels of TPOAR have on housing supply, public perceptions of planning and participatory planning goals. Secondly, the project aims to develop new insights into the best approach for managing and mediating resident opposition to HDH and social housing.

Literature review and key debates

Third-party objection and appeal mechanisms are broadly acknowledged across the literature for their contribution to participatory planning outcomes. However, the extent to which TPOAR achieve participatory planning goals has also been questioned. A review of the literature shows that TPOAR may result in adversarial rather than deliberative review processes; mediate conflict between developers and elite residents rather than the wider public; draw resources away from other participatory planning styles (e.g. community consultation at earlier stages of the planning process); and that courts of appeal may take planning authority away from elected officials at the local level. In addition, there is a widespread assumption in Australia that TPOAR can potentially inhibit and delay planning approval and development processes, including housing supply.

The tension between participatory goals on the one hand and efficiency in planning approval on the other, is reflected in contemporary planning reform both federally and at the state level in Australia. Despite strong rhetorical support for public accountability, engagement and third-party rights; recent discussion (and to some

extent policy reform) has been substantively focused on streamlining TPOAR. This interest is often premised on streamlining housing supply.

However, there are significant gaps in the evidence-base regarding HDH in current policy trajectories. In particular, the extent to which TPOAR are used to resist HDH, and the impact of TPOAR on housing approvals is yet to be established in Australia at the metropolitan scale. Similarly, the extent to which the removal of TPOAR influences housing supply timelines has not been rigorously examined. There is also surprisingly little qualitative data comparing residents', planners' and developers' perceptions of different levels of objection and appeal around HDH or the extent to which these different approaches meet or fall short of wider participatory planning aims of accountability and public engagement.

The Victorian policy context

To address these gaps, this paper sets out a research project that explores the impacts of two different levels of TPOAR in terms of housing supply and participatory planning expectations. The project focuses on the state of Victoria. This is an ideal case to explore both full TPOAR and fast-tracking approaches, because the planning system uniquely combines strong third-party appeal rights with a range of streamlined approaches. The Productivity Commission reported that with 3326 appeal cases, Victoria had nearly six times the number of planning appeals as any other Australian jurisdiction in 2009–10 (Productivity Commission 2011, p.84). At the same time, and with equal significance for this project, the use of various fast-tracking mechanisms—including ministerial call-in powers, zones and overlays—has been significant (Productivity Commission 2011). Exemptions are now widespread and take a variety of forms, creating a complex array of varying requirements for permit approvals and TPOAR on housing developments. As a result, the Victorian planning policy framework provides the most complete set of appeals and approval data through which to analyse key variations in both participatory and fast-tracked planning processes and housing outcomes at the metropolitan scale in Australia. It therefore also comprises a cost-effective option in developing data for both planning approaches.

Method and next steps

The project uses a mixed methods approach. Quantitative analysis will be undertaken of the spatial and temporal variations in the number, rate, type and location of planning permits, fast tracking processes (including ministerial 'call-ins') and appeals across Melbourne municipalities with particular focus on higher density and social housing. Throughout the report, higher density housing refers to multi-unit dwelling, with a particular focus on development of ten or more dwellings. Modelling techniques will be used to test the extent to which planning processes are distributed across different housing market conditions and socio-economic profiles.

Qualitative case studies will build on quantitative work by deepening analysis of the impacts of TPOAR/fast-track approaches on housing supply and providing a new set of 18 semi-structured qualitative interviews documenting resident, developer and planning perceptions of the effectiveness of these two models.

1 INTRODUCTION

1.1 Background

The provision of higher density and social housing in existing urban areas is a critical component of contemporary Australian housing and planning policy agendas. Higher density housing (HDH) in this report refers to multi-unit dwelling, with a particular focus on development of ten or more dwellings.¹ The provision of such housing takes place in the context of competing pressures: the economic imperatives of the housing industry; environmental concerns focused on ‘compact cities’; housing policy and welfare initiatives to provide well-located affordable housing; and resident concerns about changing neighbourhoods.

This project focuses on resident concerns about changing neighbourhoods: as part of a democratic ethos of public participation in planning, many Australian jurisdictions provide third-party rights of objection and appeal on development applications (Ryan 2001; McFarland 2011; Cook 2006, 2011). These rights have the potential to influence development approval processes and housing market outcomes. They also have the capacity to significantly affect, and potentially inhibit, the achievement of ‘compact city’ and social housing objectives. As debates around the merits of third-party objection and appeal attract increasing attention, and the stakes for compact cities, affordable housing outcomes and citizens’ rights are raised, an assessment of the efficacy and equity of third-party objection and appeal is required.

This Positioning Paper is the first output of a research project designed to explore the relationship between third-party objection and appeal rights, housing supply and participatory planning aims. The project approaches these questions by systematically comparing the distribution and impacts of two different models of third-party appeal rights on planning approval processes, housing outcomes and public perceptions of planning. The first model comprises formal third-party objection and appeal rights (TPOAR), a common (but not universal) approach to planning approvals following reforms in the 1970s towards greater public participation in planning. Full TPOAR allow third-parties to object and appeal development permit decisions of planning authorities. The second model is characterised by a range of ‘fast-tracked’ planning processes that bypass TPOAR to facilitate development. In Victoria this approach has been used for projects of state and national significance, including the \$5.238 billion roll-out of social and medium density housing through the Federal Nation Building Stimulus Package (2008–12).

These two models have significant implications for housing and participatory planning outcomes and a high profile in planning reform. Notably, in its review of the Australian planning system, the Productivity Commission (2011) questioned variations in third-party appeals. Through the Council of Australian Governments (COAG), states and territories are also exploring options to streamline development approval processes. Yet the removal of TPOAR also marks a significant reconfiguration of citizens’ rights. This can be particularly contentious where development is classified as high-risk or high-impact (Productivity Commission 2011) and raises fundamental questions about democracy, planning and rights to the city.

In the context of HDH, finding the balance between streamlining TPOAR while making allowance for the reasonable rights of residents to influence development is a key

¹ The definition of higher density housing used in this report reflects our key concern with compact city and urban consolidation policies and characteristics of available data. The latter is set out in more detail in Chapters 4 and 5.

² The study was based on a sample of 24 cities and towns in Australia with populations of more than

policy challenge. However, there are significant gaps in our understanding of the relationship between TPOAR and HDH. We have little sense of the extent to which TPOAR are used to appeal HDH and social housing at the metropolitan scale, or of who is most likely (or able) to appeal. Moreover, the views of stakeholders involved in appeal processes, including residents, developers and planning authorities, regarding the efficacy of TPOAR have not yet been established.

By assessing the impact that different levels of TPOAR have on housing approvals, participatory planning goals, and public perceptions of planning, this project aims to address these gaps.

1.1.1 Research questions

To these ends, the project addresses the following research questions:

1. What is the extent of variation in formal third-party objection and appeal rights? How and why has this changed over time?
2. What are the variations of formal objections and appeals in the planning system?
3. What are the characteristics of 'streamlined' housing projects that bypass local objections?
4. What are the implications of different types of TPOAR for:
 - a) the housing supply pipeline
 - b) resident perceptions of planning processes
 - c) participative planning goals.

1.1.2 Scope of the study

In order to explore the relationship between TPOAR, housing supply and participatory planning aims, the project employs a combination of methods and develops in several stages.

First, a review of national and international approaches to TPOAR compared to fast-tracked planning mechanisms, with limited or no third-party appeal rights, will be conducted.

Second, quantitative data will make significant inroads into our understanding of the impact of TPOAR and streamlined approaches in terms of housing supply and participatory planning aims at a metropolitan scale.

Our project focuses on the state of Victoria, which presents an ideal case to explore appeals data because the planning system uniquely combines strong TPOAR with a range of streamlined approaches. Significantly for this project, and unlike other jurisdictions, the number of planning appeals in Victoria is high. The Productivity Commission reported that with 3326 appeal cases, Victoria had nearly six times the number of planning appeals as any other Australian jurisdiction in 2009–10 (Productivity Commission 2011, p.84). As a result, Victorian appeals data provides a unique opportunity in the Australian context to measure the extent of public opposition to HDH along with variations in planning processes and housing outcomes under two different models at the metropolitan scale.

Quantitative analysis will explore the impact of TPOAR and fast-track approaches on housing supply. This includes a systematic analysis of planning permit activity, the use of fast tracking planning processes and of planning tribunal appeals data. Together these data will uncover spatial and temporal variations in the number, rate, type and location of planning permits, fast tracking processes (including ministerial

'call-ins') and planning appeals across Melbourne municipalities, with particular focus on higher density and social housing. A dataset will be constructed for the project and then analysed to understand variations in the way planning appeals and fast tracking processes occur for housing. The numbers and types of dwellings built in different locations through different planning streams in Victoria will be identified and compared. In terms of participatory planning aims, modelling techniques will also be used to test the extent to which planning processes are distributed across different housing market conditions and socio-economic profiles.

Third, in-depth qualitative case studies of three higher density housing development sites will deepen the understanding of the impact of TPOAR compared to fast-track approaches in relation to the following three key criteria:

1. Impacts on housing supply pipelines from planning to construction.
2. Resident, planners' and developers' perceptions of the planning process.
3. The realisation of participative planning goals.

Case studies will build on quantitative data in two key ways. In terms of the impact of TPOAR on housing supply, the case studies will deepen analysis by assessing the impact of different levels of TPOAR from the initial permit application to final construction. Thus the case studies will provide an opportunity to link planning approval, appeals and construction data over the life of the project. The case studies will also identify stakeholders' perceptions of the planning process. Specifically whether different levels of TPOAR and appeal fuel or limit ongoing mobilisation by objectors. They will also provide an opportunity for stakeholders to reflect on the efficacy of TPOAR and fast-track approaches in terms of their perceptions of the planning process. The case studies will be developed with clear reference to policy frameworks, informed by quantitative data collection and based interviews with resident opposition groups, developers and planners along with media analysis and site observations. Each case study will include six semi-structured qualitative interviews with key stakeholders.

