



*Final Report*

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

authored by

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## ACRONYMS

ABS	Australian Bureau of Statistics
AHURI	Australian Housing and Urban Research Institute Limited
BCA	Building Code of Australia
COAG	Council of Australian Governments
DAF	Development Assessment Framework
DDO	Design and Development Overlay
DPO	Development Plan Overlay
DPCD	Department of Planning and Community Development
FaHCSIA	Australian Government Department of Families, Housing, Community Services and Indigenous Affairs
HDH	Higher density housing
IPO	Incorporated Plan Overlay
IRSD	Index of Relative Socio-Economic Disadvantage
LGA	Local Government Area
LPS	Local Planning Scheme
NHSC	National Housing Supply Council
PPAR	Planning Permit Activity Report
TPOAR	Third party objection and appeal rights
SEIFA	Socio-economic Indicators for Australia
SHI	Social Housing Initiative
UDP	Urban Development Program
VCAT	Victorian Civil and Administrative Tribunal

# 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. Population growth, falling household size and increased competition for land and resources ensure the continuing centralisation of HDH in planning policy and practice. However, policies of densification and urban consolidation have been subject to significant resident opposition. This has raised questions around the place of participatory planning approaches in development assessment, and in particular, the role of third party objection and appeal rights (TPOAR)—the focus of this project.

TPOAR are associated with greater public participation and accountability in planning and development assessment processes, but the use of TPOAR to oppose HDH can generate delays in housing supply while also compromising the achievement of compact city and social housing objectives. The extent to which TPOAR should be incorporated into development assessment has received national policy attention through the Council of Australian Governments (COAG). In 2008, the Federal government required states and territories to use fast-track planning mechanisms to bypass TPOAR in the roll-out of its \$5b Social Housing Initiative (SHI). However, removing or streamlining TPOAR limits community overseeing of planning processes. Further, the removal of opportunities for resident objection and appeal can result in negative perceptions of the planning process, electoral backlashes and ongoing stigmatisation of social housing, which in turn lead to uncertain planning contexts.

This report presents findings of a research project that explored the efficacy of different levels of TPOAR with regard to housing supply, participatory planning outcomes and public perceptions of planning processes. The aim of the project was to expand the evidence base regarding participatory planning approaches and housing supply in the context of compact city and social housing policy in Australia.

## **Literature review and key debates**

Third party objection and appeal mechanisms are broadly acknowledged for their contribution to participatory planning. However, the extent to which TPOAR achieve participatory planning goals has also been questioned. A review of the literature showed 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 (such as 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, including housing supply.

The tension between efficiency in planning process on the one hand and participatory goals on the other, is reflected in contemporary Australian planning reform both federally and at the state level. There is widespread support for public accountability in planning and this is matched by a renewed interest in generating public support for the implementation of strategic planning and housing objectives. To these ends, there is increasing policy convergence around planning approaches that enlist residents in strategic planning ‘earlier’ in the planning process with a view to minimising opposition later. At the same time, opportunities for resident objection and appeal have been limited through a range of streamlined assessment processes in many jurisdictions in Australia. Streamlining mechanisms often apply to social housing projects. While social housing is critical to maintaining housing affordability and social justice (Fincher

& Iveson 2008), it is also deeply stigmatised. While removing TPOAR from development assessment processes is often justified for important policy goals of affordable and well-located housing, these strategic level aims can be at odds with community opinion.

### **Research aims**

Despite the apparent conflict between participatory planning goals and housing supply, there are significant gaps in the evidence base regarding the influence that TPOAR have on the supply of housing or its effectiveness as a participatory planning mechanism. In particular, the extent to which TPOAR are used to resist HDH in metropolitan cities is yet to be established. Where TPOAR exist, there is no metropolitan-wide data showing the distribution of availability and use by socio-economic status. There is also surprisingly little qualitative data comparing residents', planners' and developers' perceptions of different levels of objection and appeal in relation to HDH. At the same time, the effectiveness of planning approaches characterised by early consultation at a strategic level compared to fast-tracking approaches have not been assessed in terms of housing supply outcomes or participatory planning goals. As a result, the technical limitations of the planning system in mediating community concern about social housing and HDH are poorly understood. This project sought to address these gaps.

### **TPOAR in Victoria**

Our research project, focusing on the state of Victoria, explored the distribution of TPOAR and the impacts of different levels of TPOAR in terms of housing supply, participatory planning expectations and stakeholder reflections of the planning process. Victoria is an ideal case, because the planning system uniquely combines strong third party appeal rights with a range of streamlined approaches. 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 the use of various fast-tracking mechanisms—including ministerial call-in powers, zones and overlays<sup>1</sup>—is significant to this project. 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 in relation to housing outcomes and resident opposition to HDH at the metropolitan scale. Our project was therefore a cost-effective way of developing an evidence base for both planning approaches.

### **Methods**

The project used a mixed methods approach. Quantitative analysis was undertaken utilising a range of planning permit activity data to explore the extent to which TPOAR is being used to contest HDH. Information is reported for major developments in Melbourne involving 10+ dwellings, and where available, development of more than 25 dwellings. The extent of objection and appeal associated with particular development applications, along with underlying planning provisions, were examined, with planning and development data spatially coded against socio-economic data to examine the differing extent to which TPOAR were accessed across a diverse urban population. Modelling techniques were used to test the extent to which planning

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<sup>1</sup> Ministerial call-in powers are specified in section 97 of the *Planning and Environment Act 1987*. They allow the minister to take over the decision-making role from local council where the proposed development is deemed significant to planning policy objectives or in cases of unreasonable delay. Zones are a feature of the Victorian (and most) planning schemes, indicating allowable and prohibited use of land. Overlays are used selectively to provide additional planning policy provisions on top of that of zones.

processes and outcomes are associated with housing market conditions and socio-economic profiles.

Qualitative case studies were selected to explore the variation in participatory planning and housing outcomes across three different planning approaches. Namely:

- fast-tracked development assessment
- early 'upfront' consultation at a strategic planning level (with a view to minimising opposition later in the planning process)
- development assessment with full TPOAR.

The effectiveness of each approach is compared through detailed analysis of housing supply time-lines, from pre-application meetings to construction. Through qualitative interviews with residents, planning officers and developers involved in the sites, each planning approach was also assessed in terms of their participatory planning outcomes and stakeholder perceptions of the planning process. Each of the sites was representative of development that meets policy goals of densification and urban consolidation and are characterised by a relatively high level of community opposition (ranging from 30 to over 200 objections). While the sites are all large (categorised as 25+ dwellings), variation was sought in locational and socio-economic context.

## **Findings**

### *The use of TPOAR to contest HDH*

The findings show TPOAR are being used to target HDH. In 2009–10, 7/10 development applications in Melbourne were open to formal third party objection and appeal. Just over one in four applications (26%) received objections. For larger development proposals (more than 10 dwellings) the rate of objection was over one in three (35%).

2Access to TPOAR varies spatially and by Socio-economic Indicators for Australia (SEIFA) ranking. While TPOAR are generally available in established suburbs, the data highlights greater propensity for developments in areas of lower socio-economic advantage and house price to be fast-tracked.

Patterns of objection and appeal reflect a 'wealth and educational effect' such that applications in areas of higher SEIFA ranking are more likely to receive objections and more likely to receive larger numbers of objections per application. However, it is important to note that areas of lower relative advantage do use TPOAR to contest HDH, albeit at lower frequency and intensity.

### *TPOAR and in-principle opposition to HDH*

Qualitative interviews suggest that not all of the reasons people object and appeal HDH determinations can be considered in merit-based planning reviews including a desire to exclude particular social groups (particularly renters & students) from the neighbourhood and preserving a range of social and economic attributes associated by residents with lower-density living.

Given the tendency for development applications in areas of higher relative advantage to attract objections more frequently than those in areas of lower advantage, it appears that TPOAR are being used to protect established lower-density neighbourhoods from in-fill development and its future occupiers.

The refashioning of TPOAR as an instrument to oppose HDH represents the evolution of its conventional role as a mechanism of community oversight in planning. This variation is testimony to the ways in which the boundaries of public participation in

planning are being reshaped by the restructuring of cities around more compact forms.

*Balancing resident opposition, housing supply and participatory planning outcomes: comparing three approaches*

Fast-track planning approval delivered strong housing supply outcomes (6 dwellings per month) but generated anger, frustration and mistrust about government planning and approval processes. This was exacerbated in a politically progressive LGA (Local Government Area) as objectors were not opposed to social housing or HDH in principle. Product cost consequences of this opposition were not felt in development time-lines but were felt in terms of the negative marketing campaign against planning and political processes; and the missed opportunity to develop community-supported social housing.

Early consultation at the strategic planning level generated ongoing demands for robust, clear and locally situated information at each stage of the planning process (including drafting, modification & amendment). Despite council's efforts, those residents whose properties were affected most by the amendment were unaware their homes were in areas designated for HDH, leading to a planning appeal and significant delays in housing supply (just over one dwelling per month). While residents were well aware of the financial and social values of their homes, they were far less conscious of the planning frameworks governing their neighbourhood. In this context, the planning changes became obvious to residents through the physical change in the built form, rather than letters of notification.

Of the three cases examined, the site with TPOAR provided most opportunity for deliberation and debate and this produced a rather more locally situated development. However, the developer estimated the cost of multiple appeals was around \$3m, while the residents' costs were \$170 000. There were significant impacts on housing supply (one dwelling per month from the preliminary application to construction). State and local planning policies around HDH were not aligned in this case, leaving the case to be 'worked out' through the appeal process.

Overall, fast-tracking and early upfront consultation streamline housing supply, but generate new challenges in terms of reputational costs for planners and communication demands about planning procedures respectively. In contrast, TPOAR provides an opportunity for full deliberation over planning determinations, but can be costly in terms of time and money.

**Policy implications**

Despite the uneven impact of third party involvement on the supply of HDH and social housing, building resident support for planning policies is critical in the transition from low-density to higher density urban forms. Whether public policy-makers can bring the public along with these changes hinges on a number of factors.

*Can policy-makers at the local and state level develop agreed policy positions in terms of the location and supply of social housing and HDH?*

Conflicting local and state controls for HDH in Melbourne make development proposals for HDH reasonably vulnerable to objections and appeals. With clearer alignment and consistency of state and local planning policies in relation to HDH, opportunities for objection and appeal against HDH will be minimised and planning for HDH will be taken out of the appeals tribunal.

*Can policy-makers at the local and state level develop guidelines for high-quality, cost-competitive HDH and social housing?*

The transition to HDH marks an ideological shift in how we live, but there has been little public debate about this transition and what residential densification should look like. HDH is often contentious among residents where building design and street-interfaces are poor. Design guidelines that define high-quality design standards for HDH that facilitate community encounter and practices of 'neighbouring' will help build community buy-in for HDH. Design guidelines can also help support the development of communication strategies to frame consultative opportunities at the local level.

*Can policy-makers develop shared understandings with non-planners about HDH and social housing?*

Residents are well aware of the financial, cultural and practical values of their homes, but are far less attuned to the processes that link their homes to the wider world of strategic planning and urban restructuring. Bridging the gap between planning and non-planning stakeholders is a significant challenge that involves the development of shared understandings around HDH and social housing across diverse communities. Information tools require a high level of locational specificity and procedural clarity, and councils require the necessary resources to develop communication strategies that help residents feel 'at home with strategic planning'.

*How can policy-makers make the most of opportunities in progressive neighbourhoods to develop community-supported HDH and social housing?*

The stigmatisation of social housing has real impacts on its delivery. However, in those neighbourhoods that do not oppose social housing, the blanket commitment to fast-tracking can inhibit opportunities to develop community-supported social housing and HDH. While the exclusionary impulses of many neighbourhoods should not be under-estimated, the tendency to assume all neighbourhoods are equally prejudiced against social housing reduces opportunities for projects that develop collaborative and community-supported HDH and social housing. Rather than using a 'one size fits all' fast-track approach, there are opportunities in more 'progressive' neighbourhoods to develop a series of benchmark projects that balance housing supply with participatory planning outcomes, and high-quality, locally situated design.

*How can policy-makers acknowledge and limit socially exclusionary practice in public debate over HDH and social housing?*

While models of third party involvement are often presented as a way to empower communities, it is not always the case that residents will act in the public interest. Developing standards of design, affordable and effective communication measures, and community-supported examples will all help to raise the quality of debate and the range of stakeholders who become involved in consultative approaches. However, planners also need adequate training and preparation (and/or the appropriate professional support) to frame public debates within policies and practices of non-discrimination.

# 1 INTRODUCTION

This report is the final output of the project exploring the impact of TPOAR on higher density and social housing. The framework for this research project was set out in the Positioning Paper (AHURI Positioning Paper No.145, February 2012, [www.ahuri.edu.au/publications/projects/p30678](http://www.ahuri.edu.au/publications/projects/p30678)) where an overview of the policy context for HDH and social housing were provided. The Positioning Paper also comprises a literature review exploring debates around TPOAR, a detailed account of the planning framework in the state of Victoria which was the focus of this project, and overview of the quantitative and qualitative research design. This Final Report builds on the Positioning Paper by presenting the findings from quantitative analysis of planning approval data for Victoria, 2009–10, as well as three case studies of HDH undertaken in the Melbourne LGAs of Moreland, Manningham and Stonnington. Chapter 1 provides an overview of the policy context and details our project's approach and significance. The report then presents the findings of the quantitative research (Chapters 2–5). This is followed by the findings of three in-depth case studies of planning approval, development and participatory planning approaches (Chapters 6–9). The concluding chapter summarises the findings and sets out policy implications (Chapter 10).

## 1.1 Densification, social housing and resident opposition

Residential densification and urban consolidation have emerged as key planning and housing policy goals in Australian cities (Yates 2001; Searle 2004; Randolph 2006; Searle 2007). Contemporary metropolitan strategies such as *Melbourne 2030*, *Sydney 2036*, the *South East Queensland Plan 2005–2026* and *Network City* (Perth) are notable for their focus on compact city forms, urban consolidation and residential densification. With population growth, environmental constraints and falling household size, strategic plans enabling HDH in well-located neighbourhoods will retain a key place in urban and housing policy in future decades.

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; Bunker et al. 2005; Huxley 2002; Randolph 2006; Searle 2007). Public housing is also subject to significant stigmatisation in Australia (Atkinson & Jacobs 2008; Mee 2007; Ruming et al. 2004). This has been particularly evident in resident and local government mobilisation against the siting of new public housing under the SHI (Jacobs et al. 2010; Dowling 2009; Ruming 2011). This places new attention on the capacities and limits of the planning system in addressing broadly based community concerns around densification and social housing provision.

As discussed in the Positioning Paper, one of the key ways in which residents influence development outcomes is through TPOAR. However, TPOAR occupy an ambiguous position in planning policy and research. TPOAR are broadly acknowledged for their contribution to participatory planning outcomes but they are also characterised by many limitations. Key among these are the potential for TPOAR to: generate 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 (such as community consultation at earlier stages of the planning process); and courts of appeal may take planning authority away from elected officials at the local level (Finkler 2006; Ellis 2002; Willey 2006; Van Dijk & van der Wulp 2010). They also potentially reinforce protection of existing property regimes that favour home-owners over tenants (Finkler 2006).

Densification policy has the potential to exacerbate these tensions. The roll-out of HDH in societies where housing wealth is tied up in lower-density urban forms may

emphasise the distributional shortcomings of TPOAR as home-owners seek ways to protect a perceived change to neighbourhood amenity and property values in their neighbourhood. As pointed out by Smith (2008) the owner-occupied home comprises a key component of most people's wealth, and the majority of their debt. For many home-owners in Australia, much of this wealth is accumulated in lower-density dwellings that therefore have significant financial and cultural value (Blunt & Dowling 2008). The opposition to social housing observed by Atkinson and Jacobs (2008) may also be exaggerated from the perspective of owner-occupiers. In Australia and elsewhere, the latter are considered 'full citizens' and 'financial grown-ups' while renters are often viewed as 'second class citizens' (Colic-Peisker & Johnson 2010). Consequently, HDH that incorporates social housing or affordable rental into a single-building envelope is potentially contentious regardless of socio-economic status and housing wealth.

At the same time, ambit claims by developers seeking to maximise development opportunities through intensification can also pose a significant challenge to the rights of residents. Woodcock et al. (2011) observe a trend in Melbourne toward the submission by developers of applications that deliberately exceed controls in local and state planning policy frameworks. They document the emergence of a new trade in planning permits won through the Victorian court of appeal. HDH might also become a transmission point for public concerns about environmental and social sustainability where objectors have some claim to a wider public interest (Ellis 2004).

As a form of public participation in planning, TPOAR are nonetheless at odds with deliberative approaches deemed more suitable in responding to and embracing contemporary environmental and social challenges (Devine Wright 2009; Carson 2001). In the context of HDH and social housing, the need to build community alliances and support for sustainable planning policies add additional weight to the criticism set out in the Positioning Paper of TPOAR as an adversarial mechanism that draws resources away from more deliberative parts of the planning process (Trenorden 2009). This includes drawing resources away from earlier consultation with residents at a strategic planning level. In this way, TPOAR can be seen as a limited form of resident participation in (re)creating suburbs and cities in more compact and affordable ways.

## **1.2 Policy context**

Ensuring some level of community input and engagement is critical to the successful implementation of higher density and social housing policies in the Australian metropolis. The extent to which TPOAR should be incorporated into development assessment in Australia has received national policy attention through the COAG. In Victoria, a new Coalition government elected in November 2011 has flagged an interest in the removal of objection and appeal rights explicitly to facilitate higher densities (Dowling 2012). Currently the NSW State Government are considering planning reforms that remove local councils from development assessment processes, centralise the role of non-elected planning committees and prioritise community consultation early in the planning process (NSW Government 2012). This signals a new engagement with the principles outlined in the Development Assessment Framework developed by COAG as set out in the Positioning Paper. At the same time, objector and political backlashes to the SHI saw the relocation and limitation of social housing in a number of locations (Dowling 2009). There is a risk in relation to social housing, that even though fast-tracking development assessment stimulates supply, it can generate community opposition to development, further exacerbating the stigmatisation of social housing residents (Atkinson & Jacobs 2008; Rumung 2011) and generating community criticism of the planning system. If this



raises questions about the effectiveness of fast-tracking in terms of participatory planning outcomes and resident buy-in, it also suggests the tension between housing supply and participatory planning aims is gaining new momentum.

Overall, both the removal and retention of TPOAR pose issues for compact city and affordable housing policies. Together, these trends present 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.

### **1.3 International significance**

The challenge of balancing opposition to increased residential densities and housing supply is also evident internationally as set out in the Positioning Paper. Recent reforms in the UK that shift responsibilities for planning and housing targets to local government authorities and communities are indicative (Bramley forthcoming). These reforms prioritise community input in developing strategic plans at the local level, so they might be seen to deliver strong participatory planning outcomes. However, through an analysis of resident perceptions of housing, political voting patterns, local government planning stances and the impact of local and personal financial incentives, Bramley (forthcoming) predicts planning reforms under the 'Localisation' agenda have the potential to produce a shortfall of housing where it is most needed, thus providing a break on economic growth. Case studies of resident and council support for increasing housing and social housing in rural areas in the UK also show marked variations in community and local government support for increasing housing supply (Sturzaker 2011). Gallent and Robinson (2011) and Powe and Hart (2011) highlight the increasing tension over housing development in rural neighbourhoods, while a study of 130 local opposition groups in the Netherlands found that housing was the most commonly contested form of land use (Van Dijk & van der Wulp 2010).

Similarly, in jurisdictions with third party appeal rights, policy directions that favour devolution of national or regional planning responsibilities to local levels can lead to increasing reliance on courts of appeal to determine applications. There are concerns, for instance, that the decentralisation and fragmentation of planning process in the Netherlands will produce a shift toward planning through appeal (Roodbol-Mekkes et al. 2012). Jurisdictions such as the Republic of Ireland, and the eight Canadian provinces with TPOAR are also open to ambit claims and speculation over court decisions. Even where TPOAR do not exist, there may be an increasing tendency to see development applications decided through courts of appeal. For example, Scotland, Wales and Northern Ireland all have first party appeal rights that allow applicants to appeal local authority refusals or failure to determine. In England, Waite (2011) and Townsend (2011) report an increase in first party appeals as local planning authorities struggle to finalise local strategic plans with limited resources with the Planning Inspectorate tending to support proponents.

Together, the devolution of planning responsibilities, and in some cases, greater roles for communities in determining strategic planning goals in their neighbourhood, suggest a more participatory approach to planning. However, more localised strategies also have the capacity to generate new housing supply issues as residents and local authorities opt for low residential development targets in areas of significant growth or locational advantage. At the same time, the process of devolution hinges on capacities at a local government level to develop strategic plans and assess applications. Without resourcing at this level, there is an increased risk that housing development in traditionally low-density or rural areas will trigger the increased use of both first and third party objection and appeal so that planning approvals are increasingly determined in tribunals or courts. Here, the balance may be in favour of participation at the expense of housing supply.

## 1.4 Project aims

As policies of increasing residential intensification come face to face with resident opposition, this report aims to generate new knowledge about the relationship between planning approval processes, third party objection and appeal, HDH and social housing. The research addresses three key aims.

First, it documents the extent to which third parties use TPOAR to resist HDH and the impacts on housing supply. A cursory review of local media suggests that HDH is fiercely contested by residents and activists in Melbourne and Sydney. Case studies documenting highly conflicted sites have been undertaken (Huxley 2002; Dovey et al. 2009; Ruming 2011; Ruming et al. 2012) 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). Research tracing social attitudes in the UK and Australia also show community opposition to HDH (Bramley forthcoming) and higher density populations (Productivity Commission 2011), respectively. However, to date, planning objection and appeal data—providing evidence of resident opposition to planning applications—have not been analysed with reference to development size. This is not surprising given the complexity of planning approval pathways<sup>2</sup> characterising housing supply; or indeed, the different ways in which planning applications can arrive at an appeal. Moreover, the impact of objection, appeal and fast-track mechanisms in terms of housing supply by project is difficult to assess without engaging with the complexity of development approval and construction processes (Ball et al. 2009; Ball 2011). This report addresses these gaps by generating a data set at the metropolitan scale that uniquely combines objection and appeal data with development activity, showing whether and to what extent third party objectors and appeal applicants are targeting HDH, along with an in-depth account of the housing supply chain in three cases with different levels of TPOAR.

Second, it establishes the extent to which TPOAR are accessible to all members of the public; while also establishing whether TPOAR are exercised for community or public gains. The removal of TPOAR where they previously existed is a withdrawal of citizens' rights. There are already numerous mechanisms through which a myriad of different development styles, including HDH, are exempt from TPOAR and, across a small number of studies (Huxley 2002; Woodcock et al. 2011), there is evidence that those most likely to access TPOAR are also those living in localities with the highest socio-economic profiles. At the same time, an emerging body of 'post-collaborative' planning literature suggests that resident opposition exceeds the remit of 'not-in-my-back-yard' (NIMBY) politics (see Dear 1992) and can be motivated by public concerns about environmental and social sustainability where objectors have some claim to a wider public interest and may even see the process of challenging planning decisions as a duty (Ellis 2004). This was a point made by Alexander (1998, p.7) who argued that community opposition to development projects based on environmental or social concerns should not be simply 'dismissed' as NIMBYism. The nature of opposition is therefore important in assessing whether the availability and use of TPOAR generates some public benefit, and from this, whether TPOAR extends or inhibits participatory planning outcomes. Drawing on metropolitan-wide data showing the socio-economic and socio-spatial features of the provision (and removal) of TPOAR, along with an in-depth account of the reasons residents oppose HDH in three cases, the report addresses these gaps.

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<sup>2</sup> All development proposals that require a planning permit are characterised by a planning approval pathway. The 'planning approval pathway' refers to the steps that applicants must take in order to receive planning approval. In some jurisdictions, planning approval pathways can include the opportunity for third parties and/or first parties to object to and appeal planning decisions.

Third, from the perspective of those stakeholders who have experienced TPOAR, the report compares perceptions of the participatory planning outcomes achieved through different planning approval pathways, and reflections on the planning process overall. One of the limits of objection and appeal processes is 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; Legacy 2012; Productivity Commission 2011), we have little indication of whether earlier phases of public engagement shape intentions of objectors to appeal, or whether appeal processes (and their absence) limit or fuel intentions to mobilise in other ways. There is also little data recording the views of planning authorities and developers about their experience of appeal processes compared to streamlined projects. Analysis of in-depth interviews exploring the views of 18 stakeholders involved in planning, developing and contesting HDH and in one case, social housing, will begin to address this shortfall.

Overall, the report aims to help fill the gaps in our understanding of TPOAR in relation to HDH and social housing. In addressing the above project aims it will help anchor a policy debate focused on streamlining development approval, specifically to the question of HDH and social housing. 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 are two new datasets compiling planning and housing data at the metropolitan scale, and in-depth case studies at the scale of the development site.

## **1.5 Structure of report**

The remainder of the report presents the findings of the quantitative research (Chapters 2–5), qualitative research (Chapters 6–9), and conclusions (Chapter 10). Chapters 2–5 establish the impact of TPOAR on housing supply and identify the distributional and socio-spatial features of the provision and use of TPOAR. Chapters 6–9 develop a fine-grained comparison of housing supply and participatory planning outcomes in three housing projects, each characterised by different levels of TPOAR. These chapters also explore the nature of resident opposition (that is, why people objected or opposed these developments) and stakeholder perceptions of the planning process. The concluding chapter summarises the findings and sets out policy implications.

## **2 QUANTITATIVE ANALYSIS—APPROACH AND METHOD**

Chapters 2–5 use quantitative methods to establish the impact of TPOAR on housing supply. They also identify the distributional and socio-spatial features of the provision and use of TPOAR. Analysis is based on a dataset of residential planning permit activity in Victoria over 2009–10. This dataset was constructed for the project using merged data from a range of sources. Within the context of residential development requiring planning permission, the dataset is used to compare a sample of housing permit activity through various planning system pathways. In doing so, it explores the extent to which third party objectors are related to development approvals for HDH through different pathways, drawing on descriptive and modelling techniques.

The quantitative analysis proceeds in four chapters. Chapter 2 establishes policy context and the research methods used to construct and analyse the data set, while Chapters 3–5 present the results of the analysis. Given variations in the extent TPOAR, Chapter 3 examines the planning policy provisions associated with residential development applications in Victoria, seeking to identify variation in TPOAR status and the connections to development size, different planning approval mechanisms, and spatial trends, including local area attributes. Chapter 4 focuses on the extent to which the right to object to a development application is exercised by third parties. It profiles the scale of objections, connections between objection numbers and development size, and spatial differences in the extent and volume of objections, including local area attributes. Chapter 5 focuses in more detail on permit applications that resulted in a Victorian Civil and Administrative Tribunal (VCAT) appeal. It profiles the incidence of planning appeals and, where possible, the VCAT appeal type to establish the proportion of appeals raised by first parties and third parties. It also explores the relationships between objections and appeals. This is important because, even if third parties do not raise an appeal themselves, they may influence council decisions to refuse an application. Spatial patterns in appeals, including connections between appeals and local socio-economic characteristics, are then explored. Finally, modelling techniques are used to untangle and quantify relationships between development characteristics and the volume of third party objections, and factors influencing the likelihood of applications proceeding to appeal.

### **2.1 Victorian policy framework**

In constructing a dataset of HDH development and the provision of TPOAR, it is necessary to first establish a detailed understanding of the planning policy framework that specifies both permissible development and the rights of residents to object and appeal planning decisions. Both these factors are unevenly distributed across development type and space; and both have a bearing on how the permit application data has been categorised in our dataset. A more detailed review of the policy framework was included in the Positioning Paper for this project.

#### **TPOAR in Victoria**

TPOAR in Victoria's planning system are unevenly distributed by development type and across space. TPOAR in Victoria apply, in most areas, to all medium and HDH developments.<sup>3</sup> While the most prevalent zoning for housing, the Residential 1 Zone, does not require a planning permit for single dwellings, a permit is required for any land subdivision, construction of a residential building (meaning apartments or HDH),

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<sup>3</sup> Definitions of medium and HDH are contested. For the purposes of the research, the term HDH is based partly on common planning permit triggers in the Victorian planning system

or construction of more than one dwelling on a lot (meaning dual occupancy, in-fill or medium-density housing). Therefore all HDH in a Residential 1 Zone typically requires a planning permit. In most other zones, HDH housing is typically neither prohibited nor allowed as of right, thus also requires a planning permit. Where a planning permit is required, there are typically TPOAR on the permit decision, although there are several means of suspending these rights, discussed below.

In making a determination on applications the delegated authority (most often local council) consider: the legal framework, most notably the *Victorian Planning and Environment Act 1987* (hereafter, *The Act*); other relevant state and local policies; the relevant local government planning scheme; and objections and other submissions. The Act sets out requirements for normal notice, decision and review of planning permits (Sections 52, 64 & 82). The planning permit process requires general public notification, as well as the direct notification of any affected parties. The provision of TPOAR 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. Moreover, applications that attract objections are often determined by local councillors (elected officials) rather than planning officers. In such cases planning officers typically provide recommendations to councillors, although councillors are not bound to uphold those recommendations. Decisions on permit applications by local authorities may also be appealed 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 permit applicants or of objectors. VCAT undertakes a second merits-based review of applications, again considering the legal framework, planning scheme, and objections and other submissions. VCAT has the power to uphold, vary, set aside or substitute decisions of local authorities on planning cases. Except on points of law, there are no appeal rights on VCAT decisions. The following are the more common paths by which a permit application may result in a VCAT dispute (being ultimately approved or rejected at VCAT).

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

### **'Fast-tracking' and HDH in Victoria**

Exemptions to these normal TPOAR are widespread, take a variety of forms and often exclude HDH from notice, decision and appeal requirements. The four basic types of fast-tracking are via: particular provisions in land use zones; particular provisions in overlays; designation in the planning scheme of sites as having the Minister for Planning as responsible authority; and ministerial 'call-ins' of projects. The first three of these are based on clauses in local planning schemes and are therefore known at the time of development application; the last type involves intervention during the development application process.