2 POLICY CONTEXT

The provision of HDH takes place in the context of competing pressures. Population growth, falling household size and increased competition for land and resources ensures the continuing centralisation of HDH in planning policy and practice (Productivity Commission 2011). HDH also plays a key role in housing supply more broadly, with many Australian cities setting high targets for in-fill development as a key strategy in enabling supply and affordability in the next two decades (NHSC 2010). However, the most recent study of resident perceptions of population and housing density in Australia identified 'major residential developments' and 'increasing population density' as key concerns (Productivity Commission 2011, p.xxxvii).²

Together these intersecting trends pose a complex policy dilemma: how to meet dwelling targets in existing urban areas while making allowance for the reasonable rights of residents to influence development. In this chapter we set these trends out in more detail.

2.1 Compact city initiatives

Urban consolidation policies have been pursued in most Australian cities since the early 1980s (Yates 2001; Searle 2004; Randolph 2006; Searle 2007). In recent years the strategic plans for Melbourne (State of Victoria 2002), Perth (WAPC and Department of Planning and Infrastructure 2004), Sydney (NSW Department of Planning 2005), and Brisbane (Office of Urban Management 2005) have all had a strong focus on containment and urban consolidation (see also Forster 2006; Hamnett & Kellett 2007). Population growth, falling household size and increased competition for land and resources have also seen the centralisation of consolidation policies in more recent planning reforms (Productivity Commission 2011).

Urban consolidation policies seek to redirect urban growth away from the traditional suburban, low-density urban fringe and towards existing urban areas. While the environmental and social benefits of medium density housing compared to the traditional 'quarter-acre block' remain contested (Troy 1996; Randolph 2004; Searle 2004; Birrell et al. 2005; Mees 2010), consolidation policies have been widely adopted with the aim of achieving three interconnected objectives: containing urban sprawl and limiting environmental footprint; ensuring the supply of affordable and social housing in well-located areas with access to services, jobs and public transport; and ensuring ongoing housing supply against demographic change, including population growth and changes in household size and composition (Newman & Kenworthy 1999; Low 2002; Goodman & Moloney 2004; Buxton & Scheurer 2005).

These objectives are reflected in the metropolitan planning policies of Australian capital cities, including the: Melbourne 2030 strategy; Melbourne @ 5 Million Update; South East Queensland Regional Plan, and the Sydney City of Cities policy. Because HDH has the potential to maximise benefits of local services and employment, it has become a preferred development type for social housing (e.g. the recent Federal Government Social Housing Initiative). While the implementation of consolidation policies has been mixed (Yates 2001; Downs 2005; Filion & McSpurren 2007; Gurrin & Phibbs 2008; O'Connell 2009), the timely and efficient supply of HDH remains a key strategy in achieving a more compact city form (Hamnett & Kellett 2007).

² The study was based on a sample of 24 cities and towns in Australia with populations of more than 50 000 people. The data comprised, in most cases, a minimum of 100 interviews in each local government area across the 24 cities (Productivity Commission 2011).

2.2 Housing supply pressures

Maintaining housing supply in the face of rising demand in Australian cities, and in particular the need for more affordable housing within existing urban areas, is a prominent policy issue in Australia (NHSC 2010). The challenges of providing affordable housing are significant: supply lags behind demand with a current shortfall of 180 000 homes and a projected shortfall by 2014 of 308 000 dwellings (NHSC 2010). Up to 1 000 000 households already in the market are experiencing housing stress and this is likely to double within the next 40 years (Yates et al. 2007).

Several recent initiatives of the Federal Government have focused on increasing supply, and the efficiency of supply, of affordable housing (see Federal Government Social Housing Initiative; Housing Affordability Fund; Housing Supply Council; and COAG Housing Supply and Affordability Reform Agenda). Providing HDH also currently forms a key component of many recent metropolitan strategies in Australia. In its comparison of Australian Strategic Planning Instruments, the National Housing Supply Council (2010) has shown that Sydney, Melbourne, South East Queensland, Perth and Adelaide have all set aims for at least 50 per cent of new dwellings constructed in in-fill areas within two decades.

2.3 Resident resistance to HDH and social housing

Despite the key place of HDH in contemporary strategic planning policy, it has also been the subject of significant resident opposition. Bunker et al. (2002, p.143) note with reference to Australian city planning as a whole that 'the reaction and response of local government authorities and communities [to urban consolidation] has been mixed and increasingly hostile'. The implementation of urban consolidation in Australian cities has been characterised by political conflict, with owner groups and developers aligned against different aspects of containment and densification (Bunker et al. 2002; Bunker et al. 2005; Randolph 2006). Searle (2007, p.1) reviewed the Sydney experience and 'the way in which planning power, political power and market power have been used to make urban consolidation happen in the face of community opposition'. He highlights that consolidation has, from the outset, been opposed at the local level in Australian cities, including resistance by local government and resident objection. In an earlier study, Huxley (2002) argued the intrusion of medium density housing in established suburbs in Melbourne was the key factor in the emergence of the resident action group *Save our Suburbs* in Melbourne in the late 1990s (see also Lewis 1999). In the New Zealand context, Vallance et al. (2005) have shown that HDH in established suburbs create feelings of alienation as established patterns of behaviour are disrupted.

Public housing is also subject to significant stigmatisation so that local government and residents often reject the siting of public housing in their neighbourhoods (Atkinson & Jacobs 2008). Despite long term disinvestment in the sector, Jacobs et al. (2010) argue that efforts to increase the supply of social housing through the Nation Building program in 2008 was 'hampered' by NIMBY-style responses. This included projects employing a mix of social and market housing (Le 2010). Local opposition was also reported in the press regarding social housing initiative projects (Dowling 2009). The construction of community care homes for people with intellectual disabilities has also met with resident resistance (Bostock et al. 2004).

Resident opposition to development can contribute to a backdrop of anti-development sentiment in particular localities or regions. Searle (2007) has documented the long-standing and bitter stand-off over densification between the local councils of Sydney's north shore and the New South Wales Government, underscored by significant resident protest. Media analysis suggests the ongoing mobilisation of residents

around consolidation strategies (Lewis 1999; Huxley 2002; Searle 2007). Studies from NSW Local Government Areas (LGAs) Penrith and Canada Bay (Cook 2006; Cook & Ruming 2008) and high-profile conflicts, notably the Camberwell Station case in Melbourne, show that attempts to reduce consultative measures for large housing projects can result in politicisation and further delays. This point was explored by the Productivity Commission (2011) in its discussion of community interaction and the repercussions of not involving the community in planning decisions. Searle and Fillion (2011, p.1432) suggested that planners must 'tread carefully for there is always the possibility of a wider anti-intensification coalition with possible electoral repercussions on senior governments' (see also Huxley 2002; Searle 2007).

However, if residents or third parties decide to formally object or appeal permitted planning applications through the planning process, they can also have a direct impact on housing outcomes. It has been argued for instance, that appeals add time, uncertainty and holding costs to approval processes with implications for housing development pipelines (Simonson 1996; Productivity Council of Australia 2002, quoted in Willey 2006). Recent high profile reports in Australia have suggested that there are increased developer risks, and greater construction costs, associated with higher density housing in existing urban areas (Productivity Commission 2011; Kelly et al. 2011). The recent Grattan Institute report specifically identified TPOAR as a factor impeding housing supply in existing urban areas (Kelly et al. 2011).

The intersection of resident opposition with HDH can inhibit compact city and urban consolidation policies. But the use of TPOAR to resist HDH also raises questions of equity and access in planning processes. Studies suggest that TPOAR are most commonly accessed by a small proportion of residents from localities of high socio-economic status (Woodcock et al. 2011; Searle 2007). This may reflect the distribution of HDH as investors seek opportunities in higher amenity locations (Huxley 2002). However, the most recent data for Melbourne suggests a likely wealth effect. In their study of planning appeals and the distribution of HDH, Woodcock et al. (2011, p.7) found that even though HDH is distributed widely across the metropolitan area, including in lower-income suburbs, 'those LGAs with the highest proportion of contestation are also those with the highest socio-economic status (SES) residents'. Huxley (2002) argues that because successful objections hinge on knowledge, time and economic resources, they can be seen as an indicator of areas of planning influence (Huxley 2002; also see Dovey et al. 2009). This reflects work by Engels (1999) where capacities to formally object were correlated with rich networks of economic and social capital. A recent assessment of the NSW Standing Committee on State Development (2009, p.48) revealed the cost of making appeals to the NSW Land and Environment Court was between \$150 000 to \$200 000 and therefore a significant barrier for most citizen objectors.

Overall, opposition to HDH presents a complex policy challenge: how to meet key planning policy outcomes while making allowance for the reasonable rights of residents to influence development. Before setting out a research project designed to expand the evidence-base underpinning this challenge, the next chapter defines TPOAR and highlights international debates and emerging trends in Australian policy towards streamlining objection and appeal processes.

3 THIRD-PARTY OBJECTION AND APPEAL RIGHTS

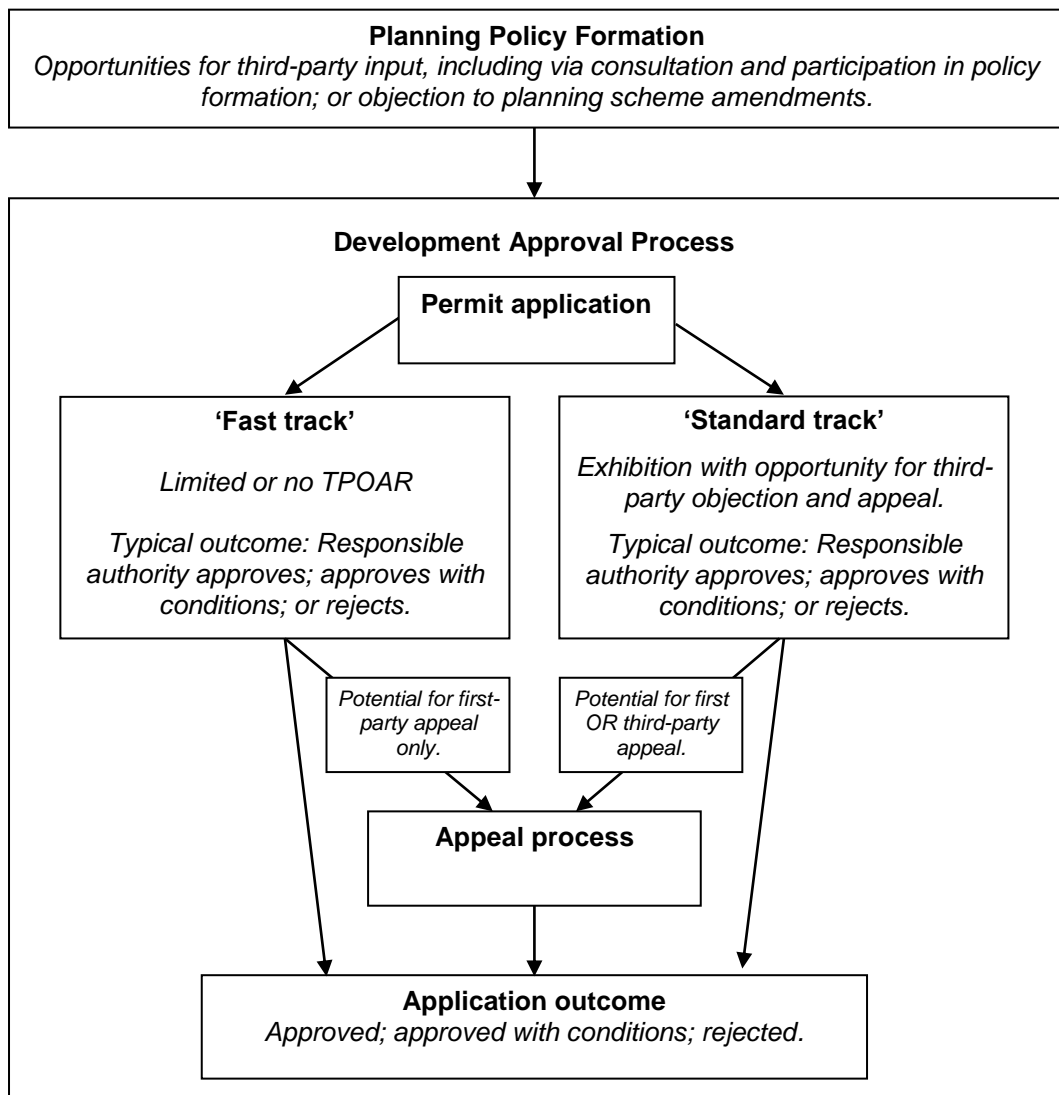
Third-party objection and appeal rights in planning are often associated with greater public participation and opportunities for non-expert engagement in development decisions. Key arguments in favour of TPOAR in planning assessment processes are based on their potential to increase avenues for public engagement with planning, and ultimately to deliver better planning decisions. To the extent that planning is considered a communicative process (Healey 1997), it is argued that mechanisms of deliberation and increasing opportunities for participation can result in improved planning outcomes (Willey 2006). The combination of a broader base of input (beyond just elected officials and appointed experts), increased debate on planning issues and the mechanisms for local knowledge to inform planning approvals are some of the benefits that TPOAR affords. TPOAR are therefore expected to lead to improved 'public good' outcomes (Willey 2006).

However, TPOAR have been criticised on a number of grounds, including equity of access and the removal of planning control from the local level. TPOAR also vary significantly across jurisdictions. Before exploring these debates and differences in more detail, this section first provides key models and definitions of TPOAR. This includes an overview of the 'typical' place of objection and appeal in relation to the wider planning process using the Victorian model as an example.

3.1 Models and definitions

Third-party objection and appeal rights (TPOAR) form a part of development approval processes in many Australian and overseas jurisdictions. Development approval processes are themselves only part of broader planning policy frameworks of legislation and strategic planning policy documents. Figure 1 below indicates typical opportunities for third-party engagement in planning processes in Australia. As shown in the top section of Figure 1, the formulation of policy and strategic plans afford the first opportunity for broader community engagement in planning. These planning policies then typically determine whether or not a proposed use or development will require development approval. Dependent on the applicable policy framework and on the nature of the proposed development, approvals will then follow one of two broad 'tracks'. In the first, there is limited or no provision for third-party involvement in the determination of the development application. In the other, some provision is made for third-party involvement.

Figure 1: Development Approval Processes and Public Engagement: Typical Australian model



Within the development approval process, there are two distinct phases of potential third-party involvement. These comprise objections during the planning permit application process; and appeals to the planning permit decision. If a planning authority refuses a planning permission or places conditions upon it, an applicant typically has the right to appeal (first-party appeal rights). If an authority grants a planning permission, third parties (typically objectors) may have the right to appeal the decision. The links between rights of objection and rights of appeal vary. In some jurisdictions there is a right to objection but not to appeal. In others, the right of appeal is limited to third parties who have lodged an initial objection. There is also variation in how 'third-party' is defined across jurisdictions. For example, in Victoria anyone can object to and then appeal a permit decision; while in others jurisdictions (NSW, SA) appellants must have a 'relevant interest' in the proposed development, with interest typically determined by either proximity to the proposed development, or via a hearing to determine relevance (Trenorden 2009). Either way, appeals on merit are carried out in 'formal or quasi-formal legal settings', such as the VCAT in Victoria or the Land and Environment Court in NSW (Willey 2005, p.268).

3.2 Debates in the literature

Even though TPOAR are seen as mechanisms ensuring transparency and oversight in land use decisions, they have also been criticised on a number of grounds. These debates challenge the idea of TPOAR as a mechanism of planning accountability and transparency. They also raise questions around what style and level of TPOAR are best suited to the achievement of higher density and more affordable cities and suburbs. As we set out next, these debates centre on four key themes: equity, hierarchies of participation, political transparency, and efficiency.

3.2.1 TPOAR and equity

To what extent does TPOAR ensure that planning processes are open to scrutiny and deliberation by the public? Advocates of TPOAR argue that they provide equity of process (H Ellis 2000; Purdue 2001; G Ellis 2006; Willey 2006). G Ellis (2006, p.334, original emphasis) argues that first-party (applicant) rights of appeal provide a challenge only to 'weak *refusals*' of permits. Third-party appeal rights are required to balance this with the ability to challenge 'weak *permissions*'. Therefore, if an applicant has right of appeal, then a third party must also have right of appeal to maintain equity. Developers wield considerable political and economic power, and are prepared to contest permit decisions. As Willey (2006, p.384) argues, 'if one accepts that the function of planning appeals is not confined to protecting a dogmatic property rights regime, then the argument that participants other than developers need to be able to access the appeals system starts to hold more weight'.

However, despite support for TPOAR within collaborative planning frameworks (Healey 1997), there is clear tension between the idea of communicative rationality underpinning the collaborative planning model and the adversarial engagement of formal appeal processes (Trenorden 2009). The notion that third-party rights improve decision-making is also questioned, particularly in light of the substantial time and cost impacts it can have on development, as discussed below (Ellis 2000; Whelan 2006).

Given that equity of access to planning decisions is a common justification for TPOAR, a significant limitation is the relative lack of equity in its engagement of citizens. Supporters of TPOAR acknowledge that the majority of people lodging third-party appeals come from an educated, well resourced minority, which raises questions about the extent to which objections are representative of community interests (Finkler 2006; G Ellis 2002; Willey 2006). Further, Finkler (2006) highlights the potentially discriminatory nature of TPOAR, with a bias in notifications of development to landlords over tenants; and examples of the deliberate use of third-party appeal to exclude unwanted residents. An implication is that, if unchecked, TPOAR can effectively 'become a tool to be exploited by elitist and capitalist interests at the expense of the vulnerable' (Willey 2006, p.380).

3.2.2 TPOAR and public participation

A common argument against TPOAR is that they detract from other more proactive public engagement and participation in policy and planning. As indicated in Figure 1, the planning approval process occurs within a wider framework of policy-making. It is argued that a focus on proactive, higher order engagement leads to better policy and greater certainty in processes. The recent Productivity Commission (2011) inquiry into planning and development approvals, for example, identified the need for planning policy outcomes to be dictated higher up the chain in the planning-to-approval process, and influenced by early community engagement. It is argued that where effective early public engagement is provided, TPOAR result in unnecessary duplication of existing merits-based review (Whelan 2006). They can also encourage

reactive rather than proactive strategic planning, countering the objectives of collaborative planning (Whelan 2006).

However, others dispute the argument that TPOAR and strong collaborative planning are in opposition (H Ellis 2000; Willey 2006; Trenorden 2009). Trenorden (2009) highlights weaknesses in the argument that higher order engagement absolves the needs for TPOAR, arguing that citizens cannot be expected to understand the full implications of planning policy, and therefore should have the right to appeal discrete decisions. Further, she argues that in practice planning policy does not provide for clear and prescriptive development outcomes and that development approvals are in part discretionary. As such, TPOAR are important to ensure that community expectations established in policy are carried through to planning approval decisions. Rather than undermining collaborative planning, it is argued that '...the very existence of TPOAR compels developers to engage more fully, sincerely and legitimately with the community' (Willey 2006, p.376).

Framing debates about the procedural merits of different development approval systems are the cultural and ideological arguments about the role of individual property rights on the one hand versus the right of community participation in decision-making on the other (Willey 2006), and the role of the state in providing for or impinging upon these rights. Appeal rights were originally enshrined in planning systems as a measure of protection for landholders against excessive government interventions and not necessarily as a means to facilitate citizens' engagement in planning, with public accountability instead catered for by elected representatives (H Ellis 2000; Purdue 2001). Commonly, third-party appeal rights were not initially conceived of as an important part of planning approval processes, and many see a move to greater third-party rights as infringing on the common law property rights that first-party appeal was established to protect (Moran 2006).