The detail of specific mechanisms under these four fast-tracking types is set out in Table 1. The result is a complex array of differing requirements and exemptions for permits and for the provision of TPOAR on housing developments. This provides an important framework for the quantitative research, allowing the determination of TPOAR status based on the underlying planning provisions.

**Table 1: Fast-tracking planning mechanisms for housing in Victoria**

<b>Broad type</b>	<b>Specific mechanism</b>	<b>Specifics</b>
Zoning	Priority Development Zone	Schedules to the zone may specify exemption from TPOAR, typically where applications are deemed in accordance with an approved local area plan.
	Comprehensive Development Zone	Schedules to the zone may specify exemption from TPOAR, 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 TPOAR, where consistent with design guidelines.
	Business Zones 1, 2 and 5	Application exempt from TPOAR unless within 30 m 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 planning scheme can specify that the Minister is the responsible authority for specific sites or development types. The Minister is not required to follow normal TPOAR 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. Expired June 2012.

## 2.2 Dataset

The dataset constructed for the project consists of data from different sources merged together to form a database of residential planning permit activity in Victoria over 2009–10. For each development application in the dataset we document the planning policy provisions of objection and appeal rights as they relate to HDH, key development application characteristics where available, and the nature and extent of objection and appeal. Most analysis is at the level of individual project applications that move through different pathways of planning permissions, with different TPOAR

provisions. Where possible, reference to the total number of dwellings proposed is included.

The scope for the analysis is residential projects in Melbourne municipalities that were in the planning permit system during 2009–10. The starting point for the dataset is the planning permit activity for residential projects based on Planning Permit Activity Reporting Project (PPARs) data sourced from the Victorian Department of Planning and Community Development (DPCD). Basic measures are reported for all residential permit applications in scope. Drawing on planning permit activity for major residential projects (10+ dwellings) sourced from the DPCD Urban Development Program (UDP) (2009–10), more detailed information is reported for major developments in established areas of Melbourne involving 10+ dwellings.

In order to determine which cases were with or without TPOAR, and as whether they were or were not appealed (including the case type) three additional sources were used:

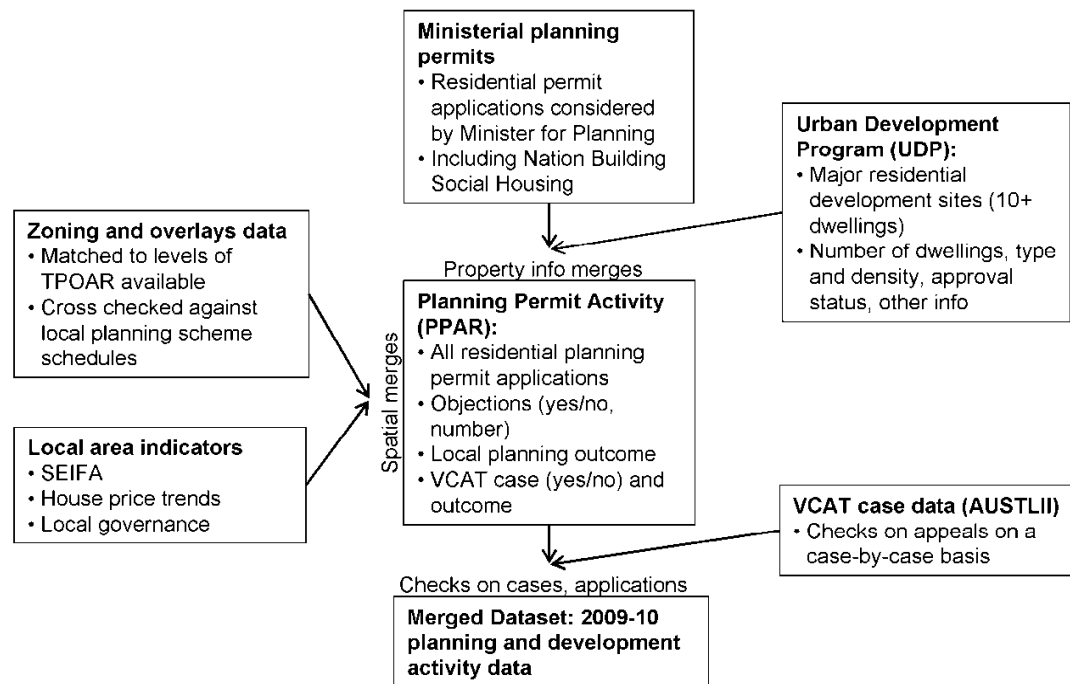
1. Planning scheme data on zoning and responsible authorities applicable to each municipality in and abutting Melbourne, sourced from Victorian Planning Schemes Online.
2. 'Call-in lists' of planning permit applications considered by the Minister for Planning and Priority Development Panel.
3. VCAT planning list appeals data, including readings of individual cases where required.

Finally, suburb-level indicators of relative socio-economic advantage from the 2006 SEIFA indices, and median house prices were used.

The diagram in Figure 1 shows the data sources and information gathered from each. The first step was to compile and troubleshoot the database. In most cases the information has been merged using shared address fields or spatial queries. There are 15 676 records in the dataset. The main variables are:

- applicable zoning and overlays, and responsible authority
- whether normal TPOAR were available and why
- whether objections were received, and if so, the number
- whether the application went to VCAT
- the type of VCAT hearing
- the number of dwelling units proposed (selected sites only, primarily known major sites of 10+ dwellings)
- the suburb of the application, including its attributes (SEIFA scores & house prices).

**Figure 1: Dataset design**



**Derived variables:**

Major site (yes/no), number of dwelling units, applicable zoning and overlays, responsible authority, extent of objection and appeal rights available (and why), location characteristics (derived from geocoding), local outcome of application (approved/not approved), whether objections received and if so how many, whether VCAT case and if so the type, VCAT outcome, built form characteristics (density, height)

**Caveats**

The dataset created is large and provides an extensive picture of planning and residential development data in the period from 2009–10. However, the dataset is approached not as a definitive list of permits, projects or appeals during the period; rather as an extensive sample of activity, with quantitative work focused on revealing patterns within the bounds of this data. Caveats include missing records (notably the outer LGA of Cardinia) and, as with any database, there are variations in data entry. This includes local variation in recording of appeal pathways and permit outcomes for cases that went to VCAT. In some areas, because the permit outcome is updated after the VCAT case with information on the nature of appeal removed, confirming the type of VCAT case was difficult.

Although only residential applications are reported (as defined by PPARs), detailed information on the scale of most applications is not available. Applications vary from relatively low-density dual-occupancy applications, to higher density, multi-level apartments. Although the permit application does contain a text description of the proposal, descriptions vary widely by municipality. Coding of all these fields was not feasible within this research project. This would be a useful topic for future research. However, where permit applications match with a major UDP site (developments of 10+ dwellings), a subset of the dataset relating to ‘major projects’ allows for analysis of project size. A small number of designated major sites also seem to represent ‘house and land’ Greenfield subdivisions on the urban fringe. However, as they are defined for UDP purposes as being within the existing urban area, these sites have been retained in the analysis.

For a relatively small proportion of permit applications, the number of dwellings proposed was included. Development sizes for some smaller applications were also



established by checks on VCAT determinations. These are not random, being driven by VCAT cases and by variations in how dwelling numbers are recorded in permit applications by municipality. As such this category is only reported upon in the modelling component. In some cases it was also difficult to confirm the existence of TPOAR. These were typically for applications in business zones where a general exemption on TPOAR exists—except for in buffer zones around residential areas, schools, and hospitals. Some of these items proved too complicated to determine with Geographic Information Systems (GIS). Categories of unknown TPOAR or unknown VCAT type are identified separately in the results where applicable.

## **2.3 Methods of analysis**

Analysis of quantitative data establishes the impact of TPOAR on housing supply and explores socio-economic, educational and other biases in the use of TPOAR. Four methods of analysis are used.

First, general descriptive analysis describes key patterns in the dataset by grouping permit application data into different categories of interest. These include TPOAR status, receipt of objections, and appeal status. The proportions of applications of different types in each category are compared. The extent of objections and of appeals of different types is also described.

Second, GIS establishes the spatial distribution and characteristics of permit application data. Data is aggregated to the suburb level and the results are mapped to identify concentrations and spatial patterns across the Melbourne metropolitan area.

Third, permit applications in the dataset have been linked to selected indicators of the socio-economic attributes of their suburb. The two sources are property sales data from the Victorian Valuer General, and SEIFA data from the 2006 Census. In the case of the SEIFA indices, 2006 data has been used as this is the most recently available. Data from the 2011 Census will become available in late 2012 (after this research project). The advantage of SEIFA is that it avoids the need for assessment and selection of variables thought to be important for measuring socio-economic advantage and disadvantage. SEIFA provides a standardised ranking of relative socio-economic advantage or disadvantage, at the suburb level. The two SEIFA indexes attached to the dataset (using suburb data, based on weighted Census Collection District scores) are:

- IRSD—index of relative socio-economic disadvantage.
- Educational and occupational advantage.

The two indexes are based on similar local area indicators combined using principle components (factor) analysis. Variables included in the indices include income, employment, tenure, occupation and education levels. IRSD is weighted more toward income variables (ABS 2008). Median house price by suburb has been taken from the Valuer General transactions data for 2010.

To summarise, there are three measures of socio-economic attributes: Property Sales Data (Valuer General) and IRSD (SEIFA) and Education and Occupation (SEIFA). For each of the three measures, applications in the sample (15 676) have been ranked and sorted into quintiles (5 equal count groups). Thus the groupings 1–5 refer to the distribution of SEIFA rankings or house prices within the sampled planning applications. This is important as it means there are essentially the same numbers of applications in each group.

The three measures are very closely correlated. This is shown in Table 2. Some suburbs are high-income but relatively low education levels, whereas some have high education levels but relatively low incomes and lower home-ownership levels, but

essentially the high-ranked suburbs match for each index (with a correlation of 0.931 between the two). House prices and SEIFA are also very closely correlated. The SEIFA index of relative disadvantage by suburb has a significant Pearson correlation of 0.717 to median house prices. The index of occupational and educational advantage is even more closely related to house prices, with a Pearson correlation of 0.804.

The close correlation of the measures has two implications for the research. First, it reinforces the close relationship between local socio-economic characteristics and housing indicators. This spatial variation is important to interpreting the planning pathway results. Second, the close correlations mean that, for reasons of simplicity, local area results are primarily reported only for one measure. The SEIFA IRSD quintiles have been used for the reason that this is a commonly reported measure. Also, house prices presented difficulties with central areas, such as the CBD and Southbank, with very few house sales (as compared to unit/apartment prices).

Results for educational and occupational advantage, and for house and dwelling prices, are reported in some sections. However, the main purpose of including ranked area indicators in the analysis is to highlight potential socio-economic factors in spatial variations in planning permit pathways. To avoid duplication, in some sections only, the results by SEIFA IRSD quintiles are reported.

**Table 2: Local area indicators–Pearson correlations**

	<b>Median house price</b>	<b>SEIFA relative disadvantage</b>	<b>SEIFA education and occupation</b>
Median house price	1	0.717**	0.804**
SEIFA relative disadvantage	0.717**	1	0.931**
SEIFA education and occupation	0.804**	0.931**	1

\*\* denotes coefficient statistically significant at 5%

Finally, the research uses regression modelling techniques to explore the combined potential influence on permit application pathways. It models the influence of features that, in combination, may be associated with the receipt of large volumes. The first model is an ordinary least squares regression model considering the influence of features that, in combination, may be associated with the receipt of large volumes of third party objections. The second model considers factors which in combination influence the likelihood that an application will or will not involve a VCAT appeal.

### 3 PLANNING POLICY PATHWAYS

In any given jurisdiction there are variations across space, and across different land uses, in the policy provisions for development. These variations include the extent to which third party objections and appeals on development proposals are allowed.

This chapter examines the planning policy provisions associated with residential development applications in Victoria, seeking to identify variation in TPOAR status. It begins by describing the number and nature of applications associated with different TPOAR provisions. It then maps the spatial concentrations of applications, and within these, the proportion without standard TPOAR. The connections between application TPOAR characteristics and local area socio-economic indicators are then presented, highlighting potential underlying factors in the spatial distribution of TPOAR status. It concludes with a discussion of implications.

#### 3.1 Distributional characteristics of TPOAR provisions

The dataset has a total of 15 676 residential permit applications. Figure 2 shows the split between those determined to be with TPOAR, and those without normal TPOAR ('fast-tracked'). Within the sample 1109 permit applications (7.1%) did not have TPOAR, compared to the majority of applications (13 636 or 87%) with normal TPOAR. For 931 (5.9%) cases we were unable to confirm the existence of TPOAR.

**Figure 2: Residential planning permit applications by TPOAR status**

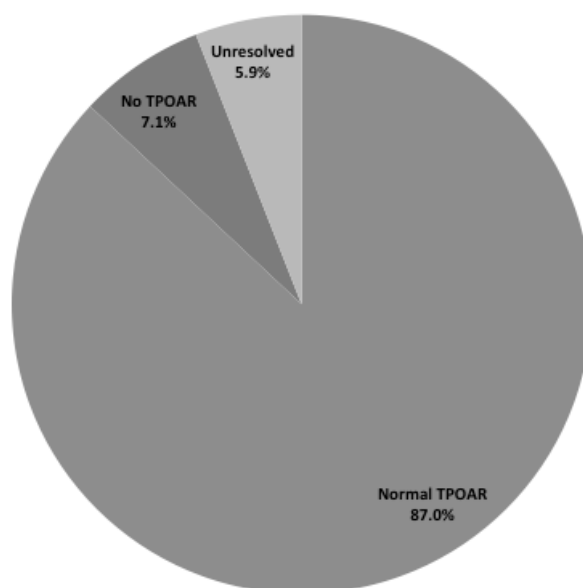
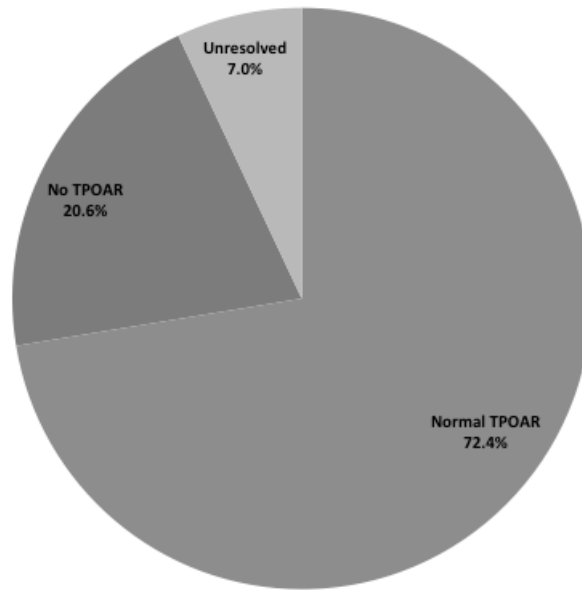


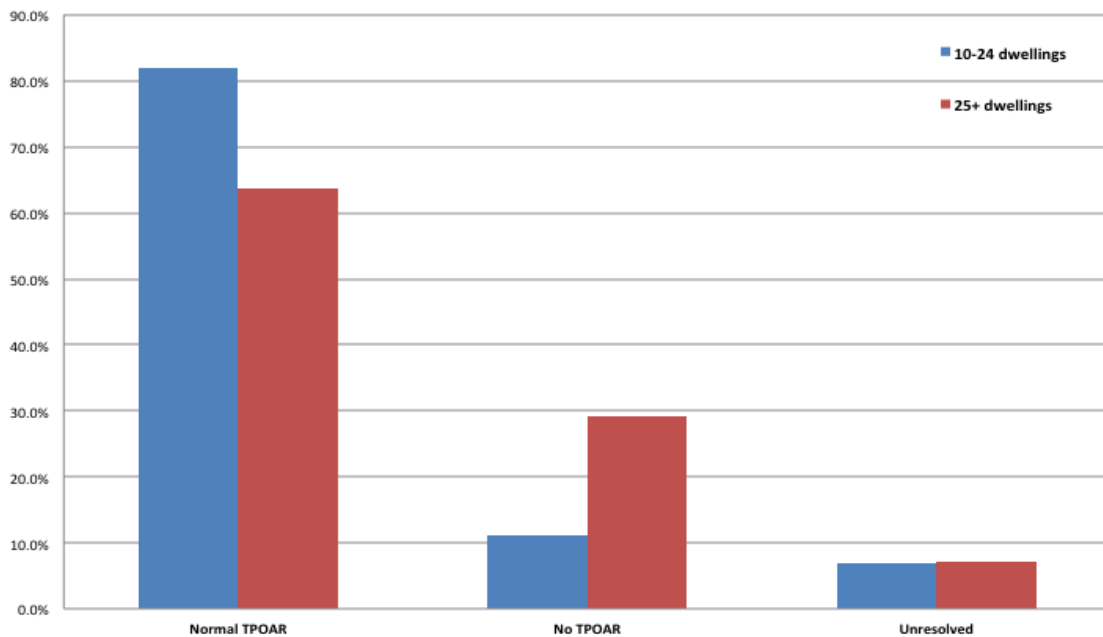
Figure 3 shows the same split of application pathways between 'no TPOAR', 'with TPOAR' and 'unresolved TPOAR' for a subset of the sample consisting of development applications known to be for 10+ dwellings (884 cases). Given the limits of the data this does not necessarily capture all large projects in the sample. However, these developments have additional information with which to look at permit applications known to be greater than 10 dwellings. Of these, it is notable that a much larger percentage (20.4%, 182 cases) were fast-tracked, removing TPOAR.

**Figure 3: Residential planning permit applications by TPOAR status—known major developments of 10+ dwellings**



Considering 463 applications known to be for 25 or more dwellings, 135 or 29.2 per cent did not have TPOAR. However, for 421 developments known to be moderate in size, (applications for 10–24 dwellings), a smaller proportion (47 or 11.2%) were fast-tracked. So overall, applications with larger numbers of dwellings appear less likely to have TPOAR. The increasing proportion of fast-tracked applications with the scale of proposals is illustrated at Figure 4.

**Figure 4: Residential planning permit applications by TPOAR status—known major developments of 10+ dwellings, by development size**

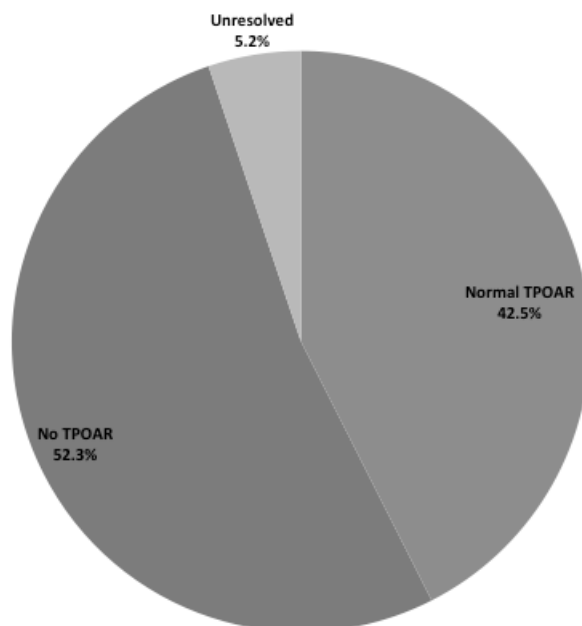


This pattern of increased fast-tracking for larger applications is exaggerated when considering the total dwellings proposed, rather than the number of permits. This is shown in Figure 5. In development applications known to have 10+ dwellings, a total

of 82 928 dwellings were proposed. Of these over half (43 368 or 52.3%) were for permit applications without TPOAR.

Importantly, the dataset only includes dwelling numbers for the minority of cases. As the majority (845 or 76.2%) of fast-tracked applications are of unknown size, the findings are indicative only. Of the limited number of cases where size is known, the proportion of applications without TPOAR increases along with the number of dwellings proposed.

**Figure 5: Residential planning permit applications by TPOAR status, known major developments of 10+ dwellings, by development size: total dwellings**



### Fast-tracking mechanisms

As indicated previously (Table 1) there are various mechanisms in Victoria through which residential planning permit applications may have normal TPOAR removed or modified. Table 3 shows the type of planning mechanism (zoning, overlays, ministerial authority) that applied to the 1109 applications (7.1%) in the sample considered ‘fast-tracked’. Some (270 or 24%) applications had more than one such planning mechanism.

The most common form of TPOAR removal was overlays. Because local authorities retain discretion over whether an overlay removes or preserves TPOAR, overlays were checked in all local planning schemes to establish whether, in each case, normal TPOAR were removed. Where this was not specified or clear, applications have been coded to ‘unresolved TPOAR’. Overlays that may remove TPOAR—the Development Plan Overlay (DPO), Design and Development Overlay (DDO), and Incorporated Plan Overlay (IPO)—applied to 89 per cent of the fast-tracked applications. The most common overlay, the DPO, applied to 807 applications. The DDO was also relatively common, applying to 10 per cent of fast-tracked applications. The DPO and DDO overlays generally involve an amendment to a Local Planning Scheme (LPS). Like permit applications, amendments are subject to notification and third party objection rights (but not appeal). Therefore, the DPO and DDO overlays generally indicate that an earlier process of advertising and consultation occurred. However, as explored in the case studies later in this report, resident groups have cited these overlays as a particular threat to public consultation and influence.

Fast-tracked zones applied to 350 or 32 per cent of fast-tracked applications, with the most common being the Residential 2 Zone (140 applications) and Comprehensive Development Zone (133). Also notable were spatially specific zones: the Capital City and Docklands zones apply only to central city areas, with 35 applications in total. The Urban Growth Zone (32 applications) is primarily used in fringe growth areas.

Although ministerial authority cases have a high public profile, particularly with regard to called-in applications, a relatively small number (42) of residential applications in the sample were 'ministerial-assessed'. The bulk of these (24) were nation-building social housing projects.

**Table 3: Fast-tracked applications by type**

<b>Mechanism</b>	<b>Applications</b>	<b>Applications without TPOAR (%)</b>
<b>Zoning</b>		
Capital City	27	2%
Comprehensive Development Zone	133	12%
Docklands	8	1%
Priority Development Zone	5	0%
Residential 2 Zone	140	13%
Special Use Zone	5	0%
Urban Growth Zone	32	3%
Total zoning	350	32%
<b>Overlays</b>		
Design and Development Overlay	110	10%
Development Plan Overlay	807	73%
Incorporated Plan Overlay	70	6%
Total overlays	987	89%
<b>Ministerial</b>		
Nation-building social housing	24	2%
Other ministerial	18	2%
Total ministerial	42	4%
More than one mechanism	270	24%
Fast-tracked applications	1,109	100%

### 3.2 Socio-spatial distribution of applications

So far we have seen that TPOAR applied to 87 per cent of applications. In order to determine the socio-spatial character of the provision of TPOAR, this section uses GIS to link the provision of TPOAR to known socio-economic characteristics for the locations in which TPOAR exist.

The map in Figure 6 shows the number of residential permit applications in the sample, by suburb; the darker the colour, the greater the number of applications. High permit activity suburbs, with more than 50 applications in the sample 2009–10, are generally spread across the city. The number of permit applications received varies across Melbourne, in part because of variations in development activity, but also due

to variations in the number and type of applications requiring planning permission. It should be kept in mind that not all residential developments require planning permits. However, the central city generally has fewer applications, which may indicate small numbers of applications for large, high-rise development. Suburbs with the highest numbers of permit applications included Reservoir and Glenroy in the middle north. As shown at Table 4, the top 10 suburbs accounted for 12.8 per cent of permit applications in the sample.

**Figure 6: Residential permit applications by suburb**

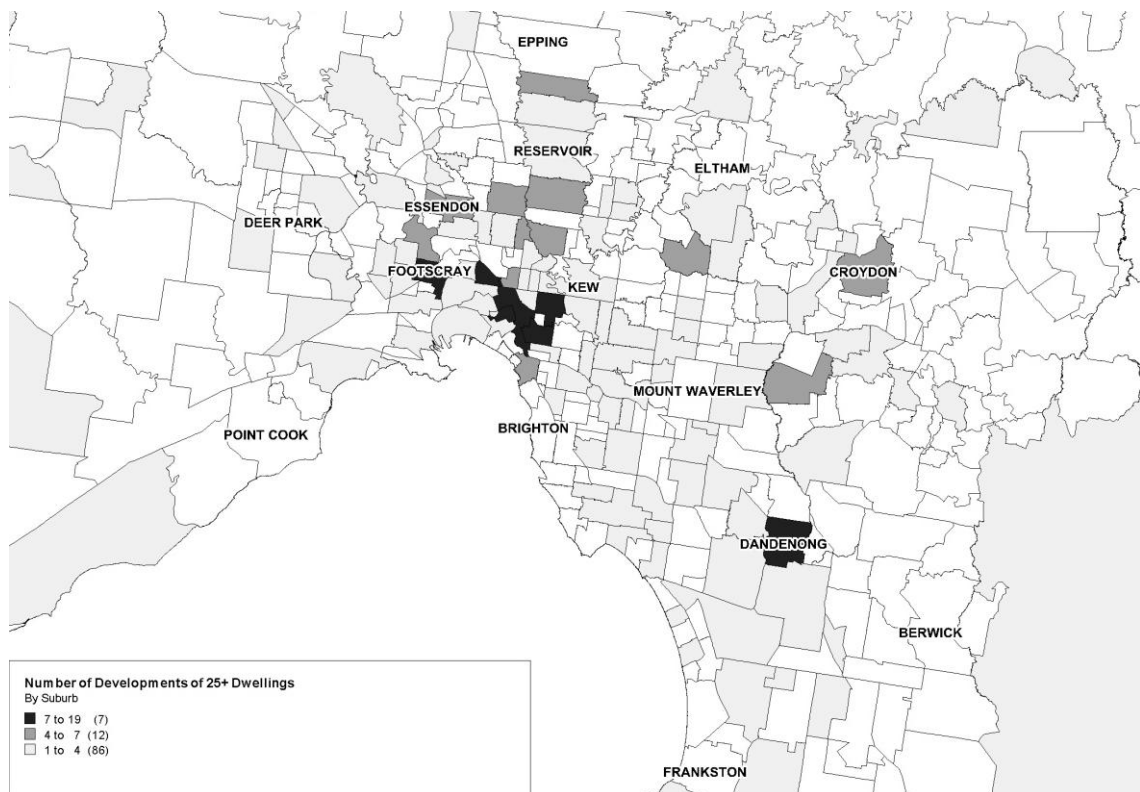


**Table 4: Top suburbs for residential permit applications**

Suburb	LGA	Permits	%
Reservoir	Darebin	281	1.8%
Glenroy	Moreland	280	3.6%
St Albans	Brimbank	217	5.0%
Bentleigh East	Glen Eira	186	6.1%
Dandenong	Greater Dandenong	182	7.3%
Boronia	Knox	180	8.5%
Noble Park	Greater Dandenong	175	9.6%
Mooroolbark	Yarra Ranges	175	10.7%
Pascoe Vale	Moreland	169	11.8%
Broadmeadows	Hume	166	12.8%
<b>Total in sample</b>		<b>15 676</b>	

The map of developments of 25+ dwellings in Figure 7 highlights a concentration of larger residential developments in the existing inner and middle suburbs. There are particularly large concentrations in the CBD and inner areas (Docklands, Richmond, South Yarra) as well as key designated districts of intensified redevelopment (Footscray & Dandenong). There are a number of other middle and outer suburbs that have at least some major development sites, indicating HDH in areas traditionally associated with lower-density living. There is also a spread of major development sites across established suburbs.

**Figure 7: Applications for 25+ dwellings by suburb**



### Distribution of applications without TPOAR

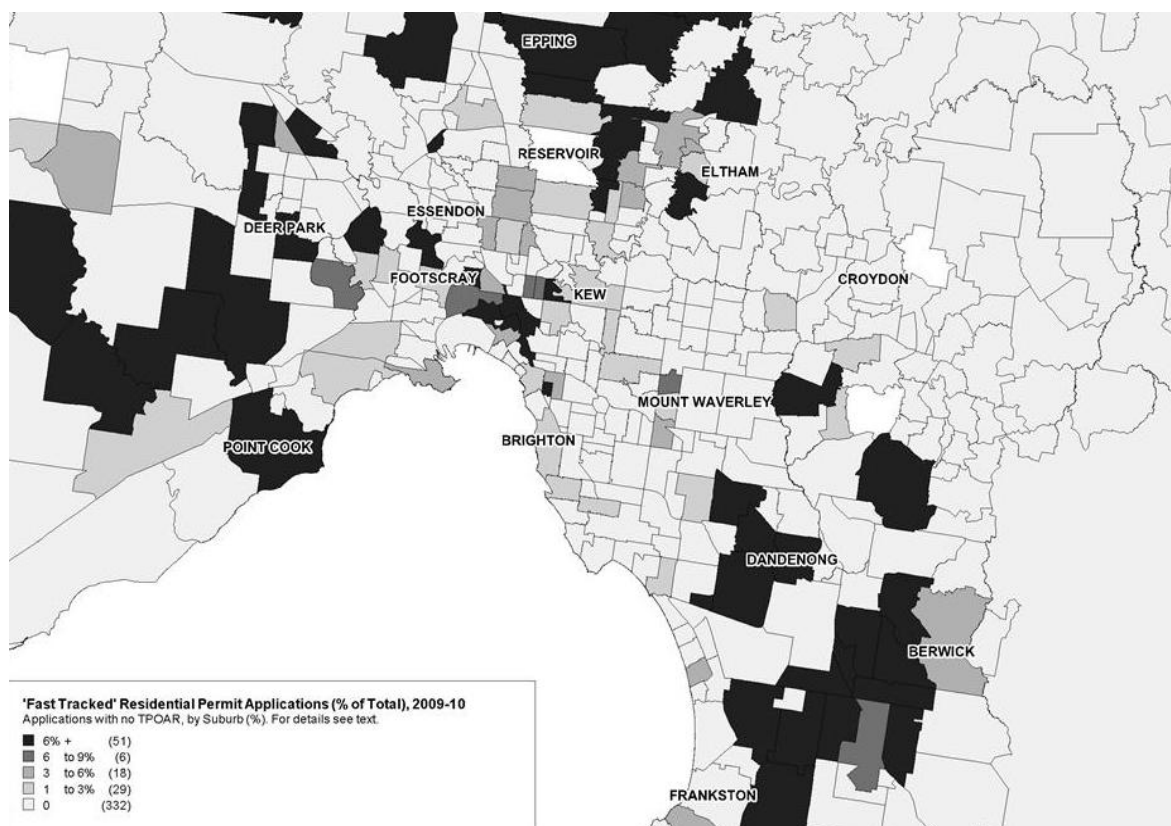
Considering the spatial distribution of permit applications without TPOAR, Figure 8 shows the pattern is not spatially random, with fast-tracked applications mostly in the outer growth areas, and in the CBD (as well as Docklands & Southbank). These are shown as a percentage of all sampled residential applications in that suburb. As shown in Table 5, by number, the top 10 suburbs accounted for 48.2 per cent of fast-tracked applications. Top suburbs for fast-tracked permit applications were: Truganina, Dandenong, Craigieburn, Epping and Carrum Downs.