Nonetheless, TPOAR are often associated with more participatory planning approaches. Even though criticised on the grounds of facilitating NIMBY interests (Orme 2010), the British Government's policy green paper, *Open Source Planning* (Conservatives 2010) recently flagged the introduction of TPOAR in Britain. While ultimately withdrawn from Parliament (Baron 2011), the green paper fuelled significant policy debate on the inclusion of TPOAR on the grounds of increasing local input into development applications (Clinch 2006). Concurrently, planning systems are often under pressure to involve the community in development decisions to improve transparency and reduce political backlash. In Scotland, for instance, no provision for TPOAR exists, but the prospect was still debated (and rejected) in 2003 (McLaren 2006).

3.2.3 *TPOAR and political transparency*

Given the discretionary, often contested, and ultimately political nature of development approvals, TPOAR have been put forward as an important component of good governance (Morris 2005; Willey 2006). TPOAR can provide public scrutiny and contestation of government decisions, bringing transparency and accountability to the exchanges between developers and the planning approval authority. This in turn counters opportunities for corruption or the perception of corruption by the general public (Productivity Commission 2011). For merits-based planning approval systems to work, they must have the confidence of the general public. Morris (2005), for example, cites the contrast between NSW, where very limited TPOAR exist, and Victoria, where comprehensive TPOAR exist. He notes the string of findings from ICAC (New South Wales Independent Commission Against Corruption) of bribes to local government officials and representatives in NSW, compared with little evidence

of such practice in Victoria. For Purdue (2001, pp.87–88), the case for TPOAR is clear:

There can be little doubt that, where a local planning authority is granting planning permission, it cannot be regarded as an independent and impartial tribunal ... it is not a question of whether third party rights of appeal need to be introduced [in England] but rather how they should be introduced.

Countering this, appeals processes (which typically are centrally administered), can shift the ultimate approval of development applications away from local government and therefore away from local representation, so it arguably goes against the principle of subsidiarity (Willey 2006). It can also lead to perverse outcomes, in particular by effectively absolving local government of a degree of responsibility in making tough or unpopular decisions, resulting in a 'less responsible attitude' in light of the appeals safety net (G Ellis 2002, p.459). As Willey (2006) documents, there is a clear potential for local councils to make a politically motivated decision in sensitive cases, knowing that there will be a second round merits-based evaluation (at appeal) which will relieve them of the responsibility to make difficult decisions (see also Finkler 2006). For example, regarding a proposed development of 20 apartments in the inner Melbourne suburb of Northcote that received objections from residents, Darebin Council avoided making a decision within the statutory timeframe. Responsibility for the decision was thereby passed to the VCAT tribunal. The council however publically 'resolved to inform the tribunal that it did not support the development' (*Northcote Leader*, July 2011).

The use of fast-tracking has been viewed problematically in terms of political processes in other ways. The removal of TPOAR and local assessment processes tends to concentrate power, for example with the minister. In a study of 12–20 Nicholson Street (part of the Federal Government's Social Housing Initiative) in Melbourne, Le (2010) argues that despite significant achievements in terms of housing affordability and density, the removal of TPOAR led to the consolidation of planning power at state government level and ongoing resident dissatisfaction. Huxley (2002) also maintains that dissatisfaction of residents in middle-ring suburbs with the deregulatory approaches of the Maclellan era in Victoria in the 1990s, including the Good Urban Design Guide and mandatory higher densities in residential zones, led to the defeat of the Liberal government in the 1999 Victorian state elections. Searle (2007) makes similar points in relation to the local government elections in NSW in 1999. Here, resident dissatisfaction and anger around mandatory medium density housing led to the election of 'anti-development candidates' including a long-standing and widely publicised stand-off between local councils on the North Shore and the NSW Government. It is perhaps unsurprising that the Productivity Commission (2011, p.86) sees third-party appeals as an important part of the planning process to prevent 'scope for deals between developers and regulators' along with enhancing amenity and 'community trust in the system'.

3.2.4 TPOAR and the efficiency of development approval processes

Contention surrounding TPOAR is regularly expressed as calls for procedural efficiency in planning approval and development processes. TPOAR, it is argued, slow down planning approval processes, and thus create inefficiency, uncertainty, increased costs, and ultimately act as a break on investment and economic growth (Property Council of Australia (WA Division) 2001; Whelan 2006; Productivity Commission 2011). In the Republic of Ireland, for instance, policy debates 'have centred on whether the country's existing TPOAR should be limited to enable more rapid decision making' (Clinch 2006, p.327). Where provisions exist for third-party appeal rights, these are typically 'placed under substantial pressure for reform or

abolition' and in 2006 the introduction of the Irish Strategic Infrastructure Bill enabled the fast tracking of major projects (G Ellis 2006, p.331). Concern in particular focuses on the potential for frivolous or vexatious claims (Productivity Commission 2011).

Delays caused by resident opposition to affordable and social housing have also been linked to fast-track mechanisms at least since the 1970s (Iglesias 2003; von Hoffman 2009). In the USA, legislation such as the *Fair Share* (New Jersey) and *Anti-Snob* (Massachusetts) acts arose in the 1970s and 1980s in response to the effects of traditional suburban zoning on affordable housing provision. The state of New Jersey's *Fair Share Housing Act* bypasses local objections for affordable housing projects, and was established by judicial precedent through the Mount Laurel (1975 and 1983) cases (Haar 1996). Similarly the Massachusetts *Comprehensive Permit Act* (Chapter 40B) bypasses local objections where developments have an affordable housing component. The bill has experienced consistent efforts at delay and litigation over its history (Flint 2004; McKim 2009).

Against this, advocates of TPOAR highlight that calls for greater 'speed' frequently ignore or dismiss the associated impacts on decision quality (G Ellis 2006). Indeed, G Ellis (2004, 2006) contends that, in practice, frivolous claims are rare, and that the characterisation of third-party appeals as being representative of only narrow self-interest is an oversimplification not supported by empirical evidence. Further, he suggests such arguments are more often representative of efforts to marginalise participation in planning that frustrates or hinders government or developer objectives.

3.3 TPOAR Policy differences and trends

3.3.1 Variations in Australian states and territories

A notable feature of TPOAR is the extent to which they—and the policy assumptions underlying them—differ. Provisions for appeal rights vary substantially between jurisdictions and have undergone reforms in different directions at different times. In terms of historical differences, Trenorden (2009) provides a summary of early legislation to introduce TPOAR in Australia. Provisions for TPOAR were introduced in 1961 in Victoria (via the *Town and Country Planning Act*), 1966 in Queensland, 1970 in New South Wales (via section 342ZA of the *Local Government Act*), 1972 in South Australia, and 1974 in Tasmania (via section 734 of the *Local Government Act*). These provisions, however, have since followed diverging histories of limitations and renegotiations. TPOAR in Australia have always been applied unevenly, and only ever to certain land uses.

The recent history of TPOAR in Australia has been framed by the decision of state and territory Planning Ministers to endorse the *Development Assessment Framework (DAF)* (Productivity Commission 2011). The DAF is a system that streamlines development into six assessment tracks. The first four tracks ('exempt', 'prohibited', 'self assess' and 'code assess') are defined as 'low-risk'. 'Exempt' development is defined as having a 'low impact beyond the site and does not affect the achievement of any policy objective' (Productivity Commission 2011, p.80). 'Prohibited' development is ideally 'identified as prohibited in the ordinance of regulatory instrument so that both proponents and consent authorities do not waste time or effort on proposals that will not be approved'. 'Self assess' is undertaken by the applicant against a set of 'articulated quantitative criteria' while projects deemed 'code assess' are considered 'more complex' but nonetheless 'considered against objective criteria and performance standards'. These first four tracks attract no TPOAR.

The last two tracks ('merit assess' and 'impact assess') reflect detailed and often complicated development applications with significant impacts beyond the site. In the DAF model, both merit assess and code assess include TPOAR.

Despite national commitment to DAF, the Productivity Commission (2011) reports significant variations in its application. As shown in Table 1 below, Victoria and Tasmania now have the broadest access to TPOAR, although The Victorian Government is currently considering the introduction of a 'code assess' stream. Western Australia, by contrast, does not allow third-party appeals, although this prospect was debated in the early 2000s (Trenorden 2009; Property Council of Australia, WA Division 2001). In NSW and SA third-party appeal rights are limited and only available for certain types of development such as farming, mining and polluting industries. However, Queensland and the ACT follow the DAF model with third-party appeals limited to the more complex 'merit assess' or 'impact assess' streams.

Table 1: Variations in Provisions for TPOAR in Australian states and territories

| <i>Location</i> | <i>Third-party objection and appeal rights</i> |
|-----------------|---|
| NSW | Limited to uses such as farming, mining and polluting industries. |
| Victoria | Broad. With the exception of single unit dwellings and some zones and overlays, assessment pathways in Victoria currently permit TPOAR. |
| Queensland | Limited. DAF based—limited to 'merit assess' and 'impact assess' developments. |
| WA | None. |
| SA | Limited to 'category 3' developments. Commensurable with 'merit assess' in DAF. |
| Tasmania | Broad. |
| ACT | Limited. DAF based—limited to 'merit assess' and 'impact assess' developments. |
| NT | Limited. Commensurable with DAF. Limited to developments in residential zones, in limited circumstances. |

Source: Productivity Commission 2011; Trenorden 2009; G Ellis 2002; Clinch 2006

In its review of Development Assessment Performance in 2008–09, the Local Government and Planning Ministers' Council (2009) reported considerable variation in the percentages of development applications subject to appeals. While these data relate to both third and first-party appeals, they appear to reflect the extent of TPOAR in each state. For instance, 7 per cent of development applications in Victoria were subject to appeal (first or third-party). This was in contrast with Tasmania (3.7%), ACT (3%), WA (2.7%), NSW (1.3%), NT (0.86%) and SA (0.82%).

3.3.2 Recent policy trends and debates

Although there is variation in the coverage and style of TPOAR across jurisdictions, three key policy trends around TPOAR can be identified in contemporary policy debates in Australia.