This spatial distribution reflects two fast-tracking mechanisms in Victorian planning schemes: urban growth zoning in fringe areas on the one hand, and capital city zones on the other (see Table 3). The use of DPO in urban fringe developments is also significant. The municipalities with the most DPO applications were all fringe growth areas. Casey, Frankston, Hume, Melton, Whittlesea and Wyndham each had more than 100 applications covered by DDO. Fast-track zoning was most used in Greater Dandenong, Hume, Melbourne and Whittlesea. Ministerial authority applications may be more controversial because, although numbers are small, the municipalities involved are often different. Municipalities with ministerial authority applications



included several inner and eastern areas: the cities of Melbourne (8), Monash (4), Boroondara (3), Yarra (3) and Hobsons Bay (2).

**Figure 8: Fast-tracked residential permit applications (% of total) by suburb**



**Table 5: Top suburbs for fast-tracked (no TPOAR) residential permit applications**

Suburb	LGA	Permits	%
Truganina	Melton	110	9.9%
Dandenong	Greater Dandenong	97	18.7%
Craigieburn	Hume	67	24.7%
Epping	Whittlesea	49	29.1%
Carrum Downs	Frankston	42	32.9%
Langwarrin	Frankston	41	36.6%
Lyndhurst	Greater Dandenong	36	39.9%
Hillside (Melton)	Melton	33	42.8%
Noble Park	Greater Dandenong	30	45.5%
Caroline Springs	Melton	30	48.2%
<b>Total in sample</b>		<b>1109</b>	

### Local area attributes and TPOAR provisions

Figure 9 shows the distribution of fast-tracked applications by SEIFA IRSD ranking of the suburb (see explanation in Chapter 2). The SEIFA groupings 1–5 refer to the

ranked distribution of SEIFA rankings within the sampled planning applications. This means there are essentially the same numbers of applications in each grouping.

The graph shows that the proportions of planning applications in each group without normal TPOAR varied from 4.2 per cent for the top 20 per cent of socio-economic rankings, to 9.1 per cent for the second quintile (middle-lowest group). Across Melbourne, fast-tracked applications appear to be slightly disproportionately located in middle and lower socio-economic status suburbs. Removal of TPOAR was more than twice as likely in the second bottom and middle quintiles than in the top quintile. As a share, 48 per cent of fast-tracked applications were in the bottom 40 per cent of SEIFA rankings, compared to 28 per cent for the top 40 per cent of SEIFA rankings.

**Figure 9: Fast-tracking by SEIFA quintile of suburb**

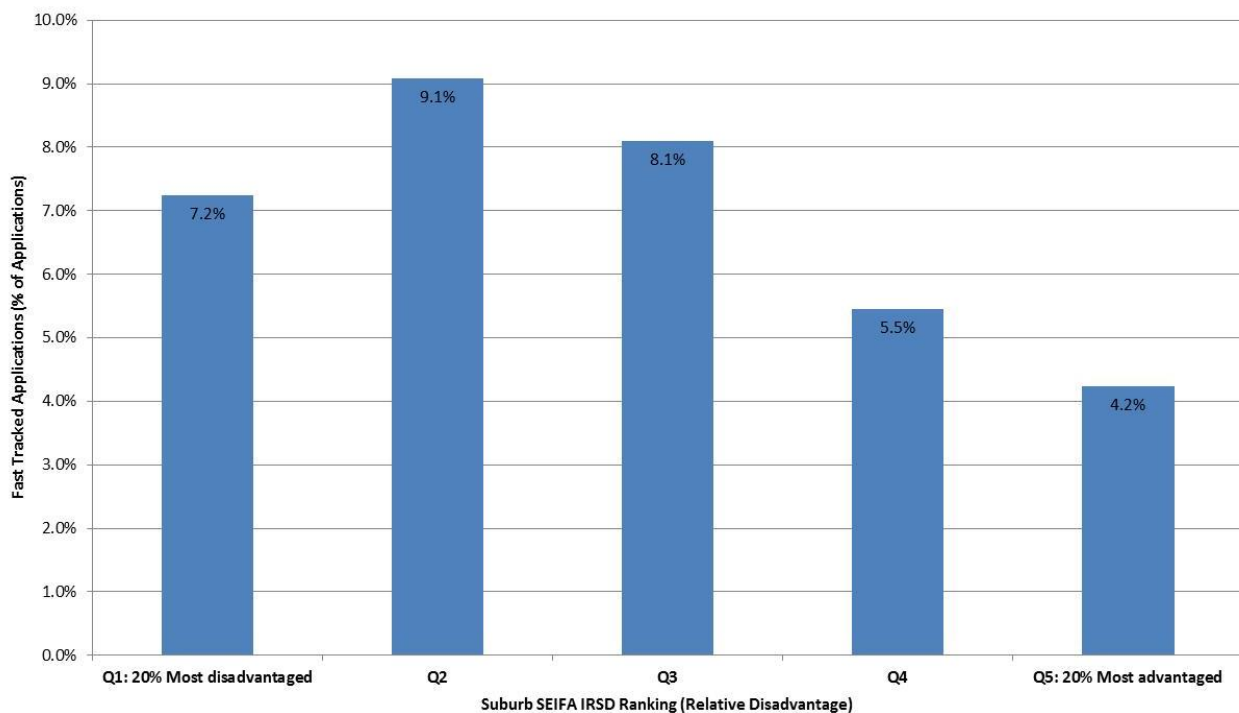
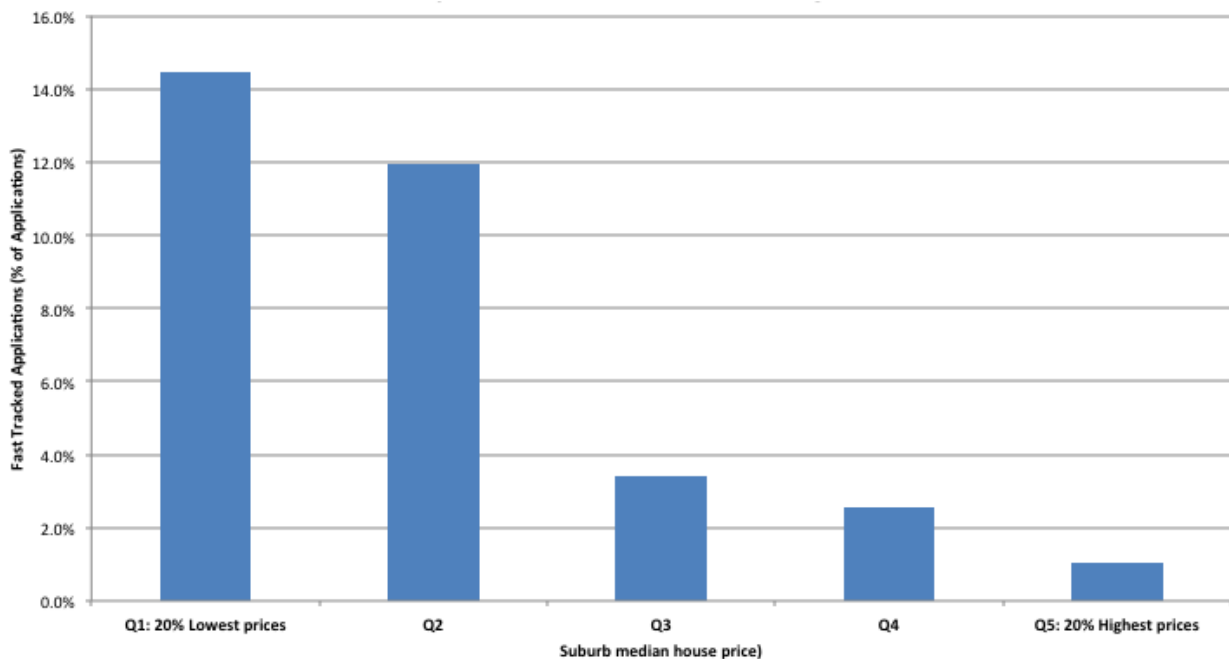


Figure 10 shows the distribution of fast-tracked applications by the house price ranking of the suburb. This distribution is much more distinct, with fast-tracking applying to higher proportions of applications in the lower two price quintiles (14.4% & 12% respectively) than in higher-priced suburbs (1% in the top price quintile). This is significant but also likely to be a function of the distribution (see Figure 8) of fast-tracked applications in newly developing fringe areas.

The results suggest that fast-tracking of TPOAR is not highly related to the socio-economic ranking of areas—it is mainly about planning objectives with a geographical scope (the inner city & urban fringe). Nonetheless, there is a distinct trend toward fast-tracked applications in areas of less socio-economic advantage, and a definite bias toward fast-tracking in areas of lower house prices.

**Figure 10: Fast-tracking by house price quintile of suburb**



### 3.3 Discussion

Overall, the majority of permit applications have full provision of TPOAR, with only 7.1 per cent without standard TPOAR. Considering a sample of large projects (10+ dwellings), the proportion of applications without TPOAR increases to 20.4 per cent and for the largest projects (25+ dwellings) to 29.2 per cent. The implication is that although larger projects (10+ dwellings) are more likely to be fast-tracked, 7/10 cases still have TPOAR.

Considering projects that have had TPOAR removed, there is significant complexity evident in the mechanisms used. There are three main mechanisms in the Victorian planning system for removing or limiting TPOAR: either through provisions in a zone, provisions of an overlay, or through allocation of ministerial authority. However, within these are a number of different mechanisms that frequently overlap, making for a complex and not immediately evident system. With the applications that did not have TPOAR in our dataset, 89 per cent were subject to an overlay that removed TPOAR, 32 per cent were within a zone that specified removal of TPOAR, and 4 per cent had TPOAR removed as a result of ministerial action (either through the planning scheme or by call-in). It should be noted that a significant proportion (24%) had multiple mechanisms.

While there is not a marked spatial concentration of permit activity at the suburb level, when looking at the distribution of applications without TPOAR, significant proportions of application numbers are focused in growth areas and the CBD, with some inner urban areas as well. Subsets of data have very different contextual elements, which means that a subset of analysis—which takes these three regions separately (that is, inner, middle & outer suburbs)—could reveal more nuanced findings. As it stands, variation from the metropolitan-wide 7.1 per cent of applications without TPOAR is relatively limited, ranging from 4.2 per cent of application in the top quintile of suburbs to 9.1 per cent in the second quintile. However, there is a general skew evident to the lower three quintiles of SEIFA rankings. When comparing fast-tracked applications to median house prices, the skew is significantly more apparent, with fast-tracked applications significantly higher in the first and second quintile (14.4% & 12%

respectively) compared to 1 per cent in the top quintile. Overall there is a clear propensity for applications in lower-priced areas to be fast-tracked; however, a significant part of this variation can be explained by the prominence of urban fringe growth in the fast-tracked applications. With a clearer sense of the availability of TPOAR, the next two chapters explore the extent to which these rights are exercised.

## 4 OBJECTIONS

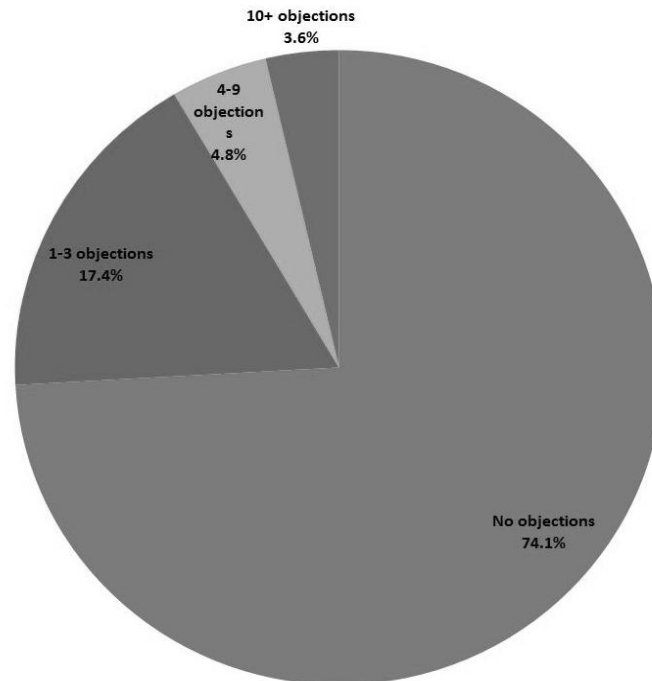
This chapter focuses on the extent to which the right to object to a development application is exercised by third parties. It begins by describing the extent of objections against application characteristics and relates this to local authority decision delegation processes. It then maps the spatial concentrations of objections. The connections between objection intensity and local area socio-economic indicators are then explored, highlighting potential drivers in the spatial distribution of third party opposition to development. It concludes with a discussion of implications.

### 4.1 Distributional characteristics of objections

As shown in Figure 11, overall, 4055 (26%) applications received third party objections and 11 621 (74%) did not. Most commonly applications received a small number of objections: 17.4 per cent of all applications received between one and three objections. A minority of cases received larger volumes of objections, with 4.8 per cent receiving between four and nine objections and 3.6 per cent receiving 10 or more. It is within the group of highly contested applications that differences by location attributes are more apparent (see below).

The median number of objections received was two. The average was much higher, at 6.1, reflecting a minority of cases with very large volumes of objections. There were 24 913 objections in total; with the maximum amount of objections for one development proposal being 224.

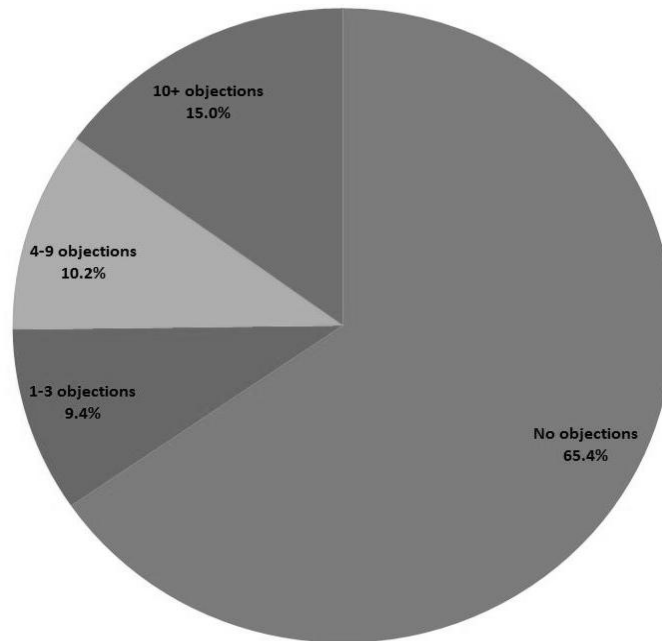
**Figure 11: Number of objections received (% of applications)**



#### Distribution of objections for large projects

Unsurprisingly, a larger proportion (34.6%) of the 884 applications known to be for major projects of 10+ dwellings received objections (see Figure 12). Larger developments also more often (15%) received high numbers of objections.

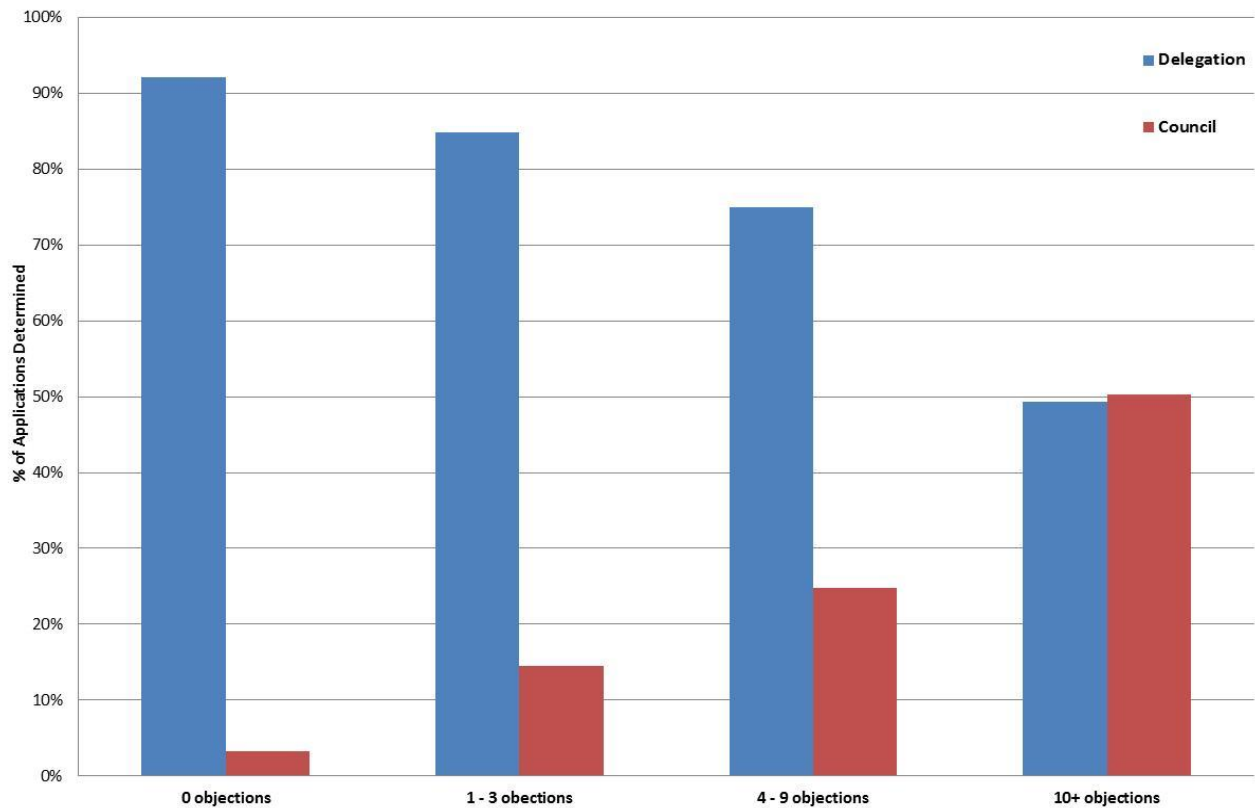
**Figure 12: Residential permit applications by number of objections received—known major developments of 10+ dwellings**



### **Objections and council assessment process**

When planning officers assess an application they do so under delegation from the elected council. The point at which applications are instead assessed directly by council members varies by municipality, with different 'triggers' to warrant special consideration of applications. Anecdotally, the triggers vary widely (3–15). However, they are not generally published. The likelihood of rejection or failure to determine may be related to varying council processes for projects with high levels of opposition. Figure 13 shows the proportion of applications that were determined under delegation (by planning officers) or by council, by the number of objections received. As objection numbers increase, greater proportions of applications are determined by councils. For applications with no objections, 3 per cent were determined by councils, whereas 50 per cent of applications with 10+ objections were determined by councils. This is likely to reflect both the inherent characteristics of some applications warranting council attention, as well as the role of council procedures in responding to highly contested projects. It is therefore clear that objections, and more particularly the number of objections, have an impact on assessment procedures at the local government level. It is notable that permits under delegation were refused less often (5%) than were permits determined by councils (18%).

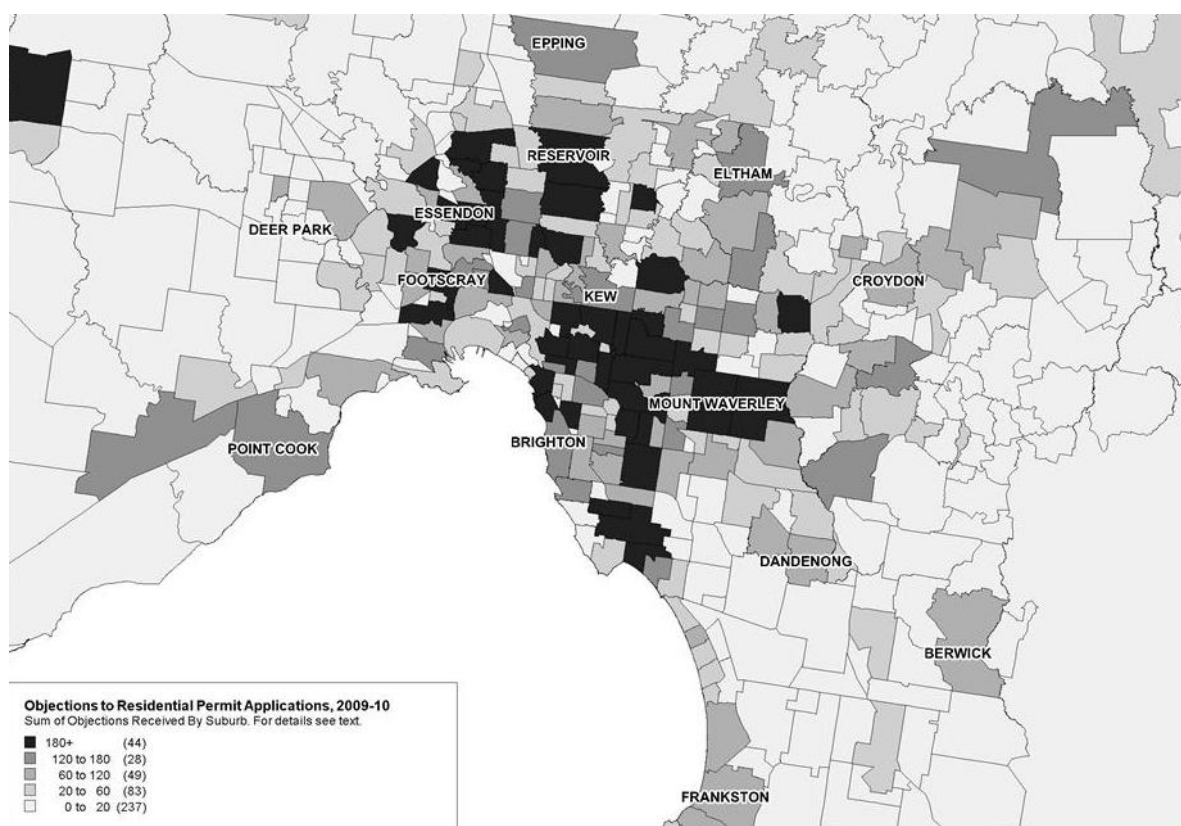
**Figure 13: Applications determined under delegation or by council, by number of objections**



## 4.2 Socio-spatial distribution of objections

In Figure 14 the sum total of all objections received in each suburb is mapped. The darkest shaded suburbs received 180 or more objections. Around 18% of objections were concentrated in the top 10 suburbs (see Table 6). South Yarra received 790 objections, followed by Hawthorn East (541) and Burwood (501). Suburbs with large numbers of objections were mainly in the eastern and northern LGAs of Stonington, Boroondara, Whitehorse, Darebin, Moreland and Moonee Valley.

**Figure 14: Total objections received—residential permit applications by suburb**



**Table 6: Top suburbs for total third party objections received**

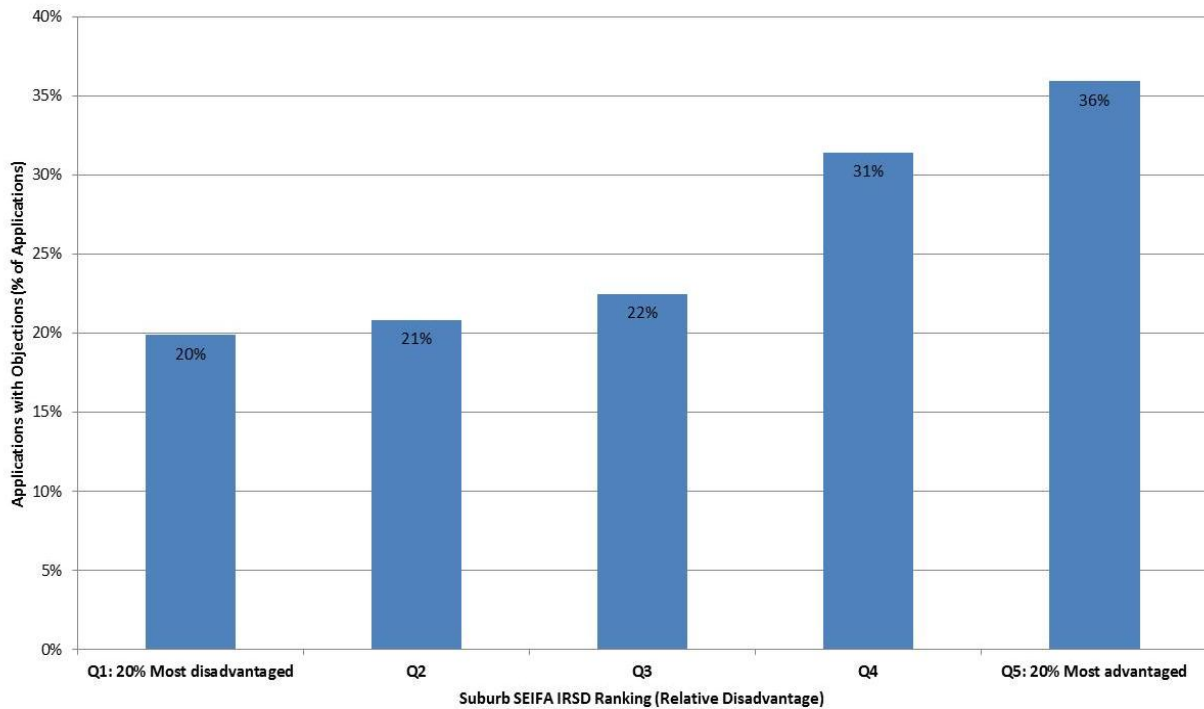
Suburb	LGA	Objections	C%
South Yarra	Stonnington	790	3.2%
Hawthorn East	Boroondara	541	5.3%
Burwood	Whitehorse	501	7.4%
Northcote	Darebin	479	9.3%
Brunswick East	Moreland	408	10.9%
Hawthorn	Boroondara	367	12.4%
Mitcham	Whitehorse	352	13.8%
Toorak	Stonnington	349	15.2%
Camberwell	Boroondara	345	16.6%
Moonee Ponds	Moonee Valley	329	17.9%
<b>Total in sample</b>		<b>24,913</b>	

### Local area attributes and objections

As shown in Figure 15, in the top quintile of socio-economic advantage (using the SEIFA IRSD rankings), 36 per cent of applications received objections. By comparison in the lowest quintile, 20 per cent received objections. The proportion of applications with objections increased consistently with SEIFA ranking, although not dramatically.

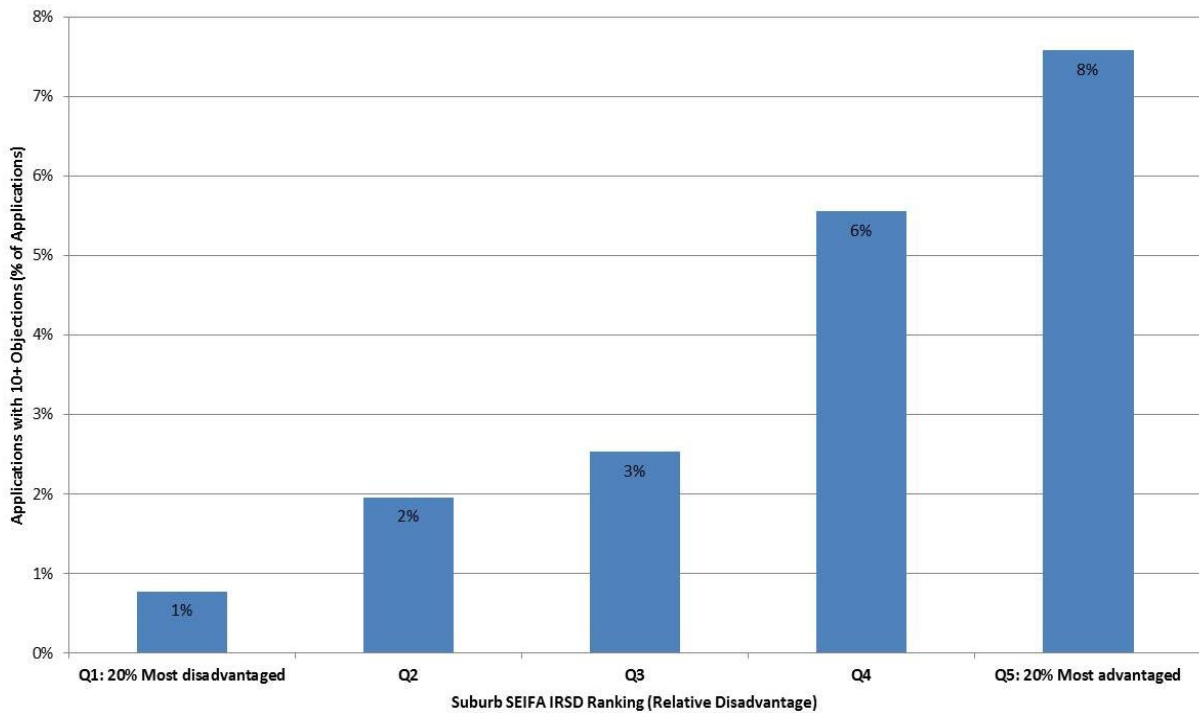


**Figure 15: Applications with objections (%) by SEIFA quintile of suburb**

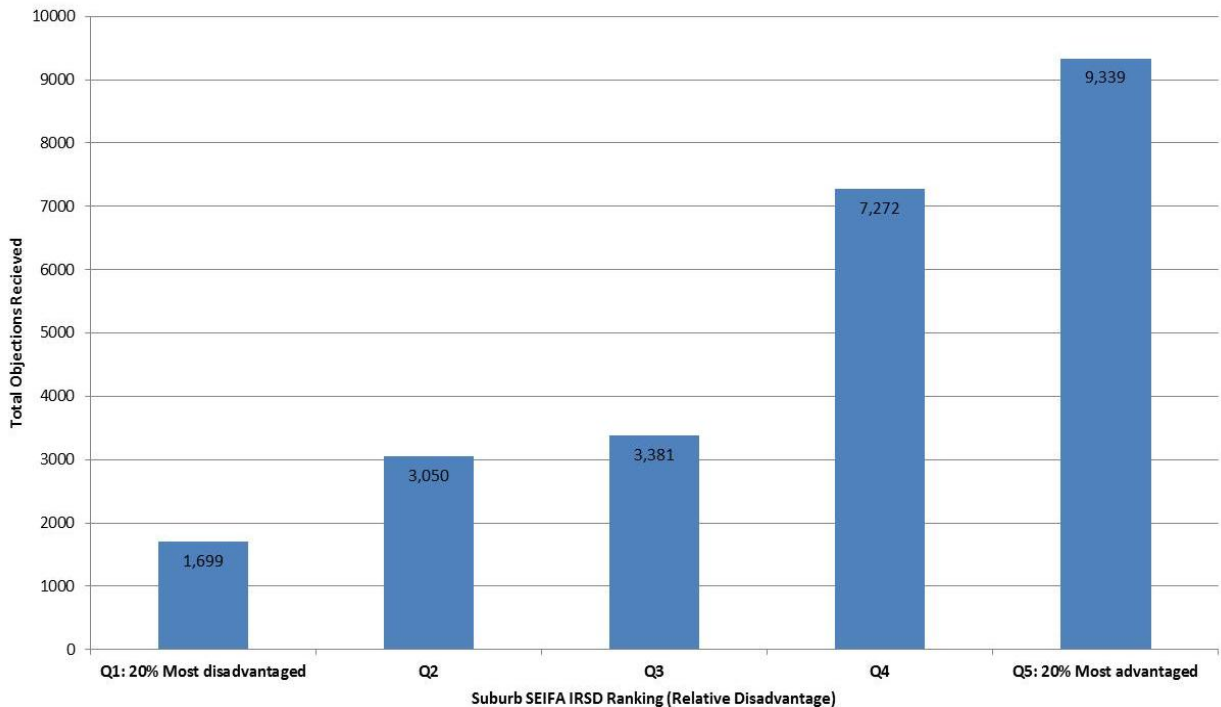


The applications with 10 or more objections by contrast show a clear correlation with increased advantage. This trend is illustrated in Figure 16. In the top quintile of SEIFA rankings, 8 per cent (or 234 applications) received 10 or more objections, whereas only 24 applications (1%) in the lowest ranked SEIFA group received objections. This pattern is amplified when considering the total volume of objections received. Figure 17 shows that the bulk of objections (9339 or around 38%) were received in suburbs with the highest SEIFA scores, compared to only 1699 in the lowest quintile. When ranked by median house price, 43 per cent of objections were in the top 20 per cent, and when ranked by SEIFA educational and occupational advantage, 45 per cent of objections were in the top 20 per cent.

**Figure 16: Applications with 10+ objections (%) by SEIFA quintile of suburb**



**Figure 17: Total objections received, by SEIFA quintile of suburb**



### 4.3 Discussion

Even though TPOAR were available on the majority of permits in 2009–10, this chapter shows they were used in 26 per cent of cases (approximately 1 in 4 applications). Of this, most received a small number of 1–3 objections (67.2%).

However, there is a significant minority with 4–9 objections (18.7%) and with the highly contested projects with 10 or more objections (14.1%). This distribution is reflected in the skew between the median (2) and average (6) number of objections.

However, when looking at 884 applications for larger projects (10+ dwellings), there is a higher propensity for objections to be lodged (34.6%). There is also a higher proportion of highly contested applications with 43 per cent of known major projects that received objections attracting 10 or more objections. The implication is that larger projects are more likely to be objected to, and more likely to have significant levels of objection.

As increasing numbers of objections are received, an increasing proportion of applications are determined by elected councils rather than being assessed solely on the recommendation of council officers. Of applications with no objections, only 3 per cent are determined by councils, whereas 50 per cent of highly contested applications are determined by councils. Spatially, third party objections show a concentration in the middle and inner suburbs, with the majority of those in the highest category of objection being located in the inner middle-east municipalities of Stonnington and Boroondara. When looking at local area attributes, there is a clear skew of objection toward more advantaged areas in socio-economic terms. The most contested suburbs are indicative of well-established more advantaged areas of Melbourne, along with more recently gentrified areas.

There is a general skew toward development applications in more affluent areas (using the SEIFA rankings) being more likely to receive objections. When considering the likelihood of applications being highly contested (10+ objections), this skew becomes significantly more pronounced. The top two quintiles of SEIFA rankings account for 71 per cent of highly contested cases, while the lower two represent only 15 per cent.

The results in this chapter indicate that whereas many residential applications (around a quarter) receive third party objections, most receive only a small number. Applications with high levels of local objection vary strongly by the socio-economic attributes of suburbs and, to a lesser extent, the size of development applications. This suggests possible differences between disputes over incremental change (attracting small numbers of objections) and arguably, more significant and coordinated objections which tend to correlate with higher levels of social advantage and larger projects.

Objection is relatively common, with a quarter of all applications receiving objections, and a significant subset of these receiving large numbers of objections. It is the cases with large objection numbers that present the most distinct spatial patterning, with activity concentrated in inner and middle suburbs and demonstrating a strong association with SEIFA characteristics, with cases with high objection numbers skewed significantly toward areas with higher socio-economic characteristics. This connection may point to the propensity for organised resident opposition in areas with higher socio-economic characteristics. Small-scale objection by contrast is more evenly distributed across the metropolitan area.

## 5 APPEALS

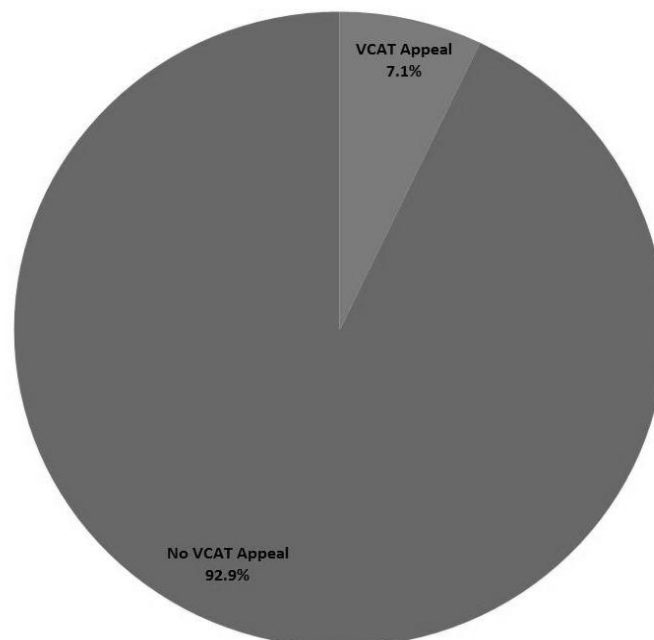
As set out in Chapter 2, appeals comprise the end point of objections and council refusals. Appeals can add further delays in the processing of development applications. This final quantitative chapter examines patterns in the incidence and type of planning appeals. It begins by profiling overall numbers of VCAT appeals, then looks in more detail at appeal types by proponent. Third party objections have important procedural links with appeals (both first party & third party), and so the next section explores connections between objection numbers and the incidence and types of appeals. Spatial patterns in the distribution of appeals are then presented. The relationships between appeals and local socio-economic characteristics are then explored.

The chapter then models relationships between development characteristics and the volume of objections, and factors influencing the likelihood of applications proceeding to appeal. There are a number of potential reasons for variations in planning objections and appeals. The scale and design of some cases may be more contentious. Alternatively, the volume of third party objections itself may influence the decisions of local authorities. The final section of this chapter seeks to better untangle these potential relationships.

### 5.1 Distributional characteristics of appeals

Even though 4055 applications received objections, as shown in Figure 18, only 1111 cases (7.1% of all applications in the dataset) proceeded to a VCAT dispute: meaning that one in every 14 planning applications involved a VCAT hearing. This is consistent with overall figures quoted by the Productivity Commission (2011).

**Figure 18: VCAT appeals (% of applications)**



Although some (30) applications without TPOAR went to a VCAT hearing (as well as 63 cases where the TPOAR status was not confirmed), the vast majority of VCAT cases in the sample (1018, 92%) occurred where there were normal TPOAR. In other words, without TPOAR, there are rarely first party appeals. See Figure 19.

**Figure 19: Residential planning permit applications–TPOAR status by VCAT**

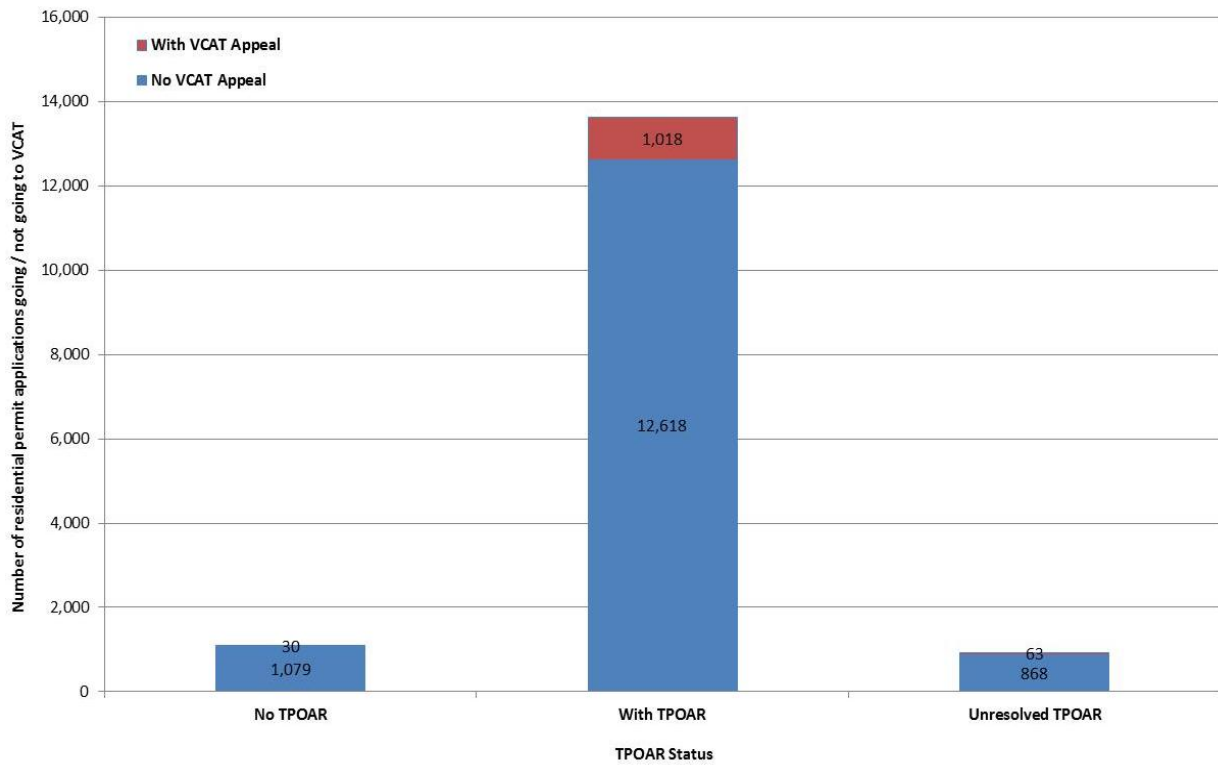
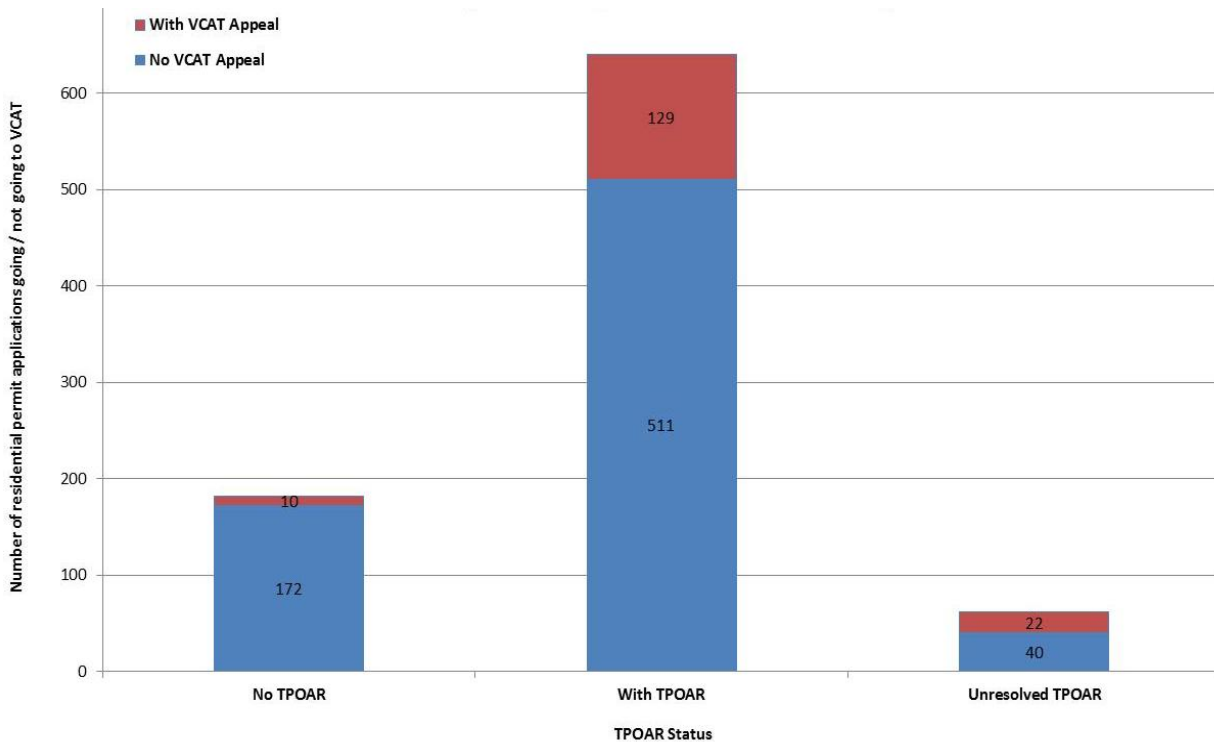


Figure 20 shows the same split of application pathways for a subset of the sample consisting of development applications known to be for 10+ dwellings (884 cases). The Figure indicates that large developments are more likely to be ‘fast-tracked’ (as revealed in Chapter 4). However, despite a greater propensity for the removal of TPOAR, it also shows that large projects are more likely to result in a VCAT appeal (18.2% of cases for larger projects compared to 7.1% for the whole dataset). For large projects where normal TPOAR apply, 20.2 per cent of permit applicators end at appeal. As such, known larger developments are more likely to bypass TPOAR or, where TPOAR exists, to be contested at VCAT.

**Figure 20: TPOAR status by VCAT-known major developments of 10+ dwellings**



VCAT hearings can be brought by developers (the proponent), as well by third parties. There are four main types of appeal:

- First party condition: a permit is granted by the council or planning authority, but the applicant appeals a condition placed on the permit.
- First party refusal: a permit is refused by the council or planning authority and the applicant appeals the decision.
- Third party objection: a permit is issued by the council or planning authority and the third parties (objectors) appeal the decision.
- Failure to determine: the authority fails to make a decision within the statutory time-frame (defaults to a refusal case if the applicant appeals).

Data on development approval pathways in Australia is not generally disaggregated by proponent and type (Productivity Commission 2011; LGPMC 2009). Results are typically aggregated, bundling appeal types. In this study we attempted to categorise appeals by proponent and type. Figure 21 shows the specific types of appeals for the 1111 cases where there was a VCAT appeal. Uncategorised types are at the far right. For 198 (18%) cases we were unable to determine accurately what type of appeal it was. The largest category of appeal (47%, 520 cases) were first party refusal cases. A small proportion (4%) of cases involved applicants appealing a condition placed on the permit. Third party appeal cases accounted for a relatively small share (19%, 211) of cases. Finally, 7 per cent of cases (77) were failures to determine, where responsible authorities failed to make a decision within the statutory time-frame. Overall, this means at least 58 per cent of appeal cases admitted originate from first parties.

**Figure 21: VCAT appeals by type**

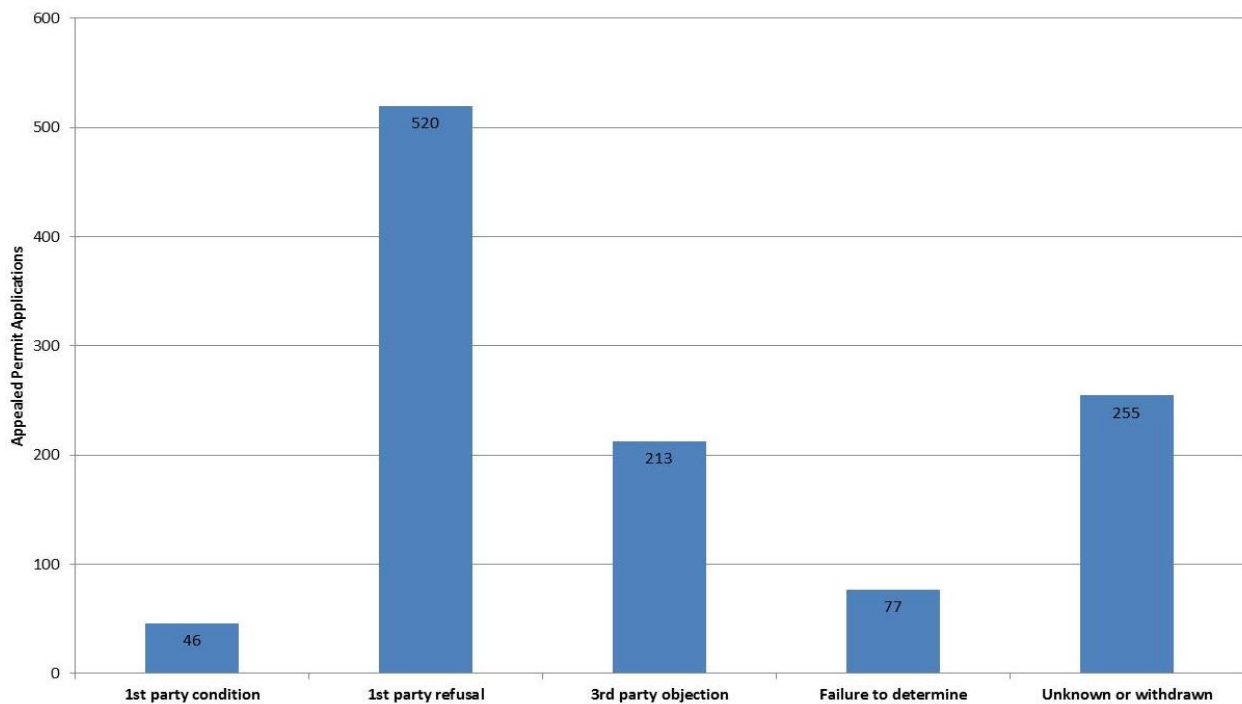
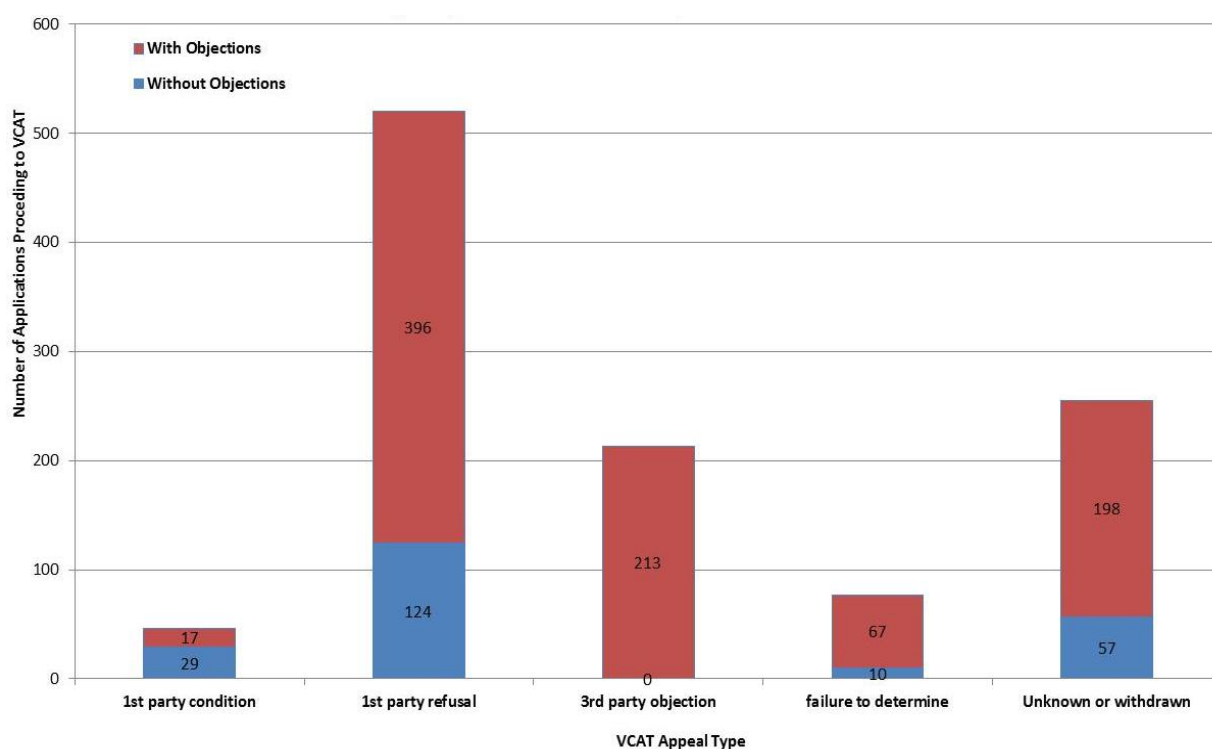


Figure 22 shows VCAT cases by type divided into those where objections were and were not received. For a third party to appeal a development application decision there must first have been initial objections to the application. Therefore, all 213 cases shown as ‘third party objection’ cases are ‘with objections’. However, an important observation is that there is a larger group of cases that received third party objections and proceeded to first party appeal of council’s refusal of the permit, with 396 such cases in the sample. These outnumber both third party objection cases, and first party appeals without objections.

Other studies have provided an important exploration of the ultimate outcomes of these types of first party VCAT cases (Woodcock et al. 2011). However, for this research we are focused on patterns of objections and appeals themselves. It is important to note that a significant majority of both first party appeals following council refusals and failure to determine cases involve third party objections. This highlights that council refusal or failure to determine may signify third party influence in the planning system.

**Figure 22: VCAT appeal type by objections**



Failure to determine cases are strongly related to high objection numbers, with 43 per cent of these cases having 10 or more objections. As shown at Figure 23, on average failure to determine cases received 16 objections, compared to 12 for refusal cases and 10 for third party cases. While failures to determine may be those where the local authority is unable to process applications due to resource constraints, the results and anecdotal evidence suggest that more often cases involve the authority declining to make a decision where there is significant resident opposition.

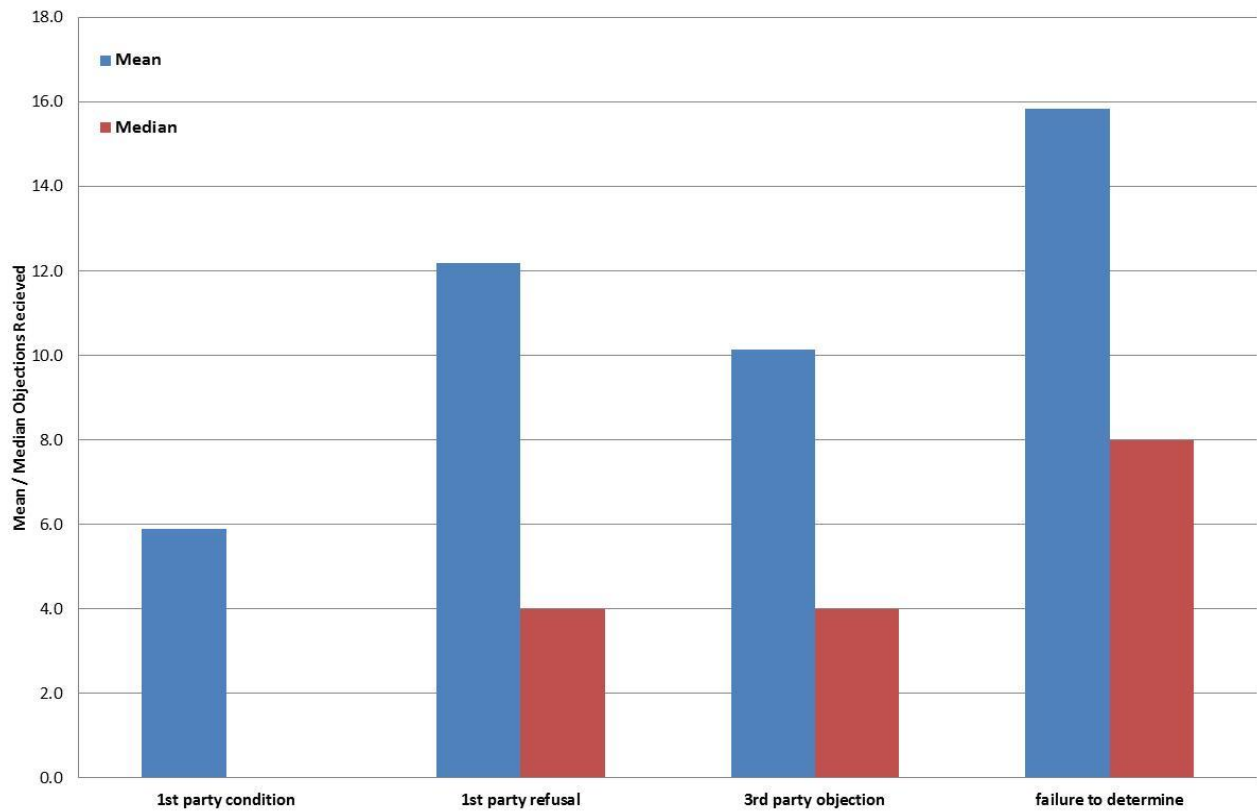
Figure 24 profiles relationships between objections, and VCAT appeal type, in more detail. Along the bottom of the chart, cases have been divided into those: where no objections were received; where a small number were received (1–3); where 4–9 were received; and those with the larger volumes of objection (10+).

The vast majority (98%) of the 11 621 cases without objections did not have a VCAT appeal. As the volume of objections increases, the proportion of applications with VCAT appeals increases. For cases with one to three objections (2727 cases) the proportion with a VCAT appeal increases to 9 per cent; and for cases with four to nine objections (758 cases) the proportion with an appeal increases to 25 per cent. Of the 572 cases with more than 10 objections, 45 per cent resulted in appeal, compared to 44 per cent without appeal. (The remaining 11% of cases had unknown outcomes or were withdrawn). Therefore, for applications with 10 or more objections, a VCAT appeal outcome was more likely than not.