First is the pressure to improve the public accountability and transparency of planning decisions. Planning and public participation models exist in a politicised context. One in which there is often intense scrutiny of controversial decisions. Along with the defence of existing TPOAR in planning systems discussed previously, there are moves in some jurisdictions toward providing—or at least, being seen as providing—more opportunities for local engagement to increase confidence of the general public in planning. Interviews in 24 of Australia's largest cities and towns commissioned by

the Productivity Commission (2011) indicated widespread support by local councils for third-party objection and appeal rights. This was matched in some cities with strong support among residents for TPOAR.

Second, there is the counter trend towards the removal of opportunities for third-party objection and appeal rights. This is often referred to as 'fast-tracking' and is a key part of recent policy debates around TPOAR. In contexts where appeal rights exist in principle, they may still be excluded or 'tracked' for particular types of developments. A true fast tracking mechanism is where a particular circumstance triggers a particular process with regards to provisions for objection and appeal. Third-party appeals are most commonly excluded where developments are very minor; or at the other end of the scale, for major developments of state significance (Productivity Commission 2011).

In Australia, most states and territories allow for major projects to be 'called in' for assessment by the state Planning Minister. Victoria and South Australia had the largest number of proposals called in (assessed at the state level). Notably, Western Australia (the state with no TPOAR) has no provisions for ministerial call-ins. The impacts of exemptions from TPOAR on housing supply are little understood or studied and the process of streamlining can be contentious. Recent reforms to planning include curtailment of appeal rights in the ACT and the expansion of state-level planning decisions in Victoria and Western Australia. Although having broad TPOAR, Victoria has introduced policies (e.g. 'Better Decisions Faster' and 'Cutting Red Tape in Planning') to fast-track or use ministerial powers to allow certain developments to bypass local objection rights. The Planning Minister in Victoria has significant control of planning schemes and decisions.

Moreover, use of Ministerial call-in powers for major projects in Victoria and other states and territories under the Nation Building Economic Stimulus Plan show a willingness to 'roll out' planning approaches that bypass formal objection and appeal on account of housing supply concerns (see Federal Government Social Housing Initiative; Housing Affordability Fund; Housing Supply Council; and COAG Housing Supply and Affordability Reform Agenda). In Australia, social and to some extent affordable housing is a development type typically fast tracked to purposefully avoid TPOAR.

Third, there is a trend toward the minimisation (but not removal) of opportunities for objection and appeal. Recent inquiries into development approval processes, such as the 2010 Victorian Competition and Efficiency Commission Inquiry into Streamlining Local Government Regulation, have flagged potential reforms that maintain TPOAR but limit the scope of development applications to which they apply. Current inquiries into development approval processes (including the 2011 Productivity Commission Review of Planning, Zoning and Development Assessments and the 2010 Victorian Competition and Efficiency Commission Inquiry into Streamlining Local Government Regulation) flag potential reforms to TPOAR. The Victorian Government, in line with COAG recommendations, is currently reviewing and updating the *Planning and Environment Act 1987*. The review 'will identify opportunities to introduce the code assess track for certain planning permit matters, and a new process for assessment of state significant development' (Productivity Commission 2011, p.90). New residential zones are also proposed for the state to replace the commonly used Residential 1 zone (which currently includes broad TPOAR against higher density housing). In the meantime zoning changes, wherein the applicable zone bypasses TPOAR, are also popular fast-tracking mechanisms in Victoria. Nationally, housing supply initiatives, including the Housing Affordability Fund, Housing Supply Council, and the COAG Housing Supply and Affordability Reform Agenda, have implications for TPOAR.

The full extent of TPOAR under the DAF model will vary according to the designation of development in different tracks. Development designated as code-assess and self-assess are not likely to attract TPOAR. Of central concern for all states as they move to the DAF model is that the assessment track should 'correspond with the level of risk/impact and thus the level of assessment attention required to make an appropriately informed decision' (Productivity Commission 2011, p.276). Ultimately, as a 'middle way' between full TPOAR and 'fast-tracking', DAF preserves appeal rights in only some cases, where projects are deemed to have a significant impact or level of technical complexity:

Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in limited other cases. (Productivity Commission 2011, p.80)

3.4 Gaps in the evidence-base

Within the context of DAF, the place of TPOAR is in the balance. Most jurisdictions in Australia are moving towards more streamlined processes, while support for third-party rights continues. Best practice suggests high-risk or high-impact development should incorporate participatory planning approaches, including TPOAR. However, this raises new questions about HDH: On what grounds might HDH be considered high-risk or high-impact? From this, what level of TPOAR should HDH attract? As the turn in Australian planning towards in-fill development comes face to face with resident opposition to HDH and the place of third-party rights moves centre-stage in international arenas, three key gaps in our understanding of the relationship between third parties, appeal and HDH are emerging.

First, to what extent are third parties using TPOAR to resist HDH and what are the impacts on housing approvals? A cursory review of local media suggests that HDH is fiercely contested by residents and activists in some middle ring suburbs in Melbourne and Sydney. Case studies documenting highly conflicted sites have been undertaken (Huxley 2002; Dovey et al. 2009) and interviews with developers suggest a perception that in-fill development is more expensive due to objection and appeal processes (Kelly et al. 2011; Goodman et al. 2010). However, we have no data at the metropolitan scale showing whether and to what extent, third-party objectors and appeal applicants are targeting, or are permitted to target HDH. In order to fully assess the extent to which TPOAR inhibit HDH, a metropolitan wide analysis of third-party appeals data, along with an in-depth analysis of the impact of appeals on housing supply time-lines is urgently required.

Second, to what extent are third-party objection and appeal rights accessible by all members of the public? And to what extent are streamlined approaches distributed evenly across the metropolitan area? The removal of TPOAR where they previously existed is a withdrawal of citizens' rights. However, across a small number of studies (Huxley 2002, Woodcock et al. 2011), there is some evidence that those most likely to access TPOAR are also those living in localities with the highest socio-economic profiles. At the same time, there are already numerous mechanisms through which a myriad of different development styles—including HDH—are exempt from TPOAR and to date, there has been no analysis of the distribution of the removal of rights. Both these gaps pose significant challenges with regard to planning reforms around TPOAR. In particular, without data showing the current distribution of, and access to TPOAR, planning reforms potentially risk replicating or reinforcing exclusionary trends.

Third, from the perspective of those stakeholders who have experienced TPOAR, how effective are objection and appeal processes? One of the limits of objection and appeal processes is that they do not provide an opportunity for third parties to articulate or present an alternative vision of how development might proceed (Trenorden 2009). At the same time, even though there is growing consensus across planning literature that early consultation can help mediate planning conflicts (Albrechts 2004; Productivity Commission 2011), we have little indication of whether earlier phases of public engagement shape intentions of objectors to appeal or not; or whether appeal processes limit or fuel intentions to mobilise in other ways (for instance through local, state or federal elections). There is also little data recording the views of planning authorities and developers about their experience of appeal processes compared to streamlined projects.

These gaps in our understanding of TPOAR provide an important framework for our research. The answers to these questions will help anchor a policy debate focused on streamlining development approval, to the question of HDH specifically. The research will also explore the extent to which participatory aims are achieved and for the first time, establish the views of those stakeholders working with TPOAR and fast-track planning approaches in the context of HDH. Central to these questions is an all-important scoping exercise around the variations in TPOAR in the planning system. The complex framework of where and how higher density housing is or is not subject to TPOAR in Victoria is reviewed in the next chapter. This then informs the design of the empirical component of our study.

4 POLICY FRAMEWORK FOR TPOAR AND HOUSING IN VICTORIA

Victoria presents an ideal case study for the research because the planning system uniquely combines strong third-party appeal rights with a wide range of streamlined approaches. Normal third-party appeal rights in the state's planning system are unusually strong. However, at the same time the use of fast-tracking mechanisms—including ministerial call-in powers, zones and overlays—has been significant (Productivity Commission 2011). Special provisions bypassing normal notice and review requirements—both within planning schemes and via call-ins by and referrals to the Minister for Planning—appear to have been commonly used to create alternative development approval mechanisms in Victoria, particularly for large projects and (recently) for social housing. The number of appeals before the Victorian Civil and Administrative Tribunal (VCAT) is high and the appeal process is widely perceived as being more biased toward the approval of higher density projects than are local council assessments (Woodcock et al. 2011). This situation allows the analysis of variations in development approval processes, appeal cases and planning system outcomes.

This chapter summarises the relevant policy framework governing third-party appeals and fast tracking mechanisms in Victoria, as they relate to higher density housing and social housing. Definitions of medium and high density housing are contested. For the purposes of the research, the term higher density housing (HDH) is used to refer to multi-unit dwelling with a particular focus on development comprising more than ten dwellings. Identification of HDH projects is based in part on common planning permit triggers in the Victorian planning system. This is discussed in more detail in the next chapter.

Summarising the relevant policy framework for HDH is an important step in framing and informing our research design, particularly for the quantitative data collection. Fast tracking tends to be used in an ad-hoc way in response to major development proposals. This means that there is little existing information bringing together the policy framework and its potential relationships to housing supply. Development of the summary below has occurred alongside initial data collection for the quantitative research.

4.1 Provisions for TPOAR on housing

4.1.1 Normal third-party notice, objection and appeal rights

Normal notice, decision and review requirements for planning permits in Victoria are set out in Sections 52, 64 and 82 of the *Planning and Environment Act* (the Act). As set out in the Act, the planning permit process requires general public notification (such as signage or newspaper notifications), as well as the direct notification of any affected parties. Public notifications and objections form a part of the permit application process. The TPOAR system means that any interested person may object to a permit application. The authority is bound to consider the objections, but receiving objections does not mean that the responsible authority will not approve an application. Decisions on permit applications may be appealed at VCAT.

4.1.2 Zoning and planning permits

In Victoria planning permits are required for certain uses and developments, dependent on the zoning of the land. Each zone stipulates uses as either 'as of right' (permit not required), permit required (use allowable with a planning permit), and prohibited. There is a high share of discretionary (permitted subject to permit) uses.