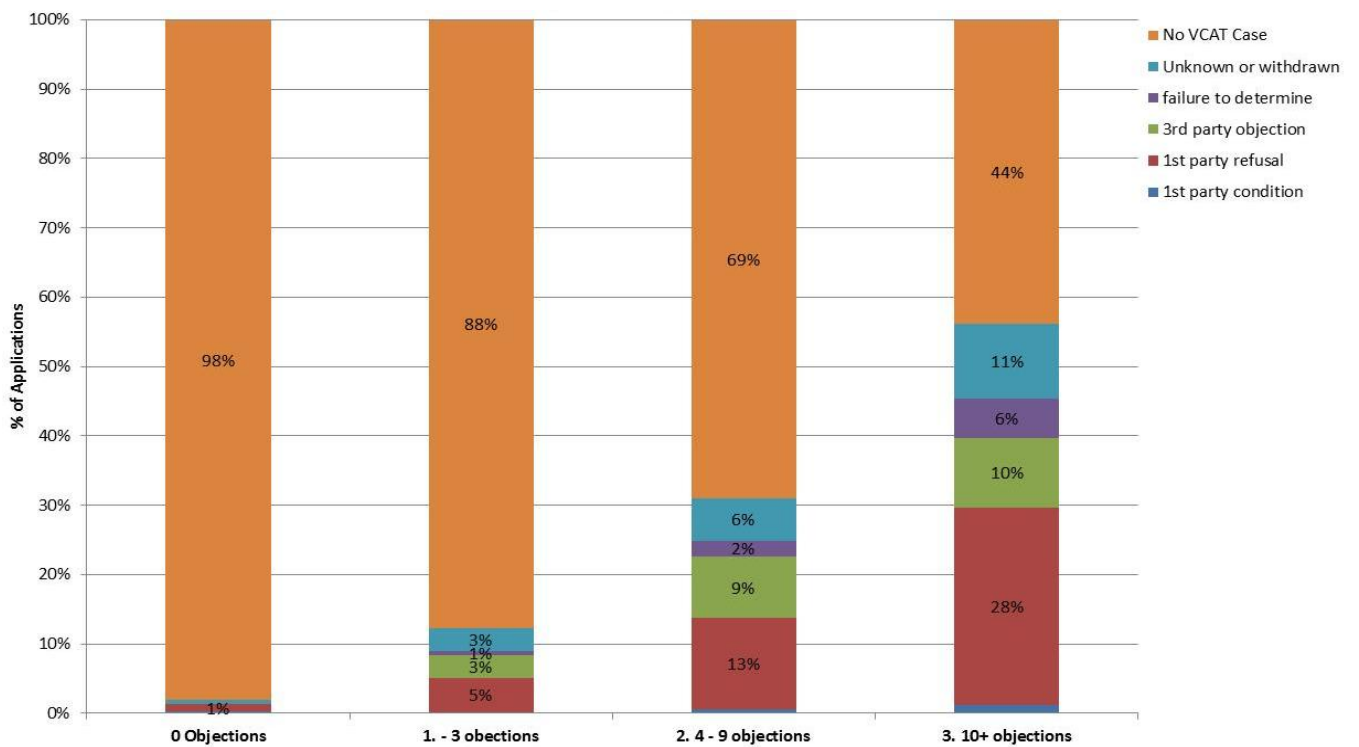
As discussed previously the connection between objection and appeal may be related to local government procedures for permit assessment, with the likelihood of councillor engagement in the determination of application outcomes (on top of the assessment of the council planning department) increasing with increased resident objections numbers. Although relatively few appeals are lodged by third parties, it is evident that objectors are influencing housing supply by providing a backdrop of opposition to plans, influencing local council decisions to refuse (or fail to determine) permit applications.



**Figure 23: Mean and median objections received, by VCAT appeal type**



**Figure 24: Number of objections received, by VCAT appeal type**

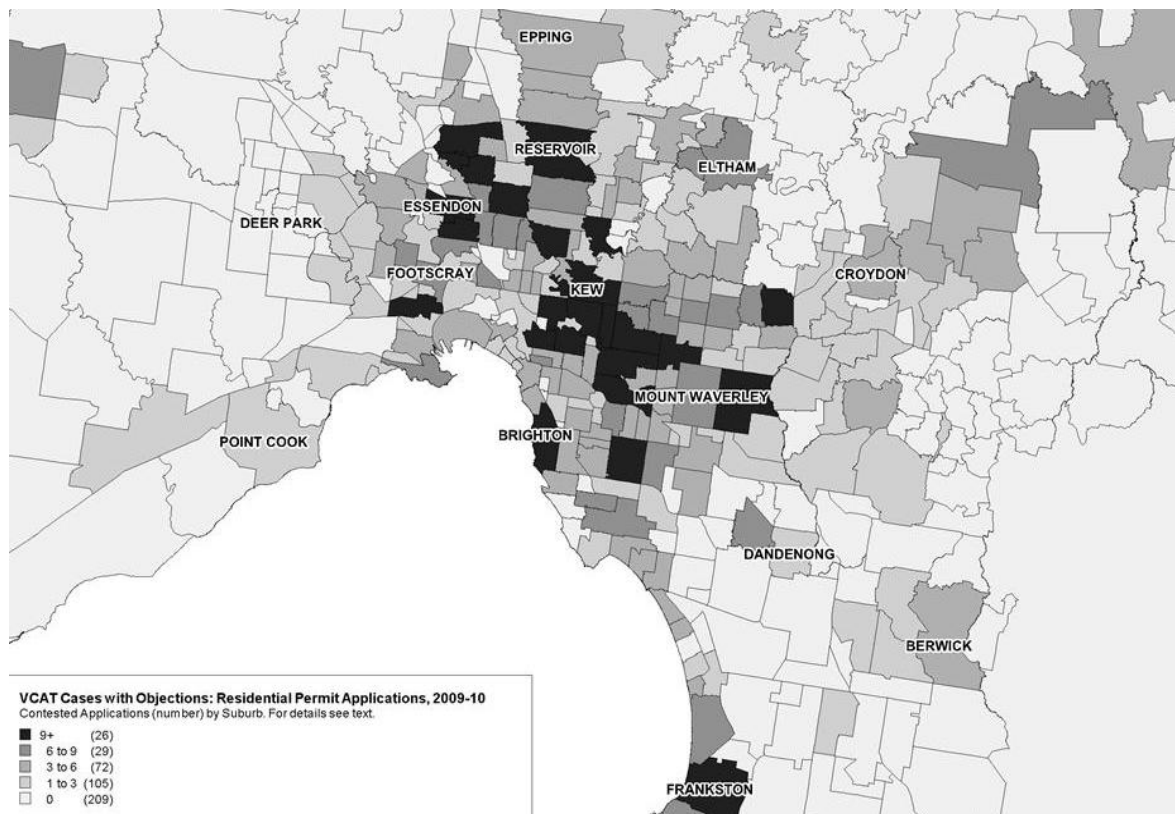


## 5.2 Spatial distribution

Given the strong association of objection numbers with first party appeals demonstrated above, the following examination of spatial variation and local area attributes focuses on all appeals that are associated with resident objection. These 'contested appeal' cases combine third party appeals with all first party appeal and failure to determine cases that include formal resident objection.

Figure 25 shows the spatial distribution of the 891 contested residential permit applications with VCAT cases in the sample. These are clustered in the inner and middle-eastern and south-eastern suburbs (e.g. Hawthorn, South Yarra, Malvern East, Mount Waverley), and the inner and middle-northern suburbs (e.g. Brunswick, Pascoe Vale, Reservoir). Most were in the municipalities of Stonnington, Boroondara, Moreland, Darebin and Whitehorse. Table 7 provides a list of suburbs with the highest number of contested appeal cases in the dataset.

**Figure 25: Contested residential permit applications, VCAT cases with objections, by suburb**



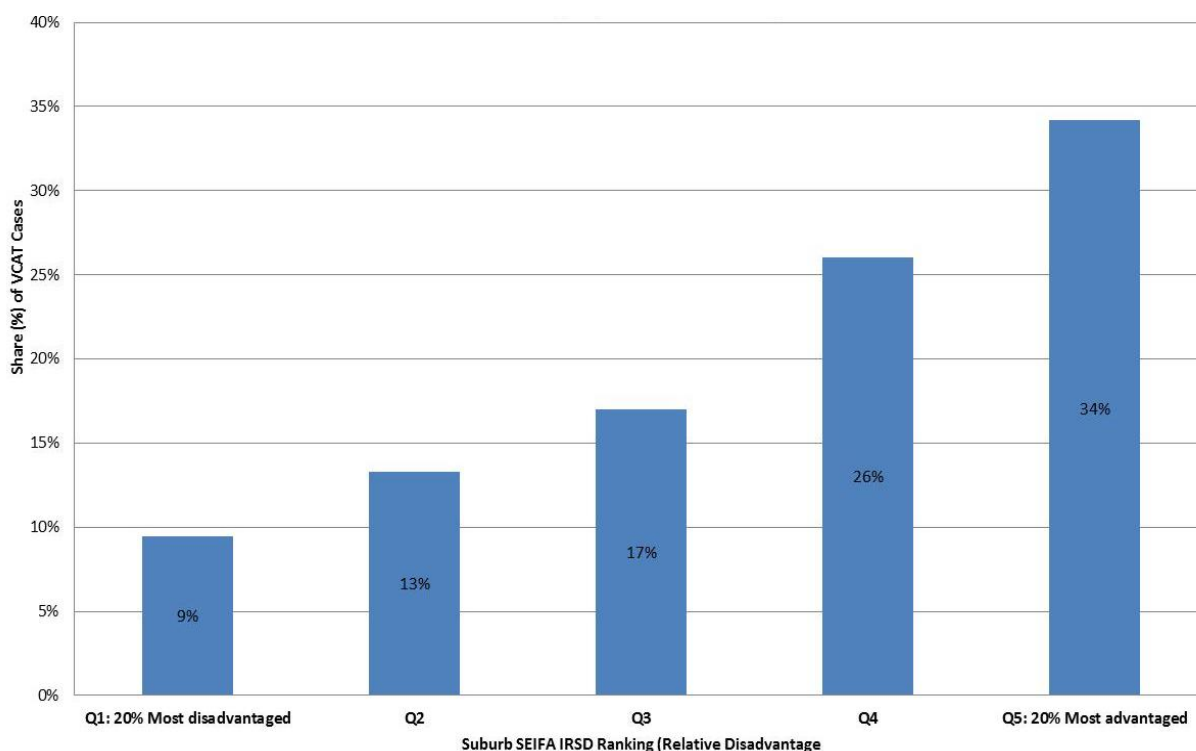
**Table 7: Top suburbs for contested cases, VCAT cases with objections**

Suburb	LGA	Permits	Cumulative %
Richmond	Yarra	19	2.13%
Hawthorn	Boroondara	16	3.93%
Essendon	Moonee Valley	15	5.61%
Pascoe Vale	Moreland	14	7.18%
Brighton	Bayside	13	8.64%
Frankston	Frankston	13	10.10%
Hawthorn East	Boroondara	13	11.56%
Kew	Boroondara	13	13.02%
Mitcham	Whitehorse	13	14.48%
South Yarra	Stonnington	13	15.94%
Reservoir	Darebin	13	17.40%
Camberwell	Boroondara	12	18.74%
<b>Total in sample</b>		<b>891</b>	

### 5.3 Local area attributes

Figure 26 illustrates patterns of VCAT cases by local socio-economic advantage comparing appeal cases that included resident objections against local area SEIFA scores. In the lowest quintile of relative disadvantage, 3 per cent of applications are contested and go to VCAT. In the highest quintile, 10 per cent of cases are contested and go to VCAT. The proportions of appeals increase with the level of advantage. As a share of all VCAT cases with objections, 34 per cent were in suburbs in the highest SEIFA quintile, compared to 9 per cent occurring in the lowest quintile of suburbs.

**Figure 26: VCAT cases with resident objection (% of cases) by SEIFA IRSD quintile**



## 5.4 Factors influencing objections and VCAT appeal

This final results section uses regression modelling techniques to explore the combined potential influence on permit application pathways. It models the influence of features that, in combination, may be associated with the receipt of large volumes of objections; or of the likelihood of proceeding to a VCAT appeal.

### Geographical variables

The models integrate a basic spatial variable, as listed at Table 8 and shown in Figure 27. These three categories are groupings of LGAs into ‘Inner’, ‘Established’ and ‘Fringe’ sections of Melbourne. The main interest is in ‘established’ or ‘contested’ regions—defined here as those municipalities not in the inner region or on the urban fringe. Development tensions in established municipalities may more closely reflect conflict with existing residents around HDH. This reflects spatial variation in urban development such that inner areas are more likely to be characterised by higher proportions of existing HDH relative to lower-density dwellings, while development in fringe areas is more likely to occur in a Greenfield context where there are fewer established neighbourhoods.

**Table 8: Spatial groupings of LGAs**

Region	LGAs
Inner	Melbourne, Port Phillip, Yarra
Established	Banyule, Bayside, Boroondara, Brimbank, Darebin, Frankston, Glen Eira, Greater Dandenong, Hobsons Bay, Kingston, Knox, Manningham, Maribyrnong, Maroondah, Monash, Moonee Valley, Moreland, Stonnington, Whitehorse
Fringe	Casey, Hume, Melton, Mornington Peninsula, Nillumbik, Whittlesea, Wyndham, Yarra Ranges

**Figure 27: Spatial groupings of residential areas**



## Numbers of objections

The first model is an ordinary least squares regression model that considers the following question:

Are certain characteristics associated with increased numbers of third party objections?

The dependent variable is:

→ The number of objections received.

The independent variables in the first version of the model are:

- Size of the development (1–5 dwellings, 4–9 dwellings, 10–24 dwellings, 25+).
- Relative educational and occupational advantage of the suburb of the application (in quintiles).
- Median house price of the municipality (in \$100 000s).

The second version of this model repeats the above but is limited only to:

- Municipalities in established areas of Melbourne (i.e. excluding inner and fringe regions, as set out in Table 8).

The hypothesis is that the number of third party objections will increase with the size of the development application, and also along with the increasing educational and occupational advantage of the suburb. Increased local house prices are also expected to influence objection numbers. The version of the model limited to established areas is intended to better highlight tensions around resident objections to in-fill housing.

The model is limited to applications that had TPOAR, received objections, and where the number of dwellings was known (1472 applications). In the second version of the model which is limited to the established LGA regions as listed previously, the sample is 1157 applications. Frequency counts for the categorical variables are set out in Table 9, both for the full Melbourne model and for the established areas model.

**Table 9: Frequency counts for models**

Variable	Melbourne		'Established' LGAs	
<b>Dwellings group</b>				
1–4 dwellings	1052	71%	832	72%
5–9 dwellings	168	11%	135	12%
10–24 dwellings	155	11%	112	10%
25+ dwellings	97	7%	78	7%
Total	1472	100%	1157	100%
<b>SEIFA educational/occupational rank</b>				
Lowest 20%	210	14%	84	7%
Q2	264	18%	229	20%
Q3	338	23%	294	26%
Q4	338	23%	312	27%
Highest 20%	315	22%	233	20%
Total	1465	100%	1152	100%
<b>Total records</b>	<b>1472</b>	<b>100%</b>	<b>1157</b>	<b>100%</b>

Note: records with TPOAR, objections & dwelling information

The results of the regression model are set out in Table 10. The results indicate that the model variables (development size & local area attributes) explain around 41 per cent of the variation in objection numbers, suggesting that the scale of objection is not randomly distributed across area and application characteristics. However, ‘unaccounted for’ variables influence much of the variation in objections.

Compared with the base case used (the lowest SEIFA quintile combined with 1–4 dwellings), other SEIFA quintiles have a positive influence on objection numbers. Being in the second quintile of SEIFA attracts marginally higher objections, attracting an additional 1.6 objections, suggesting that low and low-middle ranked areas are not significantly different in objection numbers. However, being in the highest and second highest SEIFA quintiles increases the average number of objections by 4.9 and 4.4, respectively, holding other factors constant. This means that, holding development size constant, applications in areas of higher socio-economic advantage attract 4–5 more third party objections than in areas of lower advantage. These numbers are important when considering the relationship between objections, assessment processes, and VCAT appeals.

The development size variables also show a strong and positive influence on objections. Developments of 5–9 dwellings receive on average five objections more than those for 1–4 dwellings. Larger developments of 10–24 and 25+ dwellings increase the number of objections by around nine and 20 objections, respectively. An alternative model with dwelling numbers as a continuous (rather than categorical) variable, yielded similar results but suggested that objections increased by 0.2 for each additional dwelling proposed. Both increases in dwelling numbers and SEIFA rankings have a positive and significant influence on objection numbers; however, dwelling numbers have the more pronounced effect.

The same model based on house price rather than SEIFA quintiles yielded similar results, demonstrating that both house prices and SEIFA are essentially indicators of similar variations in area characteristics. A version of the model also integrating dummy variables for inner, established and fringe locations found no significant differences between these three location groups, with location differences in objection numbers primarily explained by SEIFA rankings.

**Table 10: Model 1 results, number of third party objections (applications with TPOAR that received objections, with dwelling information)**

	<i>R</i>	<i>R</i> Square	Adjusted <i>R</i> <sup>2</sup>	SE of the estimate
<b>Model 1</b>	0.413 <sup>a</sup>	0.170	0.166	13.217

a. Predictors: (Constant), hp\_100k, dwells\_dusqm\_5\_to\_9, qedoc\_4, dwells\_dusqm\_25\_plus, dwells\_dusqm\_10\_to\_24, qedoc\_3, qedoc\_2, qedoc\_5

<b>Model 1</b>	<b>Sum of squares</b>	<b>df</b>	<b>Mean square</b>	<b>F</b>	<b>Significance</b>
Regression	52 238.165	8	6529.771	37.379	0.000 <sup>b</sup>
Residual	254 177.299	1455	174.692		
Total	306 415.464	1463			

<b>Model 1</b>	<b>Unstandardised coefficients</b>		<b>Standardised coefficients</b>	<b>t</b>	<b>Significance</b>
	<b>B</b>	<b>SE</b>	<b>Beta</b>		
(Constant)	1.222	1.157		1.056	0.291
5–9 dwellings*	5.187	1.104	0.114	4.700	0.000
10–24 dwellings	9.415	1.166	0.200	8.076	0.000
25+ dwellings	19.675	1.467	0.330	13.413	0.000
Q2 of education and occupation*	1.564	1.235	0.042	1.267	0.205
Q3 of education and occupation	2.139	1.207	0.062	1.772	0.077
Q4 of education and occupation	4.419	1.316	0.129	3.358	0.001
Q5 (highest quintile) of education and occupation	4.885	1.628	0.139	3.000	0.003
Median house price (\$100k)	0.014	0.180	0.003	0.076	0.939

\* Omitted categories in regression analysis: 1–4 dwellings, SEIFA Quintile 1.

Table 11 reports results from the model when limited only to municipalities in established areas of Melbourne (not fringe or immediate CBD municipalities). The direction and significance of the variables for dwelling size and SEIFA quintile are very similar to the original model. The effect of increasing objection numbers from larger developments (10–24 & 25+ dwellings) is slightly stronger. The effect of increased SEIFA ranking is more pronounced than in the main model. In the established parts of Melbourne, applications in suburbs in the highest and second highest quintiles attracted 6–7 more objections than those in areas of lower advantage.

Overall, the results confirm that the scale of local opposition is strongly influenced by development size but also by the socio-economic characteristics of suburbs. Larger developments attract substantially more objections but, holding this influence constant, will attract more objections again in areas of relative advantage. These trends are evident across the city but are more pronounced when focusing only on established middle-ring suburbs.

**Table 11: Model results—number of third party objections (applications with TPOAR that received objections, with dwelling information in established LGAs)**

	<b>R</b>	<b>R<sup>2</sup></b>	<b>Adjusted R<sup>2</sup></b>	<b>SE of the estimate</b>	
<b>Model 1</b>	0.414 <sup>a</sup>	0.172	0.166	13.581	

a. Predictors: (Constant), hp\_100k, dwells\_dusqm\_5\_to\_9, qedoc\_4, dwells\_dusqm\_25\_plus, dwells\_dusqm\_10\_to\_24, qedoc\_3, qedoc\_2, qedoc\_5

<b>Model1</b>	<b>Sum of squares</b>	<b>df</b>	<b>Mean square</b>	<b>F</b>	<b>Significance</b>
Regression	43 647.307	8	5455.913	29.582	0.000 <sup>b</sup>
Residual	210 810.940	1143	184.437		
Total	254 458.247	1151			

Model 1	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	SE	Beta		
(Constant)	-0.074	1.725		-0.043	0.966
5–9 dwellings*	4.666	1.269	0.101	3.678	0.000
10–24 dwellings	10.797	1.409	0.215	7.664	0.000
25+ dwellings	20.442	1.666	0.339	12.270	0.000
Q2 of education and occupation*	3.707	1.747	0.100	2.123	0.034
Q3 of education and occupation	4.190	1.707	0.123	2.454	0.014
Q4 of education and occupation	6.347	1.766	0.190	3.593	0.000
Q5 (highest quintile) of education and occupation	6.825	2.103	0.184	3.245	0.001
Median house price (\$100k)	-0.082	0.195	-0.016	-0.422	0.673

\* Omitted categories in regression analysis: 1–4 dwellings, SEIFA Quintile 1

### Likelihood of a VCAT appeal

This model considers the factors influencing the likelihood that an application will or will not involve a VCAT appeal. The model addresses the following question:

To what extent do certain characteristics increase the likelihood of an application going to a VCAT appeal?

This analysis is limited to those applications with TPOAR and where dwelling numbers were known (3064 applications). The model produces a set of odds ratios that an application in the sample will have proceeded to a VCAT appeal.

The independent variables are in categorical form, as follows:

- number of objections received (none, 1–3, 4–9, 10+)
- development size (1–4 dwellings, 5–9 dwellings, 10–24 dwellings, 25+ dwellings)
- comparative educational and occupational advantage of the suburb (SEIFA quintiles 1–5 as discussed previously)
- the region of the LGA (inner, established, fringe)

Frequency counts for these categorical variables are shown in Table 12.

**Table 12: Frequency counts for VCAT model**

Variable	N	%
<b>Dwellings group</b>		
1–4 dwellings	2230	73%
5–9 dwellings	217	7%
10–24 dwellings	322	11%



25+ dwellings	295	10%
Total	3064	100%
<b>Objections numbers</b>		
0 objections	1592	52%
1–3 objections	925	30%
4–9 objections	287	9%
10+ objections	260	8%
Total	3064	100%
<b>SEIFA educational/occupational rank</b>		
Lowest 20%	623	20%
Q2	646	21%
Q3	696	23%
Q4	565	19%
Highest 20%	520	17%
Total	3050	100%
<b>Region</b>		
Inner	164	5
Established	2312	75%
Fringe	588	19%
<b>Total records</b>	<b>3064</b>	<b>100%</b>

Note: records with TPOAR, and dwelling information

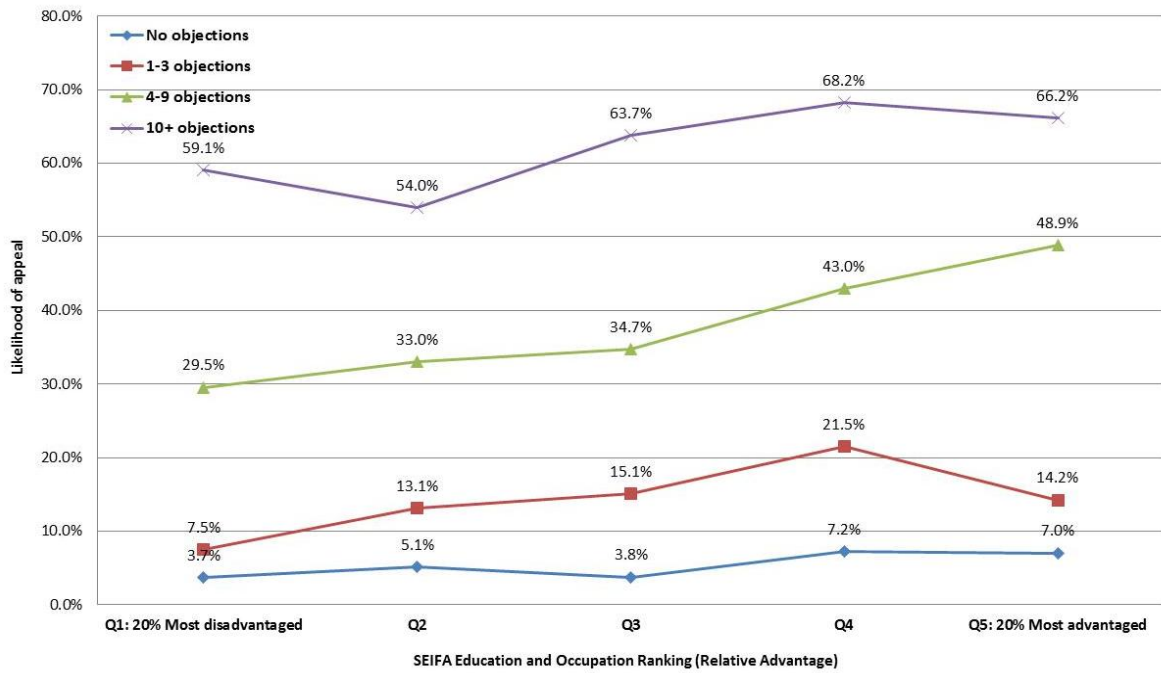
Based on the descriptive results there is expected to be an increased likelihood of an appeal if there are large numbers of objections received (10+), but not necessarily if there are small numbers of objections. Larger developments and those in areas of comparative socio-economic advantage are expected to be more likely to proceed to appeal. As applications in more advantaged areas are predominantly those with large numbers of objections, these factors may interact. Applications in different municipalities or regions may be more likely to proceed to appeal, because of differences in urban form conflicts or of governance processes.

The results are illustrated in Figures 26–32. Figure 26 reinforces the findings from the descriptive analysis, showing a significant increase in the propensity for a VCAT case as objection numbers increase. Where no objections are received, the propensity for appeal is low (< 3.7%) but is higher in the top SEIFA ranked areas (7.0–7.2%). Where the number of objections is small (1–3), the propensity for appeal ranges from 7.5 per cent to 21.5 per cent, and generally increases by SEIFA ranking. Where moderate numbers of objections (4–9) are received, the likelihood of a VCAT appeal ranges from 29.5 per cent to 48.9 per cent, and again increases with the SEIFA score of the suburb. Where large numbers of objections are received (10+), applications have between a 54 per cent and 68 per cent likelihood of a VCAT appeal regardless of SEIFA ranking. The implication is that, generally speaking, where a large volume of objections is received, there is a more than 50 per cent likelihood of going to VCAT irrespective of SEIFA ranking. Conversely if no objections are received there is a less than 10 per cent change. In the in-between ranges of third party objections the SEIFA ranking of the area makes a difference to the likelihood of an appeal.

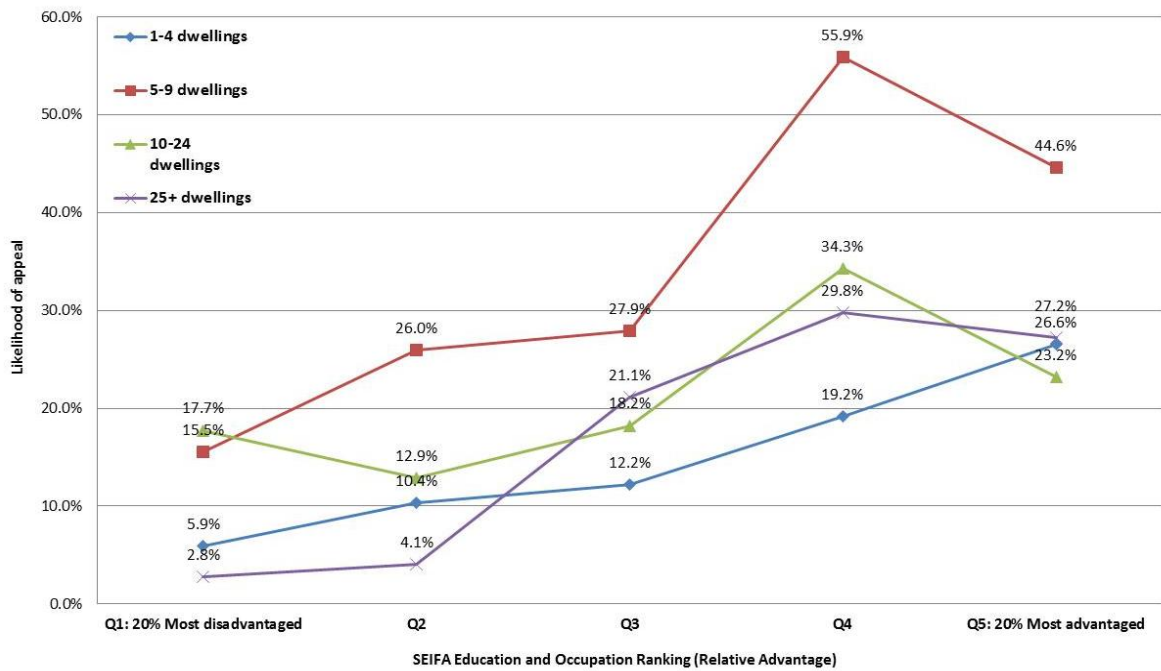
Smaller developments of 1–4 dwellings and 5–9 dwellings are significantly more likely to involve a VCAT appeal in areas of higher socio-economic advantage compared with the same-sized developments in areas of lower advantage (see Figure 29). Of developments of 1–4 dwellings, those in the lowest SEIFA quintile have a 5.9 per cent likelihood of an appeal compared to 26.6 per cent in the top quintile of SEIFA. When broken down by SEIFA and development size, the groups most likely to have an appeal are 5–9 dwellings in the top two SEIFA quintiles (45–56% likelihood of appeal). In most cases the likelihood of appeal increases with SEIFA ranking for each dwelling size group, although the relationship between dwelling size and likelihood of appeal based on SEIFA ranking is not as pronounced as the association of appeals with objection numbers. Of note is the relatively high propensity of appeal for low SEIFA quintiles where mid-size developments (5–9 & 10–24 dwellings) are concerned; although a clear skew to the higher SEIFA quintiles is still evident. However, for very large developments (25+ dwellings) there is a prominent jump in the likelihood of appeal, with only 2.8 per cent and 4.1 per cent likelihood for quintiles one and two, respectively, compared with over 20 per cent likelihood for quintiles three, four and five, respectively.