Under the Victoria Planning Provisions (VPPs), local authorities apply standard zones and overlays selected from a list set by the state government. Local planning scheme content must be approved at the state level. The decision-making process established by the VPPs is comparatively flexible, with a high share of discretionary uses. Planning permit applications are dealt with in the first instance by the responsible authority, which is in most cases the local council.

The most prevalent zoning for housing, the Residential 1 Zone, does not require a planning permit for single dwellings. A permit is required, however, for any land subdivision, construction of a multi-residential building (meaning apartments or high-density housing), or construction of more than one dwelling on a lot (meaning dual-occupancy, infill or medium-density housing). In most residential zones, medium- and high-density housing is typically neither prohibited nor allowed as of right, but requires a planning permit.

Some planning overlays apply additional permit triggers to land. These include heritage controls, neighbourhood character controls and special landscape controls. Under a planning overlay, permits are typically required to demolish or remove a building, to remove vegetation or to undertake most external works. Planning permits and building permits are related, but represent different (overlapping) processes. Building permits are required for most building and construction work over a certain value, regardless of whether a planning permit is also required. All new dwellings require a building permit, and the Australian Bureau of Statistics (ABS) uses residential building permits as an indicator of new residential building activity. There are no third-party objection or appeal rights on building permits.

Not all new dwellings require a planning permit, but where a planning permit is required there are typically third-party appeal rights on the decision to grant a permit. Some zones and overlays require permits for higher density housing but also apply exemptions from normal TPOAR, either for all applications or for specified circumstances. The end result is a complex array of differing requirements and exemptions for permits and for TPOAR on housing developments—which are set out in Table 2 below.

Table 2: Zoning and housing in Melbourne: permit and TPOAR requirements

| <i>Zone / Overlay</i> | <i>Category</i> | <i>Permit and TPOAR requirements</i> |
|------------------------------|------------------------|--|
| Residential 1 zone | Normal TPOAR | Single dwellings do not require permits. Medium and higher density dwellings require permits and have normal TPOAR. The most common zone for residential areas. |
| Mixed Use Zone | Normal TPOAR | Allows a range of residential and other uses. Single dwellings do not require permits. Medium and higher density dwellings require permits and have normal TPOAR. Exemption from TPOAR on subdivisions. |
| Residential 2 zone | Fast tracked TPOAR | Single dwellings do not require permits. Medium and higher density dwellings require permits, but do not have normal TPOAR. Meant to encourage higher densities, however not commonly used. |
| Residential 3 zone | Normal TPOAR | Single dwellings do not require permits. Medium and higher density dwellings require permits and have normal TPOAR. Similar to the more common Residential 1 zone but with more restrictive design requirements. |

| <i>Zone / Overlay</i> | <i>Category</i> | <i>Permit and TPOAR requirements</i> |
|---------------------------------|---|--|
| Comprehensive Development Zone | Fast tracked TPOAR | Schedules to the zone may (and commonly do) specify exemption from TPOAR. |
| Priority Development Zone | Fast tracked TPOAR | Schedules to the zone may (and commonly do) specify exemption from TPOAR. |
| Capital City Zone | Fast tracked TPOAR | Applies in the Melbourne CBD area. Larger developments are assessed by the Minister for Planning and are exempt from TPOAR. |
| Docklands Zone | Fast tracked TPOAR | Applies only in the Docklands precinct. Most are assessed by the Minister for Planning and are exempt from normal TPOAR. |
| Business Zones | Reduced TPOAR | Applications require permits but are exempt from TPOAR. TPOAR only triggered where applications are within 30m of a residential zone, land used for a hospital, or an education centre. |
| Urban Growth Zone | Fast tracked TPOAR | Applications do not require permits where generally in accordance with an approved structure plan. Exempt from TPOAR unless specified in the schedule. |
| Activity Centre Zone | TPOAR subject to specific circumstances | Exemptions on TPOAR may be applied in the schedule to the zone. |
| Incorporated Plan Overlay | Fast tracked TPOAR | Permits required but are exempt from TPOAR if 'generally in accordance with the incorporated plan'. |
| Development Plan Overlay | Fast tracked TPOAR | Permits required but are exempt from TPOAR if 'generally in accordance with the plan'. |
| Design and Development Overlay | TPOAR subject to specific circumstances | Allows for specific design requirements to be included in permit assessment. Mixed effect: may introduce additional requirements, or may specify in the schedule that the site is exempt from TPOAR. |
| Heritage Overlay | Additional permit triggers | Applies additional controls to areas of heritage value. Demolition, construction, and many buildings and works require permits and have normal TPOAR. |
| Neighbourhood Character Overlay | Additional permit triggers | Applies additional controls to areas of amenity value. Demolition, construction, and many buildings and works require permits and have normal TPOAR. |

4.1.3 VCAT appeals

Under the normal requirements set out in the Act, if an authority grants a planning permit, the objectors (third parties) have the right to appeal the decision at VCAT. If the authority refuses a permit or places conditions upon it, the applicant (first party) has the right to appeal the decision at VCAT. VCAT is an independent tribunal that presides over dispute resolutions, including those relating to the planning decisions of local authorities that are not resolved to the satisfaction of either planning permit applicants or of objectors. VCAT has the power to uphold, vary, set aside or substitute the decision of local authorities on planning cases. Cases are determined on merit, including consistency with state planning policy. Except on points of law, there are no

appeal rights on VCAT decisions. The types of planning dispute cases heard under the planning list include:

- Applications by objectors about the decision of the authority to grant a planning permit.
- Applications by permit applicants about the decision of the authority to refuse to grant a planning permit.
- Applications by permit applicants about the decision of the authority to impose conditions on a planning permit.
- Applications by permit applicants about the failure of the authority to decide on a planning application within the statutory time frame.

Where a planning permit is required for use or development, there are two basic possible outcomes: the development is approved, or the development is not approved. The development may be approved or not approved by the responsible authority or by VCAT; or it may be 'called-in' at either stage (during council assessments or at VCAT) by the Minister for Planning (see below). The following are the most common paths by which a permit application may result in a VCAT dispute (and be ultimately approved or rejected at VCAT):

1. There are no objections lodged but the local authority rejects the planning permit application. The applicants lodge a VCAT appeal against this decision (a first-party or refusal case).
2. There are objections lodged and the local authority rejects the planning permit application. The applicants lodge a VCAT appeal against this decision (also a first-party or refusal case).
3. There are objections lodged and the local authority approves the planning permit application. The objectors lodge a VCAT appeal against this decision (a third-party or objection case).
4. The planning authority (council) fails to make a decision on the application within the statutory timeframe (a failure to determine case).

4.1.4 Fast tracking mechanisms

Medium or higher density dwelling developments can be fast tracked through the Victorian planning system to avoid the normal TPOAR provisions specifying notice, decision and appeal requirements. The measures to bypass TPOAR take four basic forms. Three of these are based on changes to the local planning schemes, and one involves specific planning applications. These four basic types of fast tracking are detailed below.

First, fast tracking via the application of fast tracking zones in the planning scheme. Zoning can specify that a use does not require a planning permit. As discussed above, in all normal residential zones, this applies to detached housing on a single lot. Medium or higher density housing developments (residential buildings, more than one dwelling on a lot, small lot sizes) nearly always require a planning permit. Some zones specify, however, that applications are exempt from notice and appeal requirements. Applications are then assessed against design guidelines. Zones may also specify that all applications in the zone are exempt from normal TPOAR. Zoning that typically remove TPOAR on higher density housing in Victoria are as follows:

- Priority Development Zone
- Comprehensive Development Zone

- Docklands Zone
- Capital City Zones
- Residential 2 Zone.

Importantly, most residential areas in Melbourne are zoned Residential 1, with normal TPOAR. The Priority Development Zone is sometimes used for designated Activity Centres, for example transit oriented development in Footscray, and for projects of 'regional or state significance'. That the central city areas (Melbourne CBD and Docklands areas), where most high rise development in the city has occurred, are exempt from TPOAR is notable and will be explored in more detail in the quantitative component of the research.

Second, fast tracking via the application of overlays in the planning scheme. Overlays specify further conditions to inform development application assessments. Some overlays apply further restrictions on the nature of allowable development, often increasing the range of permit triggers (for example, the heritage overlay). However, other overlays effectively streamline development applications by exempting TPOAR on applications generally in accordance with an overall plan for the site (Incorporated Plan Overlay, Development Plan Overlay). The Design and Development Overlay has a mixed potential effect on TPOAR in that it may specify TPOAR exemptions in the schedule to the overlay, but may also apply additional design requirements.

Third, fast tracking via changes to the planning scheme that makes the Minister for Planning the responsible authority for particular sites or developments. Under the Act, the Minister for Planning may become the responsible authority for particular sites or development types, by modifying the applicable planning scheme or schemes at Section 61.01. Sections 61.01 of municipal planning schemes in Victoria specify the responsible authority for the scheme, including specific sites or developments for which the Minister for Planning is the responsible authority. The Minister for Planning as the responsible authority means that development applications are exempt from normal notice and review requirements. These changes are typically used for major development sites or for social housing redevelopment sites. Normally the Minister will amend the planning scheme directly. These changes are gazetted but do not have to follow from consultations with council or the public. Applications for these sites are assessed by the Minister and, as a result, bypass normal TPOAR.

Similar but special provisions have been made for social housing built through the Nation Building Stimulus package 2008–12. An amendment to Clause 52.41 of all planning schemes made applications for designated social housing both exempt from TPOAR, and assessed by the Minister for Planning. This provision will expire in June 2012.

Fourth, fast tracking via ministerial call-ins and deferrals of planning applications. The Minister for Planning may also become the responsible authority for a specific planning application—this is commonly known as 'calling in' an application. This typically occurs where applications are considered to be of state significance or are attracting controversy. The applications may be called in at any stage of development assessment, including when an application proceeds to VCAT. In addition, an applicant or council may request to defer an application to the Minister for Planning. Typically the applications are then considered by panels appointed by Planning Panels Victoria, including the Priority Development Panel. The use of ministerial call-in powers has been significant and controversial in Victoria.