Figure 30 again shows that the likelihood of a VCAT appeal is strongly related to the number of objections. In this case there is relatively limited additional influence from the number of dwellings proposed. Proposals for 5–9 dwellings tend to have the highest likelihood of appeal, except in the ‘highly contested category’ where developments of 25+ dwellings with 10 or more objections have a 74 per cent likelihood of a VCAT appeal. Figure 31 suggests that inner LGAs consistently have higher likelihood of appeal than middle-ring and urban fringe areas. This is most pronounced for developments of 5–9 dwellings, with the likelihood of a VCAT appeal increasing from 16 per cent for applications in fringe areas, to 37 per cent for established areas and 56 per cent for inner municipalities. Again, although there is a relationship between the likelihood of appeal and the number of dwellings proposed, this is not linear. Figure 32 shows that applications with 10 or more objections had an 89 per cent likelihood of appeal in inner areas. This is compared to 63 per cent in established middle-ring LGAs and 50 per cent on the urban fringe.

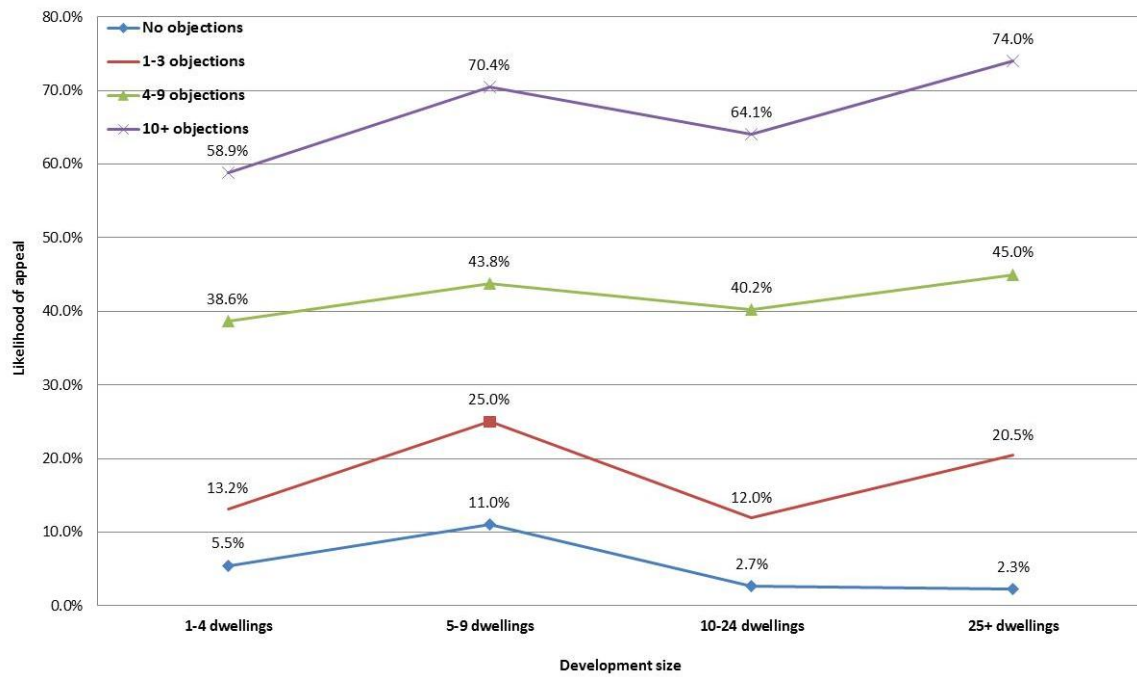
**Figure 28: Likelihood of VCAT appeal, by number of objections and SEIFA educational and occupational advantage of suburb**



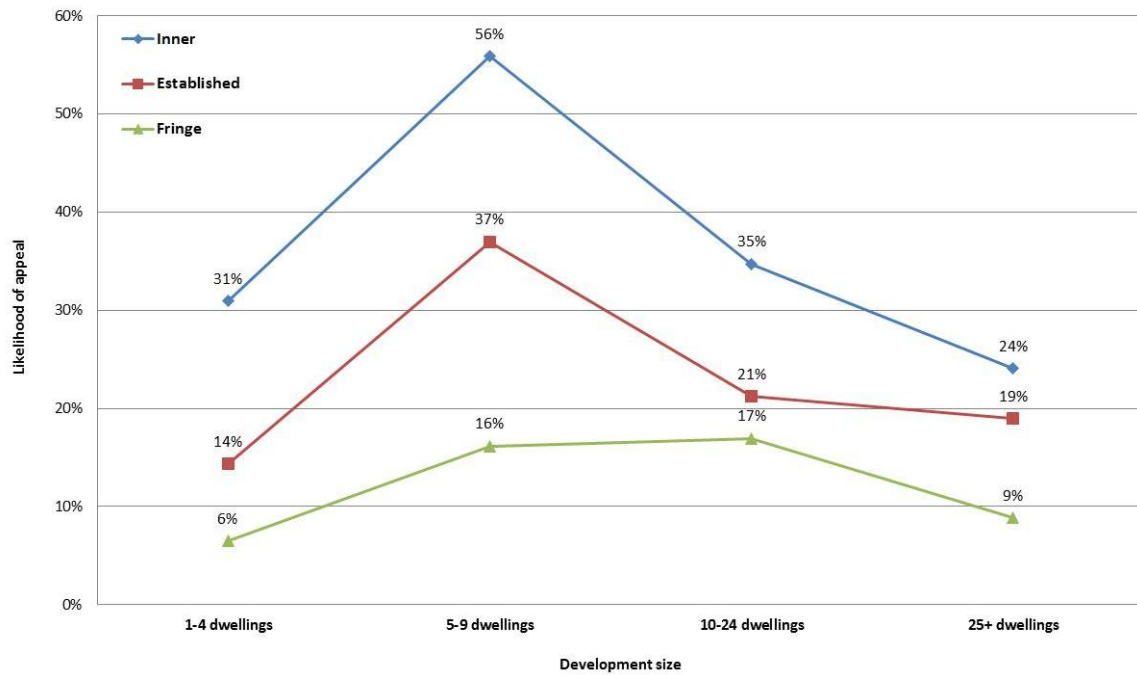
**Figure 29: Likelihood of VCAT appeal, by development size and SEIFA educational and occupational advantage of suburb**



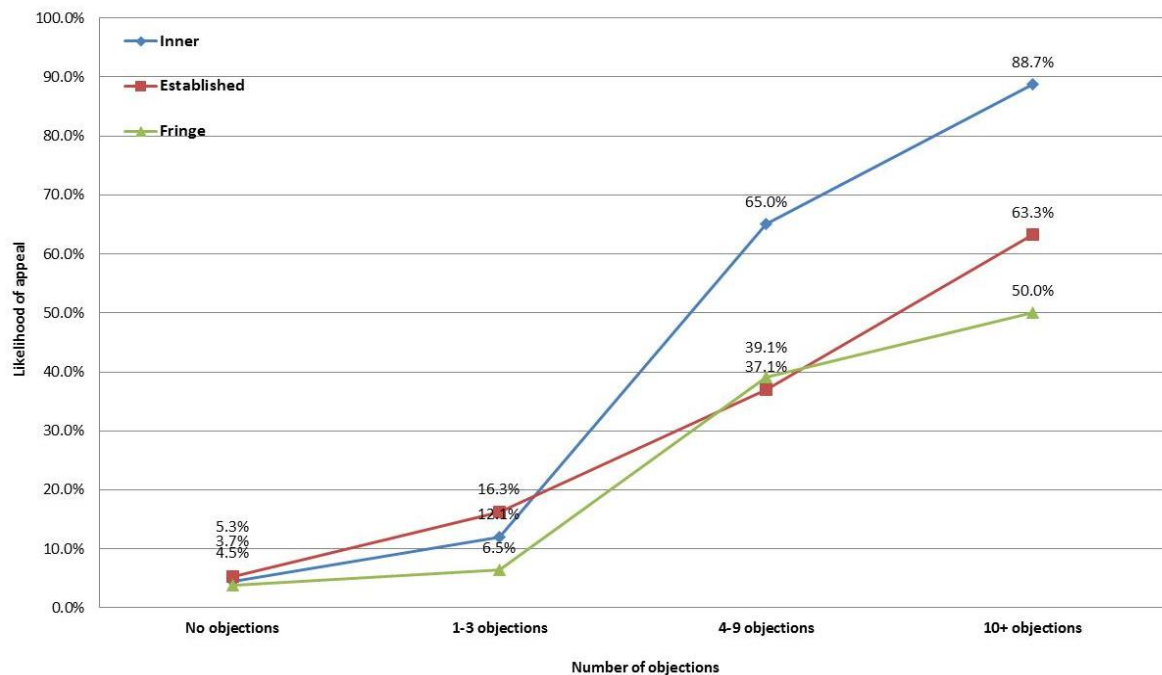
**Figure 30: Likelihood of VCAT appeal, by number of objections and size of development**



**Figure 31: Likelihood of VCAT appeal, by development size and location**



**Figure 32: Likelihood of VCAT appeal, by location and number of objections**



## 5.5 Discussion

Of the applications in the dataset, 7.1 per cent involved an appeal. This is consistent with other published analyses of appeal propensity in Victoria (Productivity Commission 2011). It is notable that this rate of appeal is much higher than in other states and territories.

The vast majority of appeal cases occurred where TPOAR existed. First party appeals are possible without TPOAR, but are in practice rare. When a subset of the data based on major projects of 10 or more dwellings is analysed, a higher incidence of appeal is evident: 18.2 per cent compared with 7.1 per cent for the whole dataset. Thus major projects were more likely to bypass TPOAR or, where these rights exist, to be contested at VCAT.

While the majority of appeals occur where TPOAR exist, an important finding is that the largest category of appeal were first party refusal cases (520 cases, 47% of all cases, 61% of known case outcomes). Third party cases accounted for a relatively small share (211 cases, 19% of all cases, 25% of known case types). Overall, of applications where the proponent is known, 25 per cent originate from a third party, 56 per cent originate from a first party but include third party objections, and 19 per cent originate from a first party and have no objections.

While all third party cases obviously stem from third party objection, a significant proportion of first party cases also involve third party objections. First party appeals and failure to determine cases are strongly associated with objection numbers. First party appeals with objections outnumber third party appeal cases. The average and median objections received on first party refusals is slightly larger than third party cases, and on failure to determine cases, is significantly larger. There is a strong relationship between first party initiated process and third party objections, suggesting that refusals and failures by council may signify third party influence in the planning system.

Of highly contested applications (10+ objections), over half had a VCAT appeal. The level of appeal increases with objection numbers. The nature of appeal also changes,

with an increased proportion of first party-initiated cases. Of cases with 1–9 objections, 36 per cent of cases are third party initiated with 64 per cent from first parties. By comparison, of cases with 10 or more objections, only 22 per cent were third party cases and 78 per cent from first parties.

As with the pattern of objections (see preceding chapter), the spatial distribution of appeals shows a similar concentration of appeals in the inner and middle-eastern and northern suburbs. The analysis further highlights the association of resident engagement with opposition channels in areas of higher socio-economic advantage. In the top quintile of SEIFA rankings, over 12 per cent of applications are appealed, compared to less than 4 per cent in the lowest quintile.

The modelling results point to combined interactions of development approval processes. Results indicate that development size and local area SEIFA rankings explain around 41 per cent of variation in third party objection numbers. Larger applications of 25 or more dwellings receive on average 10–19 objections more than those without dwelling information. Holding this constant, applications in the top SEIFA quintile receive a further 4–5 more objections than in areas of lower socio-economic advantage. Thus, larger developments attract substantially more objections, but holding this influence constant, will attract more objections again in areas of relative advantage. When limiting the model only to established middle-ring suburbs, these influences of SEIFA rankings and development size are more pronounced.

Exploring the factors which in combination contribute to the likelihood of a VCAT appeal, it is found that where large numbers of objections are received (10+), applications have between a 54 per cent and 68 per cent likelihood of a VCAT appeal with comparatively little variation by development size or SEIFA suburb ranking. However, as noted, large volumes of objections are much more likely to be received in higher-ranked areas and for larger developments. The likelihood of an appeal increases with the level of socio-economic advantage of the suburb, particularly for applications with a moderate number of objections (4–9). The most highly contested applications (10+ objections) are less clearly distinguished by SEIFA, with a high likelihood of appeal in all SEIFA quintiles. Across all development sizes, applications are generally more likely to go to appeal in higher-ranked SEIFA areas. Moderate-sized developments (5–9 & 10–24 dwellings) tend to have the highest likelihood of an appeal, particularly in inner and established areas.

## **5.6 Implications of quantitative analysis**

This section shows that HDH has become the subject of resident opposition through the planning process. However, there is significant socio-spatial variation in the use of TPOAR to contest HDH. LGAs characterised by higher relative advantage are more likely to experience a greater number of objections per planning application than areas of lower relative advantage. Because increasing numbers of objections result in a higher likelihood of appeal, it follows that objections made in areas of higher relative advantage are more likely to result in a planning appeal. Further, fast-tracking mechanisms are most prevalent in inner-city and outer-suburban ‘fringe’ areas. This can be explained by the unique development contexts of city-centre and Greenfield housing sites, but the spatial variation produces a secondary effect. Namely, the provision of TPOAR becomes less likely as house prices decrease. The provision of TPOAR is therefore generally confined to established suburbs. Within these areas, TPOAR are likely to be used more frequently and in greater intensity in areas of higher relative advantage.

Nonetheless, it is important to note that where TPOAR are available, one in five planning applications still received objections in the lowest, second lowest and middle quintiles (compared with 1 in 3 for the highest 2 quintiles). For mid-range

developments (5–9 & 10–24 dwellings) there is a strong propensity for a VCAT appeal, over 20 per cent across all SIEFA rankings, albeit with a skew to the highest two quintiles. Further, for highly contested cases (10+ objections), there is a relatively even and strong propensity across all SIEFA rankings for the application to end in appeal (although such highly contested cases are significantly more likely in high SIEFA ranking areas).

The data also reveal nuances in the way third parties influence planning decisions. Even though third party appeals are less significant in number than first party appeals against planning refusals or a 'failure to determine', the likelihood of the latter two also increases with number of objections. Thus, first party appeals are indicative of third party influence where they are accompanied by large numbers of third party objections.

Overall, the findings build on earlier observations about the correlation between resident opposition to housing and neighbourhoods characterised by strong social and financial capital (Huxley 2002; Engels 1999) and those that link patterns of appeal to areas of high socio-economic areas (Woodcock et al. 2009; Dovey et al. 2009). Specifically, the data reported here show that socio-economic bias is prevalent in the use of TPOAR to contest HDH at the metropolitan scale.

Given TPOAR enable community appeals against planning decisions, their use in the context of development proposals that deliver on key housing and planning policies has been viewed with skepticism. But it is important to consider why residents are using their oversight to challenge HDH. Is this a matter of HDH failing to satisfactorily meet state and local planning policies? Or does it represent other concerns? Moreover, the evidently contentious nature of HDH and social housing poses an equally pressing question: what is the best way to manage resident opinion, and how do planning approaches with TPOAR stack up against other approaches? Drawing on three qualitative case studies of HDH development, we turn to these questions next.

## 6 QUALITATIVE CASE STUDIES—OVERVIEW

Chapters 6–9 explore three in-depth case studies of resident opposition to housing development. While the development sites are based in Melbourne, they exemplify three dominant planning approaches in relation to resident opposition to housing development in contemporary cities. Each of these models are currently in use in jurisdictions in Australia and internationally. They include:

- Fully fast-tracked development with no TPOAR.
- Development characterised by early engagement of the community at a strategic planning level with a view to minimising opposition later in the planning process.
- Development where full TPOAR were available and exercised throughout the planning development and assessment process.

In order to enable comparison across case studies, similarities were sought in terms of the level of objection (all are characterised by a high level of community opposition ranging from 30–200 objections) and development size (all comprise more than 25 dwellings, with 2 cases comprising just under 200 dwellings). All sites ultimately received planning approval, and at the time of writing, were under (or had already been) constructed. The sites also meet planning policy goals of densification and urban consolidation.

Despite these similarities, cases are framed by unique development histories, socio-economic and political contexts and diverse institutional histories in managing resident involvement in planning processes. In order to capture the differences that these contextual factors make in terms of participatory planning outcomes, the selection of cases sought to include neighbourhoods with diverse political profiles, differences in histories and experiences of densification, and with a range of local government stances toward densification. The following section describes the cases in more detail (see also Table 13), before the case materials and limitations of approach are explained.

### 6.1 The three cases

#### **Fast-tracking in a politically green LGA experiencing in-fill development**

Case one is located in the inner-northern LGA of Moreland. Moreland is ranked in the second bottom SEIFA quintile in terms of relative advantage. It is the least advantaged LGA of the three cases. It also comprises a significant proportion of Greens voters<sup>4</sup> (46.74% two party preferred) in a Labor-held seat. Both permit activity and contestation of permits are reasonably high. In 2009–10 Moreland received 929 residential permit applications, with a higher than average number of appeals (10%): 41 per cent of appeal cases were first party appeals, compared to 23 per cent third party appeals. Moreover, around 30 per cent of applications in Moreland received third party objections and 11 per cent received four or more.

Case one was also fully fast-tracked under the SHI with no TPOAR attached to the permit application. The rezoning of the site was also fast-tracked through existing mechanisms under the Planning and Environment Act. This model is seen as the least obstructive to housing supply but limits the opportunity for resident input. The site is adjacent to a main road with significant public transport (tram & rail) within walking distance. It adjoins business properties on the south and east; a main road to the west and a smaller side street to the north. The site had been ear-marked by the Local Council Strategic Planning team for intensification in 2004.

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<sup>4</sup> Political preferences are based on the 2010 Victorian State Government Election results



### **Upfront consultation in a lower-density advantaged suburb**

Case two is located in the LGA of Manningham, ranked in the second highest quintile in terms of socio-economic advantage, and more advantaged than case one (but less than case three). The site is located in a Liberal Party (conservative) seat, with 67.61 per cent after the distribution of preferences. The LGA comprises predominantly detached dwellings on single blocks, with some town houses with extensive views to the Dandenong Ranges. In 2009–10 the LGA of Manningham received an average amount of residential development applications (366) and had a low rate of VCAT appeal, at 3 per cent. Most appeals in the LGA recorded in the sample were third party objection cases. Around 37 per cent of applications in Manningham received third party objections and 9 per cent received four or more.

The Manningham site is located 16km from the Melbourne CBD and is notable for its limited public transport options but the site is adjacent to Doncaster Road in walking distance of the Doncaster Hill Activity Centre and with access to bus services. Manningham Council has engaged in robust Activity Centre Planning, although this site is outside the Activity Centre Zone. Case two is characterised by an upfront consultation (in this case notification and the consideration of objections) at the strategic planning level with the view to minimising objections later in the planning process.

### **Third party objection and appeal in a highly advantaged neighbourhood where council support for HDH applications is mixed**

Case three is located in the suburb of Malvern which is ranked in the top quintile in terms of relative advantage. The site is also located in a Liberal Party seat (70.44% after the distribution of preferences). In the sample dataset, the LGA of Stonnington received an average number of residential planning applications (308) with a high rate of appeal (17%). Appeals were predominantly first party refusal cases (34%) and failure to determine cases (29%). Over half (56%) of applications in Stonnington in the sample received third party objections and 35 per cent received four or more. Thus there is a high level of contestation of planning permits in this LGA.

Case three comprises full third party objection and appeal process, resulting in a number of appeals at VCAT. The site is zoned Residential 1 in the LPS, despite its large size and location adjoining a business zone. In this case, in three out of four planning applications submitted, local councillors supported resident objections and rejected the application, against the recommendation of the council officers to grant a permit. The planning application progressed to VCAT multiple times. This is the least favoured model from the perspective of housing supply: it can tie up development through costly appeals processes, but the site nonetheless provides key insights into the factors leading to planning through appeal, and the costs and benefits of TPOAR.

## **6.2 Case materials**

Cases were selected through detailed analysis of 2009–10 appeals data, VCAT decisions, and media reporting. These sources were used to build a backdrop of the planning framework and the contention around each site, as well as level of community activism. Where appeals data were available, council planning files documenting development applications, planning approval pathways, justification of decisions, communication and correspondence between objectors and planners, were consulted.

In order to gain an insight into why people opposed development, 18 semi-structured qualitative interviews were undertaken. A qualitative approach was seen to be particularly useful in documenting conflicting views from multiple stakeholders, typical

in many planning conflicts (Maginn et al. 2007). Six interviews were conducted at each of the three sites with representatives from resident opposition groups, objectors, developers and local and state planning authorities. The intensity of opposition to planning decisions among those living closest to the proposed development has been well documented (Van Dijk & van der Wulp 2010) and to make the most of a small sample, we stick with this approach here.

Residents were identified through a review of VCAT cases, objections submitted to development applications in council files and media and press announcements. Nine residents were interviewed. The identification of planning participants involved a number of phone calls to local councils to ensure the officer concerned with the site was interviewed.

Semi-structured interview schedules were developed encouraging all respondents to reflect on three key aspects of the planning process:

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

To explore the nature of resident opposition, residents in the Third Party Objection and Appeals Project were asked to sum up their key objections to the site in their own words. The question contained a series of follow-up prompts regarding whether housing wealth, social change, density and so-on featured in their decision to oppose development. However, these prompts were only used if participants had not covered these areas in their initial response. The approach departs from the more standard 'checklist' approach used to test resident responses to increased density (see Productivity Commission 2011). One of the key benefits of qualitative interviews in this context is that the wider set of motivations driving opposition to HDH can be recorded.

Interviews were recorded and uploaded for transcription. Transcripts were anonymised and analysed to uncover stakeholders' perceptions of planning where third party objection and appeal are bypassed, where full appeal is available, and where disputes are framed by earlier phases of public notification or objection.

In the case study analyses we preserve the anonymity of participants by referring to them as 'LP' (planners), 'SP' (state planner), 'PC' (Planning Consultant) 'R' (resident) and 'D' (developer). Numerical codes are adopted as appropriate.

### **6.3 Caveats around case study data**

One of the key advantages of a case study-based approach is that it allows simultaneous consideration of planning development approval and construction processes (see Ball 2011). The selection of cases also provides insights into processes that are inherently uneven and manifest in different ways. However, given the particular political and institutional contexts in which the cases are located, the extrapolation of these cases is not straightforward. For instance, the findings from case one provide insights into fast-tracking in politically green LGAs with a history of in-fill and relatively high levels of contestation of densification. Similarly, the account of upfront consultation occurs in a more conservative neighbourhood, characterised by a marginal HDH market and a long tradition of low-density dwelling. Finally, case three, which was characterised by third party objection and appeal is located in an elite, high-income suburb. Extrapolation of results therefore needs to bear these distinctive political and socio-economic profiles in mind.

**Table 13: Characteristics of case studies**

Case	No. of dwellings	Geographical location	Level of TPOAR available	Political profile (2010 State Election primary vote / two party preferred)	Median house price (2010)	Planning permit applications	Planning approval pathway	Housing supply outcomes
Case one – Fast-track	199 mixed tenure	Moreland (LGA) Inner-northern suburbs 7km from Melbourne CBD	No notification, objection or appeal	Labor – 36%/53% Greens – 30%/47% Liberal – 17% Independent – 10% Sex Party – 4%	\$590 000	929 permit apps 30% objected 10% appealed	Site re-zone and development application approved without normal notification, objection or appeal by Minister under SHI legislation (VC56) and Section 20 Part 4	6 dwellings per month
Case two – Upfront consultation at strategic planning level	38	Manningham (LGA) Middle-eastern suburbs 16km from Melbourne CBD	Amendment to planning scheme exhibited and subject to objection and appeal. TPOAR available on development application	Liberal – 62%/68% Labor – 26%/32% Greens – 8% Family First – 3%	\$750 000	366 permit apps 37% objected 3% appealed	Council approval, objector VCAT appeal, followed by first party VCAT appeal leading to mediation at VCAT with local authority's decision upheld with conditions	≈ 1 dwelling per month
Case three – Full TPOAR	178	Stonnington (LGA) Inner south-eastern suburbs 9km from Melbourne CBD	Development application exhibited TPOAR available	Liberal – 65%/70% Labor – 19%/30% Green – 14%	\$1.32 million	308 permit apps 56% objected 17% appealed	Third party objections, council refusal (4 times) first party VCAT appeal (4 times) leading to permit with conditions	≈1 dwelling per month

## 7 CASE ONE: FAST-TRACKING THROUGH THE SOCIAL HOUSING INITIATIVE

Case one is an example of fast-track planning approval under the SHI. The SHI was introduced by the Australian Federal government in 2008 and comprised \$5.38b to support the social and affordable housing sectors in states and territories. The program supported over 19 000 social or affordable rental housing projects nationally. A key criteria of eligibility for funding was the availability of fast-track development approval. In Victoria, the SHI saw the introduction of specific legislation that exempts projects funded under the scheme from normal notification, objection or appeal.<sup>5</sup> This legislation was passed as VC56- Government Funded Social Housing ('Clause 52.41' of the Planning and Environment Act). In addition, by applying for recognition of the site through an existing fast-track policy lever (Section 20 Part 4) the rezoning of the site was also exempt from exhibition and objection.

Despite this, the site was the subject of a five-month campaign by residents who, without formal opportunities to object, voiced their concerns about the site with local and state politicians. The campaign gained significant support among the standing and incoming ALP candidates. Following sustained political pressure from local members, the Minister for Planning instructed the developer, contrary to VC56, and some months after planning permits were issued, to consult with residents.

While the changes to the project following consultation were minimal, case one nonetheless provides a unique opportunity to explore fast-track planning for higher density, mixed-tenure housing. To what extent is resident opposition justified given the densification and affordable housing outcomes achieved by the site? How does the fully fast-tracked model measure up in terms of generating community 'buy-in' around the higher density and social housing agenda? Before exploring these questions, we first document the planning approval pathway and housing outcomes in more detail.

### 7.1 Planning approval pathway and housing supply

Figure 33 sets out the key planning and development phases, including key periods of resident action. It shows that, from the initial pre-application meetings with council in Dec 2008 and Jan 2009, the planning and development of the site to completion took 32 months, of which the construction phase comprised just 15 months. Resident action ran parallel to the early construction phase of the site, without delaying construction, for the five months March–July 2010. The core group of residents comprised directors of a small sustainable housing architecture and project management firm (R1 & R2), senior public servants (R3) and retired academics.

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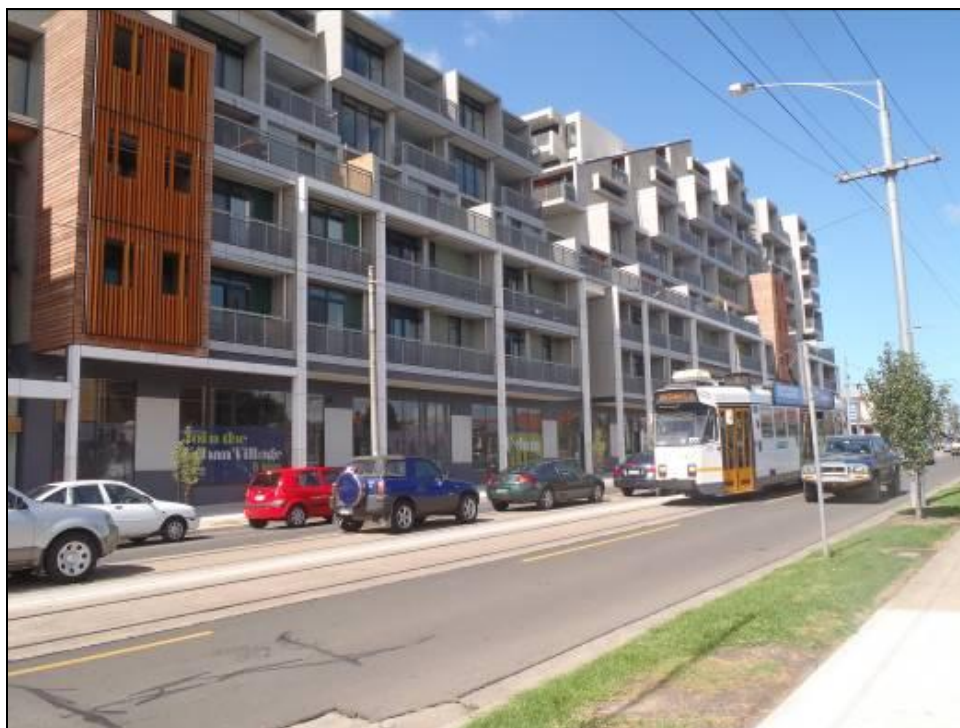
<sup>5</sup> Clause 52.41 exempts all SHI permit applications from 'the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the *Planning and Environment Act 1987*' (Department of Planning and Community Development, 2009)



Residents were first notified about the plans for the site by a letter from their Federal member and, within a week of finding out that the site was to be redeveloped into a nine-storey apartment block, contacted the local council, secured a copy of the development application, and contacted their local councillors (R1, R2, R3). The developer was instructed by the Planning Minister to hold meetings with residents soon after this. This reflected a political response to wider public opposition to the roll-out of SHI projects and was not specific to case one (D1). The Planning Minister also facilitated two meetings between residents and the Planning Minister's Chief of Staff (R1, R2). To raise awareness about the plans for the site, residents undertook a substantive letterbox drop to hundreds of homes linked to a website that, at its height, had 400 to 500 subscribers (R3). Residents liaised with local and state politicians, representatives from VicRoads and the Department of Transport and connected with other resident action groups and the media.

Despite this, changes to the initial proposal were minimal: the final development (Figure 34) incorporated more on-site car parking and a greater retail component than the approved plan (R1, Rs, D1, D2), but significant modifications were not possible (D1, D2). In all likelihood, a building of this density and bulk may not have been approved under the LPS which permits a maximum of one storey above the prevailing heights in the neighbourhood (Clause 20, Part 5) which do not exceed four stories, and for the most part are less than two stories.

**Figure 34: External view of case one**



Source: Kelly 2012

The final building design comprises nine storeys tapering to six storeys at the interface (Figure 34). The development comprises 111 market-rate units, 58 social housing units and 38 affordable rental units through the National Rental Affordability Strategy. A comparison with median house prices in the LGA show that in 2012, flats in case one were priced at \$440 000 for a two-bedroom apartment (D2)) compared to the median house price of \$590 000 (Valuer General 2010). The site is also located

just 7km from Melbourne CBD, adjacent to a tram-line and two bus routes and is 1.2km from a rail station.

The site meets Victorian mandatory six-star sustainability standards and includes solar passive design; grey water treatment and reuse for toilets and laundry; solar gas-boosted hot water; drought-resistant vegetation and the potential for fruit and vegetable production on-site (VicUrban n.d.).

## 7.2 Resident objections

I wasn't overly concerned with density if it could have been addressed in a more sympathetic manner (R1).

Recent inquiry about resident opposition to planning decisions reveals an intriguing diversity of rationales and motivations for objection. Ellis (2004) identified five distinctive 'types' of objector to make the point that it is rarely 'self-interest' alone that underlies opposition. So it is interesting, that as the opening quote here illustrates, that higher density was not per se, the focus of resident opposition in case one. Similarly the social housing component was uncontentious with one respondent suggesting, 'we had no problems whatsoever with the social housing development or component' (R3) and another seeing little distinction between tenure types: 'I don't have an issue with social housing or not social housing, whatever the housing is' (R2). When prompted specifically on the topic of property values, participants in case one also assumed, if anything, that their property would increase in value because, as one respondent figured, 'putting anything there would probably improve the value of our houses' (R1).

### Objections to case one

→ Transport (private & public) and parking.

Traffic flow was a concern because all of the proposed traffic flow was coming in and out of Moore Street, which is particularly small, particularly dead end street. (R2)

→ Density out of neighbourhood context.

The development was completely out of context with the neighbourhood: height, density, everything. (R1)

→ Impact of design on social interaction.

We got a retail space and a massive carpark entry on Moore Street...we wanted neighbours, not cars and shop fronts. (R2)

→ Social change.

People being brought into the neighbourhood rather than gravitating to the neighbourhood or organically flowing into the neighbourhood. (R3)

→ Lack of notification.

The original outrage of everyone involved was "not knowing". The lack of process and the lack of information and what felt like a really secret process, probably fired us up more than what we were trying to deal with as a reality. (R2)

→ Shortfall in environmental and social sustainability goals.

We suggested commercial spaces include community cafes and green cafes...that the site include organic waste recycling. (R3)

The other component is low energy use and sustainable energy use and affordable sustainable energy use. I mean, that's got to be front of mind in terms of any development. (R3)

We were appalled that the state government were using the social housing agenda as a way to roll out a high-density, high-tower agenda. (R2)

When asked why they objected to the site, residents instead identified six other objections. Two of these related straightforwardly to transport and building design. These included potential blockages in traffic, demand for parking spaces and stress on public transport. Opposition to the building and the interface (shown in Figure 34) were both seen as 'out of context of the neighbourhood' (R1). Elements of the interface between the building and the street were also seen as limiting social interaction such that 'more could be done [to] design the amenity of the building to make it more neighbourly rather than contained apartments'.(R3)

A fourth objection related to social change. The policy goal underpinning redevelopment of the site of 'creating new communities' was seen to be somewhat contrived compared to the (more usual) process of residents 'gravitating' into the area. One respondent described the arrival of new residents into the community in terms of 'organically flowing into the neighbourhood' (R3). This slower, 'organic' and less orchestrated social change was seen as a key mechanism through which to generate social interaction across cultural difference:

The organic flow is fantastic and that's sort of what makes Coburg and Brunswick such a vibrant and lovely place to live. There's sort of an organic mix of people and it's everyone. It's Muslim immigrants, it's comfortable middle-aged public servants, white collar players. There's still a lovely mixture of blue collar old school players there, a lovely mixture of really old ethnic families who still grow their tomatoes in their front yards. And we love all of that there because you know that's what the mix is or you move there understanding that's what the mix is...But if you are creating new communities and building profiles of who would live there, I think that's another thing. (R3)

In their study of why residents seek to protect their neighbourhoods against densification, Woodcock et al. (2009, p.14) suggest intensification is perceived as a threat to 'sense of community and the social mix'. Their point is that compared to terrace houses with short set-backs, HDH provides limited opportunities for 'unplanned' interactions that enable residents to negotiate difference, for instance 'casual encounters on the porch or while taking out the garbage' (p.16). However, as pointed out by Ruming (2011) residents are increasingly adopting the policy discourse of 'social mix' in order to oppose social housing. The 'organic mix' preferred by R3 resonates with both these themes: it is suggestive of an inclusionary politics of encounter and an exclusionary politics of place.

The lack of notification, objection and approval subject to Local Planning Procedure was a fifth key factor driving opposition in this case. As captured by one respondent, 'the lack of process and the lack of information and what felt like a really secret process probably fired us up more than what we were trying to deal with as a reality' (R2). Reflecting on community comments gathered in their five-month opposition to the site, residents maintain that 'the lack of process' produced distrust in the local council process: 'the local community and local residents don't really understand, and they turn around and blame local council'. (R1)

The final criticism of the site related to its sustainability features. This critique focused on missed environmental opportunities for organic recycling, on-site waste management, thermal building performance, community and not-for-profit business



spaces and community services. But it encompassed a wider critique of the site in terms of social sustainability. The site was seen to maintain an economic status quo in terms of the dominance of financial motivations (and perceived windfall) of the developer in achieving a majority market-rate housing (55%) at higher density than the LPS allowed due to a (large) minority social and affordable housing component (45%). Skepticism of the developer's commitment to social and affordable housing outcomes was significant: 'they hid behind some of the most disadvantaged people to roll out a high-density, high-tower agenda' (R2). This was underscored by a wider perception that the key aim of HDH was to generate construction opportunities for 'sophisticated building companies', deemed just one section of a much more diverse property sector. (R1 & R2)

### **Reconciling resident criticism with densification and affordable housing goals**

The developer kept saying "This is best practice, this is best practice" It's like, really? (R2)

Gunder and Hillier (2009) have argued that one of the defining tensions around policies and practices of sustainability are their potential to reinforce the status quo. To really embrace environmental challenges, markets need to be reorganised around an ethic of care and principles of social justice rather than profit. At the heart of this criticism is a distinction between policies and practices that effectively preserve the status quo of market societies and those that rework this model to produce environmental and social resilience. Many of the elements of participant's criticisms of case one resonate with the central tenets of this critique: they question the dominance of mainstream players, the basic interpretation of environmental sustainability and missed opportunities for locally situated, (more) socially sustainable housing. These views also fit the profile of the 'critical green' observed by Ellis (2004). Discussions with the developer in case one nonetheless provide an important insight into the nature of the constraints facing affordable housing provision.

On a day-to-day basis, and across national, state and local legislation, it is rare that affordable housing is mandated in planning policy in Australia. There are some exceptions such as the Affordable Rental Housing State Environmental Planning Policy (SEPP) in NSW. The challenge of getting developers to invest in this market is significant (Lawson et al. 2009). As local planners pointed out, developers are encouraged to explore the possibility of 'brokering, partnering with a housing association' (LP1) but 'the response generally has been fairly limited' (LP1). In this context, the SHI offered an unprecedented opportunity to increase the stock of housing at the low end of the market (D1). Case one was a flagship project incorporating social housing, affordable rental housing and market-rate housing in one building envelope. It was a partnership between housing associations and the developer that demonstrated the viability of mixed-tenure product to the private sector. A higher-cost, lower-yield development would send a weaker signal to the market and, as it stands, large-scale HDH in combination with fast-track approval increases the potential for cross-subsidisation attracting mainstream players into the low end of the housing market (D1). Given the importance of forging stronger partnerships between the private, public and not-for-profit sectors in housing, the call for a lower-yield product may be difficult to justify (we turn to this question next). Still, what is certain, is that for residents in case one, the question is not about 'whether to have HDH' but what style of HDH is most appropriate.

### 7.3 Participatory planning outcomes and stakeholder perspectives

In this section we identify themes in the transcripts related to participatory planning outcomes. We define 'participatory outcomes' in terms of the effectiveness of the fast-track model in generating community buy-in. While there was a diversity of viewpoints about the effectiveness of the fast-track approach, it is notable that all stakeholders felt notification was necessary and that political intervention was ultimately ineffective. Moreover, none of the stakeholders were immune to the importance of the site in delivering housing supply. We consider each of these points in turn.

First, there was consensus between developers (D1 & D2) local planners (LP1 & LP2) and residents (R1, R2 & R3) that the community should have been notified about the proposed development. From the developer's perspective, this included the need for community input and feedback 'ahead of finalising some of the key issues like size and access' (D1). But it also related to notifying the community about the construction process and plans, summed up as 'doing the neighbourly thing' (D1). Following the roll-out of case one, the developers' Board ruled that consultation would be incorporated into all projects in the future (D2). The developer and state planner also linked a lack of notification and information about the project to the production of suspicion. This is a widely broached topic across consultative planning literature, and relatedly, they felt a missed opportunity to share the strengths of the project, including the design outcomes with the public (D1). These views were matched by residents who felt they had 'no opportunity to be heard' (R2) and the local planners interviewed who felt their own opportunities to comment on the design were negligible (LP1). While all stakeholders agreed that some notification was necessary, it is important to note that this level of participation is relatively weak, and on Arnstein's (1968) ladder or participation would be regarded as 'tokenism'.

Second, there was consensus that political intervention in the planning process was ultimately ineffective. While residents were hopeful that political involvement may force greater levels of consultation, they conceded that the result was poor (R1, R2, R3). The directive to consult with residents, issued by the government following resident opposition, was necessarily circumscribed by the approved plan. From the residents' perspective, the concessions negotiated through the resulting consultation process—increasing the number of car parking spaces and set-backs—were minimal. And the developer conceded that consultation occurring after planning permits are issued, will always produce limited change. The construction, contracting and subcontracting procedures are activated as soon as the permit is issued (D2). The futility of post-permit consultation was summed up by one respondent who claimed 'it made no difference in the end' (R1).

Still, there is a clear tension between the developer, who while preferring some level of notification, felt the fast-track approach was justified by housing gains, and residents, who sought much greater recognition, acknowledgement and inclusion in the process. As pointed out by the developer, a range of market-rate HDH product is already fast-tracked, including high-cost housing in Docklands. The SHI presented a unique, 'one-off opportunity'—fully funded and costed by the Federal Government—to increase the share of social and affordable housing stock in the state. However, residents were skeptical of the project, partly because 'we had no opportunity in a natural justice sense to be heard' (R2) but also because systems of political and planning accountability had been bypassed.

What was proposed and ultimately built was actually outside the planning regulations for our local council and for that site. So our local council, who was

voted in by us ostensibly, have set in train a set of planning schemes that have been agreed to at some level by the local community. The state government were able to basically override them. (R2)

The perceived marginalisation of local government planning processes ultimately contributed to a negative perception of state government planning. The process was described variously as 'absolutely objectionable' (R3), 'offensive' (R3), 'an appalling process'. Critically, this perception drove an oppositional movement that sought to raise the profile of the site, through the press, the state government election, across the community, and through direct contact with householders through mail-out and letterbox drops. This campaign arguably notified more people more quickly of the site, and the planning approval pathway than standard notification and neighbourliness would have.

Reflecting more broadly on the planning process, stakeholders were asked to discuss their preferred planning model: fast-track planning approaches upfront, consultation at a strategic level, and planning models where full TPOAR are available. In case one, most stakeholders preferred upfront consultation at a strategic level (R1, R2, R3, LP2 & D1). This was justified on three grounds.

Upfront consultation is more efficient:

I think the point for third party input is in actually developing the planning scheme itself... If the public had input at that point there was an agreed set of rules and then everyone had to play by the rules so you're eliminating VCATs and that. So everyone's had their go upfront. That would be much more efficient. (R2)

Housing policy is a question of citizen rights:

I think citizens should have rights in setting the parameters of...how housing is going to evolve within a municipality. (D1)

You have a democratic right to vote your councillors in. You have a democratic right to actually be involved in policy setting... around housing policy and built form. (D1)

Upfront consultation diffuses opposition:

It takes a lot of heat out of things. (LP2)

However, the local planning team also pointed out that new residents often are not involved in (and therefore aware of) amendments (LP2) and that the effectiveness of upfront consultation hinges on the 'quality of the original plan and the level of detail that's provided' (LP1). It is notable that none of the stakeholders supported a fully fast-tracked model, although D1 felt this 'depends entirely on how good the upfront process is'. While most respondents acknowledged the limits of TPOAR, described as a process that at best 'tweaked stuff at the end' (R1), R3 and both local planners saw the merits of TPOAR as a mechanism of accountability and transparency (LP2), particularly for contentious or more complex sites.

## **7.4 Summary of case one**

In conclusion, Case One made significant gains in affordable housing supply, but in by-passing local planning processes, including notification and opportunities for objection, the process of fast-tracking fuelled community anger and distrust. This led to an informal marketing campaign against the project and planning process. While resident opposition did not disrupt housing supply, product cost consequences of fast-tracking are felt in terms of public perceptions of planning. However, the case shows

that not all neighbourhoods are opposed to social housing or HDH. Residents in this politically green suburb sought a locally situated development where the building design facilitated informal interaction between new and existing residents, engaged local businesses and integrated a wider range of sustainability features.

## **8 CASE TWO: UPFRONT CONSULTATION AT A STRATEGIC PLANNING LEVEL**

Planning policies characterised by early upfront consultation with residents at a strategic level are favoured for their potential to improve participatory planning outcomes. They potentially limit objections later in the planning process (Productivity Commission 2011) build stakeholder buy-in (Healey 1997) and create opportunities for conflict resolution between competing interests (Albrechts 2004). Although it is perhaps under-acknowledged, all strategic planning at the local level in Victoria involves a basic level of public participation through notification of amendment with options for third party objection. Under the Planning and Environment Act 1987 council officers are required to notify and consider public responses to significant strategic level changes through their LPS. The LPS is a comprehensive framework that incorporates a myriad of planning documents and policies that govern land use. While the capacity of council planning teams to respond to comments are framed both by state planning policy and political considerations; both of which can, and usually are, at odds with some elements of community expectation, it is also true that strategic-level changes for most local councils, most of the time, are exhibited in draft form, objections are considered (and responded to) and the plan modified before submitting for ratification by the Minister.

Case two is an example of a development site framed by a wider process of upfront strategic planning. In this case, the site was incorporated into height controls introduced as an amendment to the LPS. The amendment concerned the introduction of height controls across the municipality. In contrast to case one, the level of notification around these changes was significant—including two periods of review by the local planning authority that generated over 100 objections, a set of revisions and a final panel review at the state level generating a new set of recommendations (Figure 29). The impact of these changes in relation to case two was to incorporate the site into an overlay that encouraged multi-storey development of three storeys subject to a minimum lot size. Even though the site is located on a main road, at the time of the amendment it was (and by and large the surrounding area still is) characterised by single dwellings on single lots.

However, nearly five years elapsed between the time of initial consultation about the proposed amendment and development of case two. On-site notification was the first physical indication of the amendment in an area adjacent to a main road but otherwise characterised by low-density housing. When the application was submitted, the application saw 30 objections. The case progressed to mediation at VCAT, but did not go to appeal. Nonetheless, a second site in a nearby street was contested at VCAT in 2012, and resident objectors have engaged enthusiastically with opportunities for comment and objection to current strategic planning processes, most notably in the 2011/2012 review of the Residential Housing Strategy. Overall, the site raises a number of questions about the effectiveness of upfront consultation at the strategic level. In particular, it highlights the difficulties of public notification of planning decisions over long time-frames. Before exploring these themes in more detail, we first set out the strategic planning process that set the controls on the site, making a note of the nature and frequency of third party involvement.

## 8.1 Strategic planning process

The strategic planning process underpinning the density controls applied to case two occurred five years before the development application was submitted. As shown in Figure 36, the guidelines for the controls, the Residential Character Guidelines, were exhibited in March 2004. To incorporate the Guidelines into the LPS, an amendment, VC50, was prepared. It sought to concentrate higher density development on main roads, transport and service centres, and to preserve urban environmental assets. This was achieved through application of a Residential 3 Zone (Res 3) and a Design and Development Overlay (DDO8). Both Res 3 and DD08 encourage HDH, while also setting height controls.

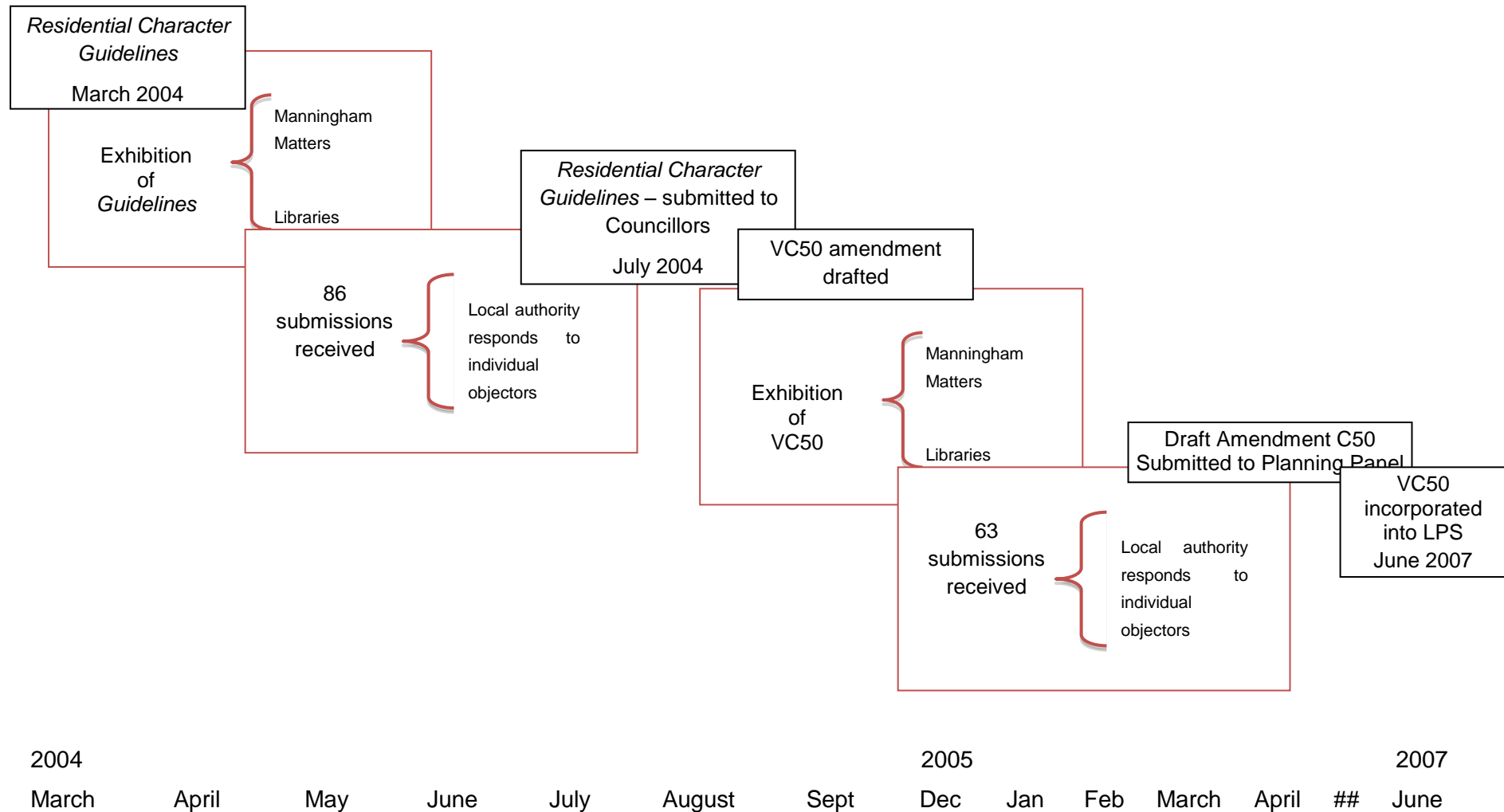
Interviews with local planners (LP1 and LP2) confirmed that all households in the municipality affected by VC50 were notified of the proposed changes by letter. In addition, the Residential Character Guidelines and VC50 were exhibited for six weeks. They received 86 and 63 objections, respectively. LP2 maintained that following the consideration of objections, there were some changes in the boundaries of Res 3 and DD08 that reflected the input of established residents' groups (LP2). It is notable that when the amendment was finally incorporated into the LPS in March 2007, discretionary height controls and smaller minimum lot sizes were adopted on recommendation by the Planning Panel.

Despite these new controls, the development application for case two was not submitted until 2.5 years after the amendment, and nearly five years after the initial consultation around the Residential Character Guidelines. As neighbours became aware through signage, the new site (shown in Figure 35) became a transmission point for resident opposition to HDH.

**Figure 35: External view of case two and neighbouring property (foreground)**



Figure 36: Local planning scheme amendment and consultation, case two







on single lots, where households enjoy private space consisting of a single or two-storey house surrounded by front and back gardens (Blunt & Dowling 2006). Compared to case one, resident concerns reflect a much stronger attachment to suburban form, and an associated defence of suburban values. While generally accepting of dual-occupancy style development, other forms of HDH were seen to unsettle financial, family and community values in a myriad of ways. One respondent (R3) had already moved house by the time of the interview.

### **Objections to case two**

→ Investment sunk into renovation that would not be recuperated.

I certainly wouldn't have been spending money on the place if I'd known. (R3)

If we knew the full impact we would never have renovated our house 5 years ago. (R2)

→ Disruption to practices of inhabiting home.

I had actually spent a lot of time making the garden productive, really productive, only then to see all my sun gone. The soil became quite wet and damp. There just wasn't enough sun. (R3)

There was nowhere I could walk without being seen. (R3)

→ Traffic, parking.

- danger and congestion

It's very dangerous to drive out. (R2)

The parking because it's already bad with the school nearby. (R2)

- disruption to existing social life of street.

Our kids can't play safely in the street. (R2)

→ Social change.

[Pride in your home] is normal around Doncaster...if there's a lot more people that are not owners, that are just short-term residents, they wouldn't have that pride in how it's presented. It's a place to sleep. It's not a place to present and be part of the community. (R2)

Compared to case one, property values were more prevalent among the concerns of this group. However, this related specifically to the loss of investment in renovation and home improvements rather than a devaluation of property (R1, R2). While the perceived waste in undertaking renovations was considered in relation to capitalising on DD08, the cost of moving, stamp duty and a perceived lack of value in the market were seen as prohibitive:

If you stay, you've either got to buy another place and you're not going to get a renovated place around there for the money the developers are offering. So you either have to give up your house to a developer and then start renovating all over again and the cost of that, or you've got to get the money out of your own pocket somehow and go and take up a bigger mortgage on an equivalent house that is already renovated somewhere else in the suburb. (R1)

The imposition of HDH was also felt through changes to everyday habits. This was highlighted in concern for the loss of sunlight in practices of clothes-drying (R1) and food production where, in spite of significant efforts to establish a garden 'the soil became wet and damp...there just wasn't enough sun' (R3). For one participant whose home had been adjacent to the site, these changes in habit were coupled with

a feeling of being under surveillance while performing relatively mundane household tasks ('when I drove up the driveway...sitting in a little sunny spot at the front...making a cup of coffee in the kitchen'). Ultimately this contributed to a sense of insecurity (amplifying feelings of loneliness) at home:

I was living there on my own and I actually felt insecure about 38 lots of people that I didn't know seeing the time I came home, the time I got up and all of those things. (R3)

These accounts of the imposition of case two suggests that opposition to HDH, like resistance to renewable energy projects, is deeply anchored in the 'sphere of daily life' (Van Dijk & van der Wulp 2010, p.22; see also Vallance et al. 2005). Of course, practices of habitation are governed in part by planning regulations through standards of overlooking, and minimum sunlight allowances. However, there is a significant shortfall between the minimum allowances in the planning scheme, and the expectations of home-owners:

That's one of those lovely things you find out about the regulations. You find out that they can shadow the whole side of our house most of the day, even on the equinox when all the shadowing plans have to be done. But that's okay because we've got a backyard. If we've got 50sqm of alternate secluded open space then they're allowed to shadow (R1).

Outside the home, concerns related to traffic and parking, resonated strongly with objections in case one. This included the perceived congestion and danger of increased vehicle entry from the adjacent main road onto the much smaller side street. The perceived demand for parking spaces was also seen to impact on social interactions, community building and family life. Woodcock et al. (2009) have shown terraces with short set-backs can contribute to social interaction in inner-city suburbs. In case two, cars and car parking are similarly important components for maintaining family life:

If we want to have a little kids party in the backyard here, where are all the parents going to park to bring their children? When [our children's] friends come over they'll have to park miles away. Because if they keep developing at this rate there'll be nowhere to park. (C2R2)

At the same time (and conversely) a high concentration of cars was also seen to inhibit opportunities for play and socialisation:

At the moment it's a reasonably quiet court. The kids in the street do run backwards and forwards between each other's houses, like there's always neighbours kids here at our place or our kids at their place. So there's a fairly car-free usage by the kids in the street. (R2)

These views may be contradictory—both embracing and limiting car use—but they are testimony to the central role that cars play in social (and family) life in suburban areas. They help explain the strong lay perception that densification increases car usage (R3: 'Council [argued] that people who bought these wouldn't have cars, I mean how ridiculous') or the prevalence of transport and congestion as key concerns about higher densities (see Productivity Commission 2011, p.xxxviii; Bramley forthcoming).

Still, the most contentious feature of case two from resident perspectives was social change. This was characterised by speculation about: increasing crime rates ('I've heard from people living next door to more flats that the crime could go up' R2); the likely increase in a careless rental population ('you're attracting a lot of tenants that may not look after the property or the garden' R2); the uncertainty of new neighbours of unknown socio-economic status ('there's nothing to really say what sort of people

they're going to be or what socio-economics they would come from' R1); and an increase in childless neighbours ('young professional people without families' R3). It was also assumed that 'tenants and students would bring the area down' (R2) while the building itself was seen to inhibit social life, described as 'more like a hotel' (R3).

Overall, these views provide an insight into the clash of values around HDH in established low-density suburban areas in Australia. They hint at the significance of detached dwellings to identity, financial values, life stage, social comfort and control. These values have been supported by a raft of policy instruments in Australian cities and suburbs through the 20th century (Badcock & Beer 2000). These values are embodied in practices which HDH can 'habitually' unsettle, particularly for residents at the interface of HDH and low-density forms. Generally, these are not the green values of case one—although practices of food production in low-density settings unsettle this (see Ghosh & Head 2009)—but more popular values of Australian suburbia. There is a substantial domestication of cars and low-density housing as a means to control and order social life. In this context, HDH is readily positioned as an imposition on neighbourhood values, community and families. In the next section we explore the fortunes of the 'notification of amendment' as it challenges the financial, practical and social authority of the low-density suburban home.

#### **8.4 Participatory planning outcomes and stakeholder perceptions of planning**

They need to use clear language to explain the good and the bad side of the zones and everything else. So people understand the environment they're in.  
(R1)

Reflections on the participatory planning outcomes largely reflect a shortfall in communication of the amendment process. They can be grouped into four key themes (see below). First, residents felt the original notification about the changes to height controls were unclear. It is notable that all three residents interviewed, including one resident adjacent to the project site, maintain they did not receive notification of the Residential Character Guidelines, or the amendment VC50.<sup>6</sup> The notification (nonetheless produced during the interview) provides a routine summary of the proposed amendment. A map of the areas affected by the amendment is not provided, although reference is made to a map of affected precincts in the printed version of the local council newsletter, Manningham Matters. The letter states the amendment will 'encourage residential densities around existing Activity Centres and along Main Roads' (Manningham City Council 2005, p.1) encouraging three-storey developments on lots of 2000sqm or more and two-storey development on lots less than 2000sqm. Alternately, in areas 'removed from Activity Centres and Main Roads, a maximum of two dwellings is encouraged on a lot'. (Manningham City Council 2005, p.2)

##### **Stakeholder perceptions of participatory planning outcomes in case two<sup>7</sup>**

→ Notification of significant changes unclear to residents.

For a once only, one night event in the local park [Council notifies us]. When they change the entire zoning and totally change the way the life of this area,

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<sup>6</sup> Through an inquiry into the notification process, the council ombudsmen was reportedly unable to locate documentation (in council minutes or otherwise) of council having sent the letter to their homes (R1, R2 & R3). Local planning officers (LP1 & LP2) interviewed for this project nonetheless maintain that 40 000 households were notified directly; and produced the letter (they maintained) was provided to R1, R2 and R3 in 2004. The question of notification was investigated by the council ombudsmen and during this process, residents were (reportedly) forwarded a version of the letter reproduced in this interview.

<sup>7</sup> NB: LP1 and LP2 did not comment about the participatory outcomes on the site specifically.

they don't think it necessary to do a direct house mail. (R1)

→ Residents unprepared and un-resourced.

There's no support person or anyone to really support the average resident who doesn't have the \$8000 or \$10 000 to pay every expert. There is no unbiased person to talk about the parking studies or any other areas. We have to figure it out ourselves. (R1)

→ Lack of implementation of VCAT decisions.

The wins I got at VCAT were never enforced by the council. (R3)

I wouldn't have paid a million dollars for something with screens, and I think [council] just decided that I wouldn't be able to win it. (R3)

→ Being forced to move away from the area too soon.

I wasn't ready for it and I'd put all this money and effort into the garden thinking this was going to be my retirement hobby. (R3)

I've lived in [LGA] all my life...I love that I'm close to family, friends. And like I said before we thought about staying here another 20 years. (R2)

Reflecting on the letter during the interview R1 and R2 maintain that the full intent of the proposed changes were unclear because it did not clearly indicate that the side street adjacent to case two, or their own court (the subject of a subsequent appeal) would be affected. R2 maintained that 'even reading it today knowing what it means, it didn't scare me' (R2) because 'at no point did they ever say "We could put 38 apartments on [your] Street" (R2).