4.2 Summary

The above review has highlighted that TPOAR are strong in Victoria and apply, in most areas, to all medium and higher density housing developments. In most residential areas, the applicant must apply for a permit from the local authority and the local authority is required to undertake public notification. Third parties may object to an application and can take the case to VCAT to appeal if the council approves the application.

However, the review has also highlighted that exemptions to these normal TPOAR are widespread and take a variety of forms—each with implications for housing development. Special zones applying to many areas of intense development—including the CBD and Docklands—are exempt from TPOAR. Overlays removing TPOAR on applications are applied to many major sites and precincts. The Minister for Planning has strong powers under the legislation and can assess sites or applications without provisions for review or appeal. These provisions for bypassing TPOAR are set out in Table 3 below. This provides an important framing for the research design described in the next chapter.

Table 3: Fast tracking planning mechanisms for housing in Victoria

| <i>Broad type</i> | <i>Specific</i> | <i>Content</i> |
|--|---|--|
| Zoning | Priority Development Zone | Schedules to the zone may specify exemption from notice, decision and review requirements of the act, typically where applications are deemed in accordance with an approved local area plan. |
| | Comprehensive Development Zone | Schedules to the zone may specify exemption from notice, decisions and review requirements of the act, typically where applications are deemed in accordance with an approved local area plan. |
| | Residential 2 Zone | Applications for medium and high density housing are exempt from normal notice, decision and review requirements, where consistent with design guidelines. |
| | Business Zones 1, 2 and 5 | Exempt from TPOAR unless within 30m of a residential zone, education facility or hospital. |
| Overlays | Incorporated Plan Overlay, Development Plan Overlay | Applications exempt from TPOAR if generally in accordance with an overall site plan. |
| | Design and Development Overlay | Schedule may specify that applications are exempt from TPOAR if in accordance with design guidelines. |
| Responsible authority—planning scheme | Clause 61.01 of the planning scheme | The scheme can specify that the Minister is the responsible authority for specific sites, precincts or development types. The Minister is not required to follow normal TPOAR process processes. |
| Responsible authority—call-ins, deferrals and panels | Called-in projects | The Minister may call in permit applications for assessment. The Minister is not required to follow normal TPOAR processes. |
| | Deferred projects | The council may request that an application be assessed by the Minister or a panel appointed by the Minister. |
| | Nation Building Stimulus Projects | Clause 52.41 added to planning schemes makes social housing projects under the nation building program exempt from TPOAR. The Minister for Planning is the responsible authority. Expires June 2012. |

5 EMPIRICAL COMPONENT OF THE STUDY

Our study aims to situate HDH in wider debates related to streamlining TPOAR in development assessment processes. It is particularly interested in documenting the impact of TPOAR compared to fast-track planning approaches on housing supply. However, it is also concerned with the policy challenge of mediating community opposition to HDH while maintaining participatory planning goals. To these ends, the project examines two basic models of public engagement in planning approval processes—approval processes where third-party objection and appeal rights (TPOAR) exist, and fast tracked planning approval processes that bypass these rights. In order to explore both a breadth of data documenting impacts on both housing supply and participatory planning aims at the metropolitan scale, as well as detailed data documenting the ways that TPOAR intersect with housing supply across the whole of the planning and development process, along with the perceptions of key stakeholders regarding the effectiveness of TPOAR, the project uses a mixed methods approach. It comprises quantitative and qualitative phases.

5.1 Quantitative research design

Our quantitative design is based on the policy framework for higher density and social housing developments in Victoria, as set out in the preceding chapter. For the purposes of the research, the definition of higher density housing is based on permit triggers in the Victorian system. Proposals to construct residential buildings (apartment buildings), more than one dwelling on a lot, and dwellings on very small lots, normally require planning permission. Within this scope we explore variations in provisions for TPOAR. As described above, although there are broad provisions for TPOAR on HDH, there are a range of exemptions that bypass TPOAR in different circumstances. For the purposes of the research, social housing is limited to the provisions of the Nation Building social housing project—government funded housing projects endorsed by the Office of Housing.

We are constructing a dataset specifically for the project, which consists of data from a range of sources merged together to form a database of planning activity in Victoria 2009–10. This dataset will form a major component of our empirical research. The dataset will be analysed to profile the extent to which there are variations across regions in the way planning appeals and fast tracking processes occur where they concern residential planning permit applications. Two types of measurements will be examined. These comprise overall figures on residential planning permit applications and, for larger developments (with 10 or more dwellings) where additional details are known, dwelling numbers by type and density.

The numbers of permit applications and dwellings built through different planning streams in Victoria will be compared. Most of the analysis will be at the level of individual housing projects that move through different pathways of planning permissions in Victoria, with different TPOAR implications.

Within the context of residential development requiring planning permission (defined in the previous chapter), we will compare housing activity in three basic pathways through the planning system that we have identified:

1. Unrestricted TPOAR available; the planning application did not go to VCAT.
2. Unrestricted TPOAR available; the application proceeded to appeal at VCAT.
3. No TPOAR available ('fast tracked' based on a number of possible criteria, as set out in the preceding chapter).

5.1.1 Scope

The scope for the analysis is housing projects in Melbourne municipalities that were active in the planning system at any point during 2009 and 2010 by:

- applying for a planning permit
- lodging a VCAT appeal
- applying for ministerial project status, or
- already being listed within the planning process in the above ways.

The developments will be coded into three basic types:

- no or limited TPOAR available
- unrestricted TPOAR available; planning application did not go to VCAT
- unrestricted TPOAR available, and application proceeded to appeal at VCAT (and if so which type of appeal).

Basic measures will be reported for all residential permit applications in scope. More detailed information is available for the following cases. For these major developments, additional measures will be reported including density and dwelling numbers:

- housing projects in established areas of Melbourne involving 10+ dwellings
- defined by DPCD's Urban Development Program (UDP)
- submitted or in the planning system in 2009 and 2010.

5.1.2 Data sources

To build the dataset of housing projects and TPOAR streams, the following are being collated:

- Planning permit activity for residential projects based on Planning Permit Activity Reporting Project (PPARs) data sourced from the Department of Planning and Community Development (DPCD).
- Detailed planning permit activity for major residential projects (10+ dwellings) sourced from the DPCD Urban Development Program (UDP) for 2009 and 2010.
- Planning scheme data on zoning and on responsible authorities applicable to each municipality in and abutting Melbourne, sourced from Victorian Planning Schemes Online.
- 'Call-in lists': lists of planning permit applications considered by the Minister for Planning and Priority Development Panel.
- VCAT planning list appeals data.

The PPARs data provides a base case of residential permit activity for the investigation period. PPARs data provides indicators of the local planning outcome, the number of objections received, and the type and outcome of VCAT cases. PPARs data is at the application level, and may include multiple applications per site. The UDP data provides more detailed information on development activity for major sites (10+ dwellings) during the investigation period. This includes density, form, dwelling numbers, and site history. The UDP data is the development level.

Both the PPARs and UDP data sources provide key information on planning process; however, they do not contain enough detail to enable full analysis of the impact of TPOAR and 'fast-tracking' on housing supply. Synthesis of these data sources with an

analysis of planning scheme provisions (zones, overlays, schedules), ministerial call ins, and VCAT appeals will enable a more detailed picture of the impact of TPOAR and 'fast-tracking' on housing supply to be presented.

5.1.3 Compilation of dataset

The first step for the quantitative method is to compile the base list of permit applications and housing projects that fit within the scope above. This list is based on planning permit and Urban Development Program (UDP) data published by DPCD, as described above.

There are two streams to the UDP: major residential (10+ dwellings in urban areas), and broad hectare (Greenfield) developments. The UDP data is based on planning permit records and on consultations with local councils. A spatial join will be undertaken to link the PPARs to UDP data. Residential permit applications will then be coded into those relating to major development sites (for which additional information is available), and other (usually smaller) applications. Multiple permit applications for the same site will be identified. Projects not meeting the scope of our project will be eliminated. For example, those that applied for planning permission after 2010 will be removed.

From this list of housing projects we will then code those projects into 'fast tracked' and 'appealed' categories if applicable. To identify fast tracked projects, the zoning and overlays applicable to each project will be identified and coded by whether normal TPOAR does or does not apply for that particular zone and municipality. Housing projects found in the Minister's planning permit register will be matched to the base list. This process will identify applications for which the Minister is the responsible authority and where normal TPOAR will not apply. This includes Nation Building social housing projects; called-in applications; and projects in many fast tracked zones such as the Capital City and Priority Development Zones. The applicability and type of fast tracking will be coded onto the list of housing projects in scope.

Finally, housing projects that proceeded to a VCAT appeal will be identified. This will be based in part on information in the PPARs and UDP data, supplemented with VCAT case lists and media coverage to determine the type of VCAT appeal (first-party, third-party, failure to determine). Ultimately, for each housing project in scope, the following information will be collected (where applicable) and attached to the base list of housing projects:

- The number of dwelling units proposed (major sites only).
- Site density (major sites only).
- The applicable zoning and overlays.
- The responsible authority.
- Whether appeal rights available, and if not then which type of fast track process (zoning, overlays, ministerial authority).
- Location characteristics (derived from geocoding the projects to specific sites).
- Outcome of application: approved/not approved.
- Level of objections received.
- Level of informal opposition (whether community groups were involved).

5.1.4 Analytical methods

Once the dataset is finalised, there will be three basic components to the quantitative analysis, as follows:

1. descriptive analysis
2. modelling
3. validation against aggregate data.

The descriptive analysis will look at variations in the number and rate (relative to permit applications and total dwellings) of VCAT appeals and fast tracked projects for residential developments across Melbourne municipalities over 2009 to 2010. This first stage of the analysis will describe geographical variation in the following:

1. Planning permit activity for housing (overall numbers, differences between major and other sites).
2. Volumes of dwellings by type and density.
3. Objections, VCAT appeals and outcomes (numbers, percentages, differences between major and other sites).
4. The use of different fast tracking mechanisms for housing (zoning, overlays, ministerial authority, Nation Building social housing).

The analysis will compare the policy implications of spatial variations in planning permits, objections, appeals, and streamlining processes for new housing. The extent to which more projects are approved (or built) through fast tracking means will be compared. For major developments, variations in the type and density of housing will be explored.

The second part of the quantitative analysis will use correlation and regression techniques to link the descriptive analyses to additional data describing the following:

1. Local housing market indicators.
2. The socio-economic distribution of participative planning measures (using Socio Economic Indicators for Australia (SEIFA) and other measures).

Modelling techniques will be used to test the extent to which planning processes are equally distributed across different housing market conditions and socio-economic profiles. The analysis will explore factors influencing planning streams and outcomes for housing projects. This will enable us to consider the extent to which different planning system outcomes are equally distributed across the city; and the extent to which planning streams and outcomes are driven by the nature of projects or of local areas. The use of local housing market indicators will explore the influence of housing prices. The use of the SEIFA indexes will explore the influence of local resident characteristics—addressing the issue of whether appeals are more common in areas of higher economic power. The SEIFA indexes provide small area measures of socio economic factors including income, education, tenure, and occupation.

Finally the findings will be validated against other aggregate data for Melbourne over the study period. These data sources comprise:

- ABS Building Approvals
- UDP data on broad hectare housing
- Planning Permits Activity Report (PPAR) reports

The building approvals data will be particularly important as it will highlight the differences between all residential developments in the city, as compared to the medium and higher density housing requiring planning permits. As reviewed in the previous chapter, low density housing typically does *not* require a planning permit in Victoria. This means that although the dataset compiled for the study, and the core analyses proposed, will capture variations within different planning processes for

housing, a large part of housing is likely to be built *outside* the planning system. A number of studies have suggested that there are barriers to urban consolidation as a result of simpler development processes for low density housing in greenfield areas. This stage of the analysis will therefore put the role of TPOAR, appeals, and fast tracking of development, into the context of the overall scale and characteristics of residential development in the city.

Together these quantitative data will make significant inroads into our understanding of the impact of TPOAR and streamlined approaches in terms of housing supply and participatory planning aims.

5.2 Qualitative case studies

Three qualitative case studies of higher density development in Melbourne will build on quantitative work in two key ways. First, as set out in Table 4 below, by deepening analysis of the impacts of TPOAR compared to fast track approaches on housing supply and second, by providing a set of qualitative data documenting stakeholder perceptions of the effectiveness of TPOAR and fast track approaches from different perspectives.

- a) *Establishing the impact of TPOAR and fast track approaches in terms of delay in housing supply across the life of the project.* The case studies will build on the quantitative work by developing a detailed, whole-of-project account of the impact of TPOAR/fast track on housing supply timelines. Project timelines will be established for each case from initial engagement of proponents through to construction. Even though it is assumed that third-party objection and appeal processes add delays to housing development, this project will quantify and specify these delays in each case study. The case studies will not only capture the complexities and interruptions that characterise and shape housing supply (Ball et al. 2009) but develop an understanding of housing supply that incorporates and acknowledges deliberative aspects of the planning process.
- b) *Stakeholder perceptions of the planning process.* Through in-depth interviews with residents, planners and developers associated with each of the case studies, qualitative data will provide a clearer sense of the effectiveness of TPOAR compared to fast track approaches from stakeholder perspectives. Specifically qualitative data will explore whether TPOAR and fast track approaches dilute or fuel new types of mobilisation against HDH and social housing; whether earlier phases of community consultation shape residents' decisions to object or appeal development approvals; whether and how TPOAR and fast track approaches shape developer intentions to develop in-fill sites; and how planners' experiences of TPOAR and fast track approaches shape their approach to future projects. Critically, they will provide an opportunity for all stakeholders to reflect on alternative approaches.

Table 4: Impacts of TPOAR/fast track investigated in quantitative and qualitative research design

| <i>Phase of research</i> | <i>Housing supply</i> | <i>Participatory planning goals</i> | <i>Perceptions of planning</i> |
|--------------------------|---|--|--|
| Quantitative | <ul style="list-style-type: none"> → Number and per cent of applications and dwellings subject to appeal rights by dwelling type. → Variations in appeal rights. → Variations in objections and appeal by location and by dwelling type. | Variations in distribution of appeal rights and appeal outcomes by locality, SEIFA and housing market characteristics. | |
| Qualitative | Impact of appeal/streamlining on housing supply from initial permit application to construction. | | <ul style="list-style-type: none"> → Stakeholder perceptions of the effectiveness of TPOAR/fast-track. → Likelihood of further mobilisation. → Alternative forms of participation (including earlier engagement). |

5.2.1 Selection of cases

In order to draw comparisons between different levels of TPOAR in terms of housing supply and stakeholder perceptions of the planning process, case studies will compare one fast tracked example (Case A) with two cases where full TPOAR are available (Case B and Case C). Case A will be a site developed as part of the Social Housing Initiative where TPOAR were bypassed. Case B and Case C will have full appeal rights. To enable comparison of the impact of TPOAR/streamlining on housing supply timeline, Case A and Case B will comprise approximately the same number of dwellings. To explore the extent to which early consultation and agreement of planning outcomes shape decisions to appeal planning approvals, Case B or C will be selected from a sample where the appeal was preceded by an earlier phase of consultation. For instance, the case may occur in a location characterised by strategic-level consultation through a structure planning process, zone amendment, precinct plan or similar prior to appeal. In addition, in order to generate a whole-of-project account of the impact of TPOAR/fast track on housing-supply timelines, all three cases will be at or near construction.

The selection of the three case studies will be aided significantly by quantitative analysis. Specifically, planning approvals data by planning stream, objections data, appeals outcomes and number of dwellings will be used to develop a shortlist of potential sites. Location will also play a role with at least one case drawn from the middle suburbs where higher density development and resident action is becoming increasingly significant.

5.2.2 Case materials

The case studies will be developed with clear reference to planning policy frameworks and histories of prior consultation surrounding each site. The case studies will also draw significantly on semi-structured interviews with resident opposition groups, developers and planners along with media analysis and site observations.

Eighteen semi-structured qualitative interviews will be undertaken. Six interviews will be conducted at each of the three sites with representatives from resident opposition groups, objectors, developers and local and state planning authorities. Semi-structured interview schedules will be developed encouraging respondents to reflect on three key aspects of the planning process:

1. The housing supply timeline from initial engagement to construction including key points of consultation, objection and appeal processes.
2. The impact of appeals or fast track approaches in terms of delay.
3. Perceptions of the planning process.

Interviews will be recorded and uploaded for transcription. Transcripts will be anonymised and analysed to uncover stakeholders' perceptions of planning where third-party objection and appeal are bypassed, where full appeal is available, and where an appeal has occurred in the context of earlier phases of consultation. The interviews will also trace stakeholders' perceptions after appeals decisions have been made and construction is underway.

The qualitative interviews are significant in establishing stakeholder perceptions and viewpoints along with residents' experience and practices (Smith 2001). Pitcher et al. (2008) argue that qualitative methods are well suited to uncovering diverse community views, particularly in establishing how viewpoints are formed, and from this, appropriate policy responses in complex situations can be developed. This set of interviews will also link participatory planning approaches to housing supply.

The case study component of our research will proceed through the following stages:

- Identifying illustrative case studies.
- Examination of planning opposition group website and media content.
- Fieldwork: in-depth qualitative interviews and site visits.
- Examination of planning timelines and outcomes in the case studies involved.
- Analysis of media content, observational and interview data and writing up illustrative case studies.

6 CONCLUDING REMARKS

Higher density housing (HDH) has moved centre-stage in Australia over the past decade, in compact city and social housing policies. But the rollout of HDH has come face to face with public resistance embedded in the cultural norm of detached housing. This project starts from the assumption that the potential for resident opposition to distort the supply of HDH has placed mechanisms for public participation in planning, specifically TPOAR, under new scrutiny. While debates around the efficacy of TPOAR are traditionally framed around a long-standing opposition between facilitating development and public participation in planning, this paper highlighted the pressure that compact city and affordable housing policies are now placing on TPOAR, along with the increasing use of fast tracking mechanisms to enable development approval.

Against a backdrop of resident opposition, the report has shown that HDH produces a complex policy challenge: namely, how to meet dwelling targets in existing urban areas while making allowance for the reasonable rights of residents to influence development, and at the same time, manage sectional interests. To help navigate this path, this paper has outlined a research project that puts HDH at the centre of debates around TPOAR and participatory planning.

To this end, we point to three key gaps in the research required to inform the current reassessment of TPOAR in Australia and elsewhere. The first is to what extent are TPOAR inhibiting housing supply compared to fast track approaches? The answer to this question would provide a more detailed and precise account of the extent to which 'resident action' is targeting higher density and/or social housing, and from this, whether changes to TPOAR are likely to have a significant impact on housing supply. At the same time, the assumption that fast tracking development approval processes results in faster housing supply pipelines can be more carefully scrutinised and from this, provide an indication of whether the removal of citizens' rights is likely to improve housing supply. Second, to what extent is access to TPOAR distributed across the metropolitan area? There is some evidence that those most likely to exercise TPOAR are also those living in localities with the highest socio-economic profiles, and there has been no analysis of the distribution of the removal of rights. With a clearer sense of the current distribution of rights, new reforms can minimise exclusionary trends. Third, how effective are current TPOAR and fast track mechanisms from the perspective of those who experience them most? To what extent does the removal of TPOAR encourage new forms of resistance or collaboration; what form might they take; and how might these responses feed back into the planning process?

With a clearer understanding of the wider policy context of HDH in Australian cities, existing planning policies in relation to TPOAR, as well as research literature, this Positioning Paper lays out the basis for the empirical part of our project. The empirical part of the project consists of quantitative and qualitative components of data collection and analysis, the results of which will be presented in the project's Final Report in May 2012. We hope that this paper and further project outputs will contribute important and policy-relevant insights on the functioning of TPOAR, the forms of resident resistance to higher density and social housing, housing supply pressures, and participatory planning goals.

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