Relatedly, R1 and R2 maintain that the notification precluded the possibility of three-storey apartments in their street, as three-storey development would only be encouraged on three residential lots (Figure 38). Critically, the letter provides no indication that to be informed about the progress of the amendment, residents had to make a submission to council objecting to the draft. This oversight is significant as through the panel review, the minimum lot size for three-storey dwelling was reduced to 1633sqm, effectively enabling three-storey development on two standard lots. By not objecting, residents were not notified of the change.

**Figure 38: Excerpt from notification of VC50–lot sizes and density**

In these areas, three-storey developments are encouraged on sites with a minimum area of 2000sqm, which generally equates to three residential lots. If a minimum area of 2000sqm cannot be achieved, Council would consider an application for a multi-unit development with a maximum of two storeys.

Residents also felt the mediation process at the local council level and at VCAT favoured the proponent, who could afford a 'table of experts' and 'lawyers' (R1) reinforcing the perceived lack of deliberation and engagement with their view (R2) along with their own lack of experience with the planning system (R1). Reportedly, council failed to enforce the conditions for screens on the top floor of case two (R1 and R3) energising criticisms of local council (R3). The final set of concerns related to being forced to move from the area earlier than intended, either before retirement (R3) or against a longer-term commitment to the area:

We thought about staying here another 20 years...Close to the high school, close to the primary school, wait until our kids grow up and then we'd move house. Now I feel like we're going to get pushed out. (R2)

Overall, residents in case two perceived the planning process as technically challenging (R1, R2, R3), remiss in terms of notification (R1, R2, R3) and as operating in the interests of development (R1). They were also deeply skeptical about the policy of densification, suggesting 'the concept didn't cross the planning department's mind that maybe people don't want [HDH] and that's why it's not selling' (R1). This resulted in a number of strategies by residents to raise awareness about the sites and the planning process through informal mechanisms, including a website that provides a 'one stop shop' for locationally specific planning information for other residents. However, unlike case one, the potential to participate in strategic planning processes has also generated a stronger engagement by residents in council's formal consultative processes. As summed up by R1:

The problem is not the builders trying to maximise the profit from this particular site. The problem is these planning guidelines and the scheme and the DD08 zone is not defined well enough, so we realize that if we want to fix this properly...we actually had to target higher up the chain of command.

When asked to reflect on the three different planning models, objectors in case two generally supported the provision of TPOAR as a means of mediating planning decisions. They were nonetheless more qualified in their support of upfront consultation at the strategic level than residents in case one, arguing that residents who bought into the area following amendments would not be consulted and 'may not understand what the zones mean' (R1). The provision of objection and appeal was if anything, more attractive than 'sorting it out years before' (R1). The review and ratification of amendments to the LPS was also perceived to create new uncertainties, 'making things that were mandatory optional or discretionary' (R1). While the planning consultant and local planners generally supported the idea of upfront consultation at a strategic level ('it provides some certainty to us and to our clients in terms of what they can and can't do'), local planners emphasised this strategy hinged on the quality and clarity of zones and controls developed, so that 'everyone understands' (LP2). Interestingly, TPOAR were generally supported by all stakeholders, although for R1 this hinged on 'a support person to guide you through'. The fast-tracking approach was rejected by all stakeholders in case two.

## **8.5 Summary of case two**

In conclusion, upfront consultation at the strategic planning stage is known for diffusing objections and smoothing development approval processes. However case two illustrates the difficulty of engaging residents where amendments are played out over several years. This can generate anger and frustration as residents see their neighbourhoods change, fuelling anti-development campaigns even where councils have been pro-active about designating areas for HDH in their planning schemes. While residents are well aware of the financial, practical and emotional investment they make in their homes, they are far less certain about the planning policies and laws circumscribing these investments. In this context, unless formal notification is clear, and the implications for households (in terms of impacts & processes) are easy to understand, residents are unlikely to make sense of the information presented.

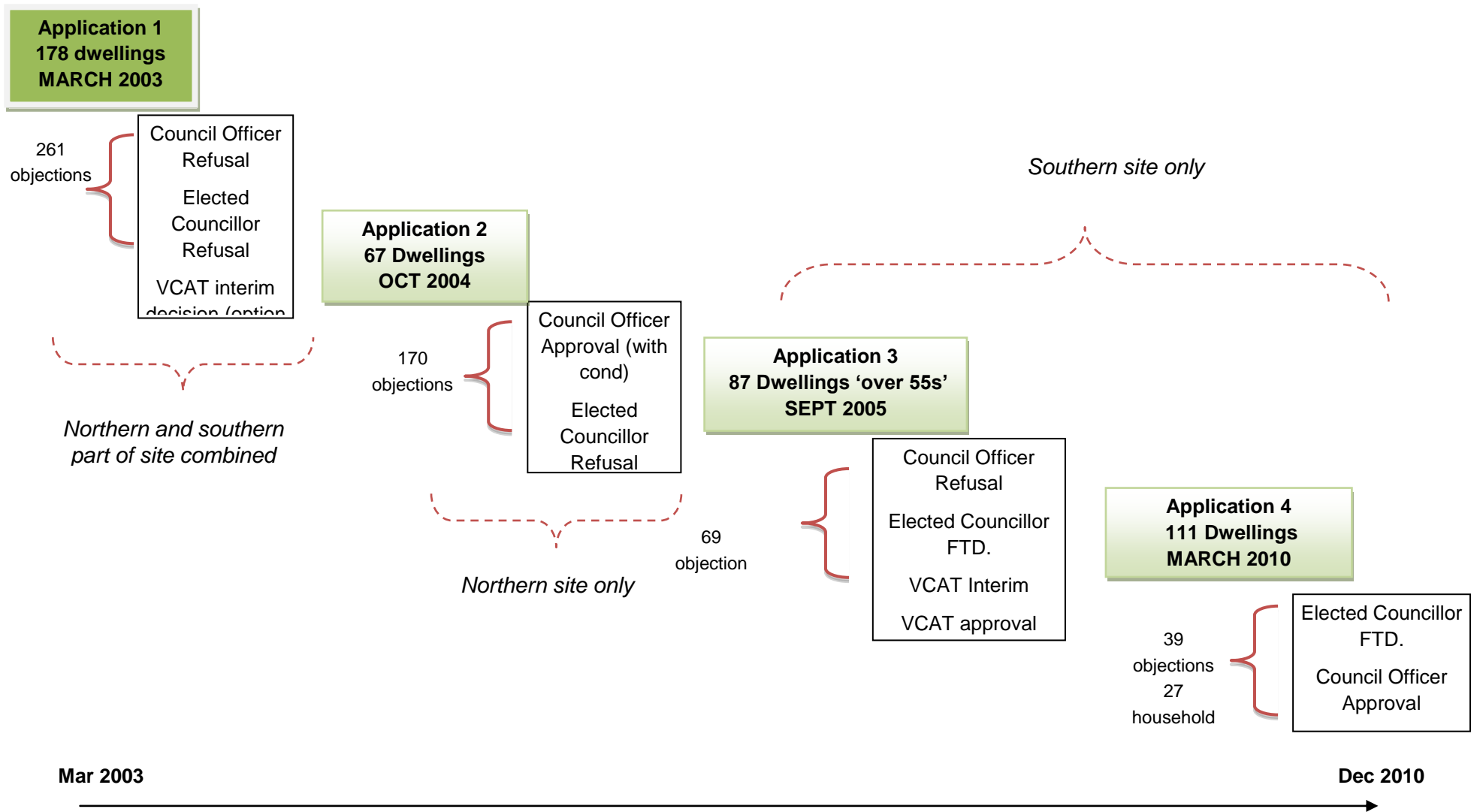
## **9 CASE THREE: THIRD PARTY OBJECTION AND (FIRST PARTY) APPEAL**

So far we have seen that even though fast-track planning approaches can quickly increase the supply of housing, it is less successful in achieving resident buy-in. Similarly, while upfront consultation at the strategic level potentially reduces the need for TPOAR, it also increases demand for clear forms of notification throughout each stage of the planning process, including strategic guidelines, amendments and final ratification. The images and materials require clarity and simplicity; and there is a chance that increased publication of planning strategies will lead to increased opposition earlier in the process.

In this chapter, we consider a third planning approval pathway, characterised by full TPOAR. Third party objection rights were used in this case, to register resident dissatisfaction with the initial application (2003) and in three subsequent applications for subsections of the site (in 2005–06 & 2009). In two of these decisions, councillors went against the planning officers' recommendations. In this regard, the council supported the resident objectors, forcing the developer to appeal its decisions (or failure to do so) through VCAT. Even though VCAT over-ruled council's failure to determine, and granted permits in three out of four hearings, many of the concerns of residents in case three were addressed through the appeal process: it included the sinking of the car park/s below ground achieving height reductions of approximately one-storey across all 187 dwellings. It included negotiation of shared pedestrian access so the dwellings open onto the street, and minimum balcony widths. The site also comprises 18 three-bedroom apartments (10%) more suited to families. Despite these modifications, the proponent still achieved permits for the construction of 187 dwellings, the number initially proposed in 2003.

Of the three cases, there is no doubt case three adds significantly to the housing stock while also addressing many aspects of resident criticisms. However, the financial cost of council refusals, delays and the initial refusal at VCAT were significant for both the proponent and objectors. Case three therefore raises some key questions about the use of TPOAR to contest HDH. First, to what extent should the Tribunal be used to negotiate the design of HDH? Second, how equitable is a process of review (and deliberation) that requires significant financial resources? Third, should elected members have the option of deferring decisions where proponents are broadly in accordance with state planning policies, and local officers assess plans to be in accordance with the LPS? In short, could this outcome have been achieved quicker and cheaper?

Figure 39: Development assessment process case three, 2003–10



## 9.1 Planning approval pathway

Figure 39 sets out the planning approval pathways associated with case three. It shows that from 2003–10, four development applications were lodged. The initial application (submitted in March 2003) was refused by council and (eventually) by the Tribunal<sup>8</sup>. The proponent subsequently submitted plans that treated the site in two parts. Application 2 related to the area north of the access-way<sup>9</sup> (Figure 40) and Applications 3 and 4 to the south of the access-way<sup>10,11</sup> (Figure 41). One permit was allowed to lapse by the proponent in this time, despite gaining approval. While there is no difference in the number of dwellings proposed in the initial application and the number finally approved (178 dwellings), the design and layout of the buildings changed through the process of approval. While VCAT decisions were subject to significant conditions, a review of the decisions highlight three key modifications to the original proposal.

### **Height reduction and interface with surrounding homes on the northern side.**

The initial application comprised predominantly 3–4-storey dwellings on the northern side, and up to six storeys on the southern side. Council officers determined that the application exceeded the height and bulk characteristics of the area and would have recommended refusal had council determined the application within 60 days (Stonnington Council 2003). The Tribunal agreed, but given the strategic significance of the site, gave the proponent an opportunity to amend and resubmit its application. While the Tribunal ultimately felt these changes were insufficient and determined against the amended proposal<sup>12</sup>, they noted the significant improvement to the plan on the northern side. This included a greater proportion of two- and three-storey, rather than three- and four-storey dwellings with a reduction in the height by up to 2.55m.

In October the same year, the proponent submitted the plan for the northern site as a new application. While council refused the application (against the recommendations of council officers), the Tribunal approved the new plan with conditions. These included a minimum of seven three-bedroom apartments, minimum balcony sizes of 8sqm and fixed, solid 1.7m high dividing walls (Figure 40). So, between the first and second applications, the northern side of the proposal was modified to include a greater proportion of three-bedroom dwellings, larger balconies and an overall height reduction.

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<sup>8</sup> Development Application 1 (184/03): Submitted: 3 March 2003 First party appeal lodged (failure to determine): 16 June 2003 Interim VCAT decision: 29 Jan 2004 Final VCAT decision (refusal): 22 July 2004

<sup>9</sup> Development Application 2 (980/04) Submitted: 5 October 2004; Council Planning Officers recommended approval; Council refusal 24 February 2005; First party appeal lodged: VCAT decision (approval with conditions): 29 July 2005

<sup>10</sup> Development Application 3 (949/05) Submitted: 20 September 2005 Council Officers Recommend Refusal, Council Refusal 22 February 2006 First party appeal lodged: VCAT decision (interim order): 6 October 2006; Approval 25 May 2007 PERMIT LAPSED

<sup>11</sup> Development Application 4 (0150/10) Submitted: 4 March 2010 Council Officer Recommendation for Approval, First party appeal lodged (failure to determine): 6 August 2010 VCAT decision (approved with conditions): 10 December 2010

<sup>12</sup> In its amendment, the proponent achieved height reductions on the southern side by sinking dwellings into the basement level with some apartments adjoining 2.7 m retaining walls; and maximizing 'single-aspect' apartments with minimal ventilation (those facing either east or west only).



**Figure 40: Northern side of case three**



**Figure 41: Southern side of case three (left)**



**Section 173 agreement: proponent responsibility for easement and pedestrian access**

The third plan for the site concerned the southern site of the lot and the proponent opted for one building of between two and six storeys (included predominantly below-ground parking) comprising 87 independent living units for retirees. The application was refused by council (in accordance with council officer recommendations) based

on height, massing, poor internal amenity, insufficient parking (38 space shortfall) and encroachment on the access-way and easement. The Tribunal offered a chance to resubmit the application, subject to maintenance of the central pedestrian access by entering into a Section 173 agreement (Condition 12 of Planning Permit 949/05). The amended application was approved but the proponent failed to commence construction within the permit time-frame. Interviews with residents suggest this may have reflected competition from other 'over 55s' development in the area and low sales (R1, R2, R3).

### **Reduction of height and increase in three-bedroom dwellings on southern site**

Less than two years after the approval for the retirement village, the proponent submitted a new application for 111 dwellings over five storeys (excluding a part-basement car park) for 52 one-bedroom, 48 two-bedroom and 11 three-bedroom dwellings. Following council's failure to determine (despite the recommendation of council officers to approve the application) the Tribunal approved the new plans.

So from the initial submission, the heights were reduced by around one storey on both the northern and southern sides; the final plans comprised a greater proportion of larger three-bedroom apartments, the proponent entered into a Section 173 agreement that ensured public pedestrian access through the easement and a number of design features (such as minimum balcony size) were improved.

## **9.2 Housing supply**

The site comprises 187 dwellings. The developer estimated the costs of delay to be around \$3m. To calculate this, they took the total cost to prepare the first plan for the site, holding costs and consultants' and barristers' fees over 10.5 days of deliberation at VCAT. It is not clear whether this figure includes the cost of purchasing one home to make up the minimum 1000sqm lot size preferred for densification in *Melbourne 2030*. On the northern side, a one-bedroom flat was selling in May 2012 for between \$390 000 and \$420 000 with body corporate fees of \$540.20 per quarter and an administration and maintenance fee of \$910.37 per quarter. This compares to a median house price of \$1 325 000 and median unit/apartment of \$532 250 for the LGA of Stonnington as a whole (Victorian Valuer General 2010).

Overall, the scale of development in case three meant that, even with significant delays, the site achieved just under one dwelling per month. The development is also more sympathetic to the surrounding area than case one, maintaining an open interface with the street, a greater proportion of three-bedroom housing and overall lower heights. The car parking is unobtrusive and this impacts on the height.

Given that the net outcome of refusals and conditions attached to permits was a more locally situated development, it appears that TPOAR may have been used in this case to improve the public and community outcomes of the site. To explore the social and community agenda of the resident groups, the next section looks at objections to the site in more detail.

## **9.3 Resident objections**

I think a lot of us were worried that we didn't really want to go to the Fitzroy Carlton area. We didn't want those young people, the university group to come in there. So that's why we thought the value of the properties might go down.  
(R2)

The provision of a greater number of smaller dwellings in areas of high amenity or proximity to services and transport is one of the key arguments linking HDH to

housing affordability. While densification potentially drives house price appreciation in the long-term (Beer, Kearins & Pieters 2007) it is a key mechanism for generating supply across a wider range of price-points in well-located neighbourhoods. However, from the perspective of the home-owner, an increase in HDH also means an increase in the number of people sharing neighbourhood amenity, services and infrastructure. So HDH can still be perceived by residents in low-density areas in terms of devaluing the amenity of their area and relatedly, the value of their home. Compared to case one and case two, the potential impact of HDH on the financial values of homes was a prevalent theme for residents objecting to case three.

### **Objections to case three**

Height and density (including proportion of one-bedroom units).

The problem with height? It doesn't fit into the surrounding areas. (R3)

Parking/traffic.

What's going to happen with the traffic? Because we're in a little easement so the traffic of 180 units was going to be horrendous for us ... It would just be a nightmare. (R2)

Social mix.

I don't think anybody would be against diversity but you'd like to know that it was going to be owner-occupied maybe to a point, to get a mix. (R1)

The original plans just were dog boxes and it looked like quick, student accommodation. So you've got your Europeans, your Asians, their families setting them up in these units for a year while they study and then they move out. Students are transient ... so you're sort of uprooting a nice quiet neighbourhood into this transient [neighbourhood] of 200 and 300 people in your street. (R3)

It went through a stage where it was going to be like nursing (aged accommodation) ... and nobody objected to that because you would have had less traffic, less intrusion ... you're not going to have the noise, the parties at night, the whatever it might be that's going on. (R1)

Property values.

Our area was a beautiful little, I don't know. It wasn't upper-class but it was a nice residential area. When that goes up in the middle of our area it could not only damage the value of all our houses around the area, but also spoil it. Because at the time they were talking about it being student accommodation. (R2)

Part of it, the tall part, it was clearly going to be student housing. We all know they don't patrol how many people are in the thing. So it was a down-market exercise as opposed to a quality development. (R1)

What they were doing was not quality. (R1)

Like residents in case one and case two, residents in case three were concerned about the height of the development relative to the existing neighbourhood architecture. Traffic and congestion too, were top of mind for objectors (R1, R2 & R3). Access to the larger southern site is through a small, quiet residential street. Even though VicRoads anticipated a substantial increase in traffic and congestion (Stonnington Council 2003), the estimated car-journeys were still below standard vehicle movements per day. Residents were skeptical of the traffic reports ('we

actually didn't believe them' R2) and felt the impact would be 'horrendous'. Even though they broadly acknowledged the need for HDH, residents felt it should be confined to main roads (R1).

Also, like case two, concern around social change was a key theme. In part this reflected the increased number of people in the neighbourhood and the pressure this placed on demand for parking and generation of traffic. However, residents also assumed Case Three would generate higher proportions of unwanted residents, including tenants and students (R1, R2, R3). Moreover, the lack of three-bedroom units signalled to residents that 'they weren't units that people living in this area would want to be downsizing to' (R3). It is notable that in the initial hearings, objections about the small proportion of three-bedroom apartments were supported by council and VCAT.

However, in case three, residents were far more likely than those in case one and two to link concerns around social change and the impact of congestion to property values. Described variously as 'our main concern' (R2), 'an issue in everyone's mind' (R3) and something that 'would make a bit of a difference' (R1) all three interviewees claimed that the site would result in a decline in housing values. The potential increase in student population was one reason, according to R2, that 'we thought the value of the properties might go down' and 'probably would damage the value of all our houses around the area' (R2). The development itself was seen as a 'down-market exercise' (R1). This was particularly the case with the southern side of the site, where there were a majority of one-bedroom apartments that were perceived to attract students to the nearby Deakin University campus.

Against the perceived impact of one-bedroom accommodation on the neighbourhood and property values, respondents were far more receptive to the third plan for the site which proposed just 87 retirement dwellings:

It went through a stage where it was going to be like nursing (aged accommodation) ... and nobody objected to that because you would have had less traffic, less intrusion ... you're not going to have the noise, the parties at night, the whatever it might be that's going on. (R1)

Overall, even though resident objections helped to produce a more locally situated development, the key reasons for objection related to traffic and protecting the area from a perceived social change. While the opposition contributed to significant revision of plans to generate a reduction in height, improved apartment design and continued public access, it was sustained by neighbourhood concerns of maintaining existing property values and private vehicular access.

## **9.4 Participatory planning aims and stakeholder perceptions of planning**

I find that groups of residents who are articulate, well organised, reasonable, are more effective and get our ear. And that was a particularly well organised and articulate group. (Councillor 1)

Case three was the subject of significant and well-resourced resident opposition from the outset. Even before council gave notification, R1 had notified neighbours and began a process of door-knocking that generated over 261 objections and, unlike cases one and two, generated approximately \$170 000. Fund-raising in case three was a necessity to employ town planners, barristers and consultants, 'otherwise you just get wiped' (R3). R3 provides an insight into the benefit of socially and financially networked (and leveraged) resident groups:

If this wasn't as wealthy an area as it was, you'd never have been able to raise the money to have had the long process here. I mean we just happen in the same kilometre block of this site to have High Court Judges, bookies, you know Sirs Knights, barristers, QCs people who understood how important it was, but you know, if I'd just probably gone to Ashburton, I probably could only have raised \$10 000. (R3)

The capacity for some groups to fund expert advisors and legal support is one of the long-standing criticisms of TPOAR (Finkler 2006; Ellis 2002; Willey 2006) objectors from lower socio-economic backgrounds rely on scant advice and support in negotiating a planning system that in most places, for many residents, is complicated. However, there is little doubt that the proponent also had a long-term view of its investment, sustaining four development approval processes and eventually securing permits for the 178 dwellings initially proposed. Indeed, the original risk by the developer (buying the site for reportedly \$9.9m in 2002) might be seen as an educated 'bet' on the likelihood that VCAT would defer to state planning policy. The result was a more locally situated development (certainly on the northern site) but the process was costly in terms of time and money with VCAT critical of both the proponent (for stringing the application process out) and residents (for objecting to development based on the likelihood of an increase in tenants rather than home-owners) in its decisions. Given the cost, time delays and relatively 'obvious' modifications to the plan over seven years, how does case three weigh up in terms of participatory planning outcomes?

Given the financial and practical commitments of residents and the proponent to the process of appeal, it is not surprising they felt 'strung along' (see below). While compared to case one, the modifications to the original plan were significant, residents in case three were only partly satisfied with the outcomes achieved. There was a tendency among residents to view the planning process as a mechanism that favoured the proponent. There was no sense that the developer would be called to account for instance, if they didn't implement the conditions in the planning permits 'What is council going to do, "naughty naughty"?' (R1). From the developer's perspective, Council needed to provide more certainty in the planning regulations.

However, it is notable that residents also regarded the planning process as reasonable, acknowledging that the developer 'had the law on their side' (R2), that both council and VCAT had been supportive (although R1 disputed this) and notably, that it looked (after all) like their property values were 'going to go up' (R2). Residents praised the barrister for the proponent (described as 'very very smart' [R3] and 'brilliant' [R2]) and that even though they 'didn't agree' with some of the reports that were submitted as part of the appeal, that due process had been followed. Throughout the transcripts, it was also evident that residents were satisfied with the outcome on the Northern site, suggesting the height reduction and design changes, along with the finished product, generated some level of buy-in. Overall, there was frustration with the time taken to resolve the case, disappointment combined with some satisfaction with the outcome and a general acknowledgement of the legal basis on which the outcomes were based.

### **Participants' reflections of participatory planning outcomes**

Process weighted toward developer.

The fact that it went on for so long and the way that they could string it out the way they did was appalling. (R1)

I don't think you can be 100 per cent satisfied with any of these processes

because they are long-winded, they need a dedicated team of people to fund them, to keep at them, to keep the neighbours informed and you know why eventually, you just get wound down, ground down and spat out because they have the funds. And they will keep fighting for the funds and you know we raised of \$170 000 to fund our campaign for four, five years, but eventually you know, people move out of the area, people don't care anymore, people die. We had several members die. You just can't keep going. (R3)

Planning controls not clear.

It was a classic example where we'd make changes and go back and they're go 'oh actually, we want this'. So things kept moving and it was like "hang on, what do you want?" And that's what takes time and costs money. (D1)

Reasonable process.

At the end of the day, they did have the law on their side, so it wasn't that they had tried to cheat us at all. They were only operating within what the government policy was at the time. (R2)

Council supported us all the way through. (R3)

We were certainly satisfied when VCAT knocked it out. (R3)

I can't see at the end of the day, I can't see how we could have ever won the thing. (R2)

I don't feel too badly... in the end what's happened is I can't argue with it. The units have actually, I think the values in our property are going to, actually go up. (R2)

While resident perceptions of the planning process were somewhat more positive, the process of appeal was seen in some ways as inevitable:

I mean you start off with that ridiculous yellow notice and it just goes on from there and you end up at VCAT. (R3)

Despite this, residents in case three were far less likely to support upfront consultation at a strategic level. This is an intriguing result because, had the site been zoned for HDH in the LPS with some level of height control, it is likely that a similar outcome would have been achieved more quickly for less financial, practical and emotional effort. Even though both the local planners (LP1 & LP2) and local councillor (to a lesser extent) saw the potential for upfront strategic planning, residents (and in addition, the councillor) dismissed the process out of hand because they could not see how such a process would be made accountable or be possible to implement. Their grounds were as follows:

Upfront strategic-level consultation will at best, be token:

When they do things like that, is to try and make it look like they're actually consulting but in actual fact it's just purely a façade to say 'look what we've done, we've involved the community. (R1)

Upfront strategic-level consultation is logistically unachievable:

It would never happen... I can't remember how many thousand there are in voting in the council, but if we had everybody coming in to raise an objection and discuss it, I mean you'd never get anything done. (R2)

Upfront strategic-level consultation hinges on mandatory controls:

It couldn't possibly work unless they were absolutely mandatory controls.  
(Councillor)

On the other hand, the developer saw little difference between upfront consultation at the strategic level and the fast-tracking model, even though they emphasised a potential lag in the zoning process that may inhibit property acquisition, and also figured that the controls would not be mandatory:

Yeah, I think that's a great idea. The only drawback from that is timing-wise in terms of acquisition of a site. If you buy a site and you need to wait for the whole area, or master plan, to be finalised and approved and then you're waiting around, you've got holding costs and so forth. So where that process is done before parcels of land are available for purchase then I agree that that's a fantastic approach. If there's a masterplan in place with height limits and so forth then it's a great way to set the rules and then you still have flexibility within those guidelines to come up with something. (D1)

With the exception of the proponent, all participants rejected the fast-track model, and even though all respondents (except the developer) were less dismissive of the current system, it was still criticised in terms of costs for residents (R1, R3 & C1), the potential for subjective decision-making (LP1) and the need for communication of objection rights to residents (LP2). Still, these were not seen as grounds for removal of TPOAR. Overall, residents in case three were rather more skeptical of the capacity of the planning system to effectively mediate in their favour, even though their reflections on the planning process acknowledge the legal basis on which it operates. They reflect the findings of Ellis (2004) that showed some resident opposition is mobilised by a minimal state view. This may explain why the current availability of TPOAR (the current system) attracted a wider range of (qualified) support than upfront consultation (deemed practically and logistically unachievable) or fast-tracking (rejected by all but D1).

## **9.5 Summary of case three**

One of the common criticisms of TPOAR is that they delay housing supply. In practice, TPOAR can only significantly delay development under particular circumstances: where the development assessment process does not meet state or local planning policy guidelines. In case three, different positions at the state and local levels created the conditions for appeal (for both objectors and the proponents) leading to a drawn-out process and significant delays in supply. However, it is notable that the site does come closer to a negotiated outcome than that achieved in case one or case two. Many elements of the case suggest stronger, clearer planning controls would have improved the housing supply outcomes with little or no impact on the participatory outcomes achieved.

## 10 CONCLUSIONS

Drawing on new quantitative and qualitative analysis of planning approval pathways in Melbourne, this report has explored the impact of third party objection and appeal on higher density and social housing. It has sought to extend the evidence base around resident engagement with planning processes to contest HDH and social housing in three key ways. First, to establish whether and to what extent, TPOAR are being used to resist HDH and the extent to which TPOAR are accessible to all members of the public; second, to identify why people oppose HDH and social housing; third, to explore the effectiveness of different planning approaches in terms of housing supply and participation planning outcomes in mediating resident opposition to HDH and social housing.

### 10.1 The use of TPOAR to contest HDH

The findings of this research show that TPOAR are being used to target HDH. In 2009–10 7/10 development applications in Melbourne were open to formal third party objection and appeal. Given the vast majority of single-dwelling developments do not require a planning permit, development applications are predominantly representative of increasing density (ranging from dual occupancies through to multi-storey developments). Just over one in four of these applications (26%) received objections. When we look at a subset of the data including only known larger development proposals (more than 10 dwellings), the rate of objection increases to more than one in three (35%). Larger applications are also more likely to attract much greater numbers of objections, and permits with a greater number of objections are more likely to lead to a council determination (rather than under delegation by planning officers) which has a greater chance of refusal. Larger developments are also more likely to result in an appeal against the local government determination. These figures show both a significant propensity for HDH development proposals to attract opposition, and also importantly, significant capacity for more widespread opposition.

In the Australian context, this positions HDH in the same realm as other locally unwanted land uses. It also suggests that in the context of compact city policies, the traditional uses of TPOAR are being refashioned as mechanisms to prevent residential densification. Objections data may also be seen as an indication of resident attitudes to HDH. Here, it appears that one in three developments (of more than 10 dwellings) are generating community concern that progress to formal objections against development approval. As a measure of community values in the City of Melbourne, the objections data is indicative of the more widespread opposition faced by planning authorities in cities and settlements balancing higher density living within traditionally low-density settings.

### 10.2 Socio-spatial variation in the use of TPOAR

However, presently access to TPOAR varies across space and by socio-economic characteristics. First, the provision of TPOAR are uneven across the metropolitan area where a proportion of development applications are not contestable. These fast-tracked developments are more prevalent in Greenfield development areas and in the central business district and adjacent precincts. The data highlights greater propensity for developments in areas of lower socio-economic advantage and house price to be fast-tracked, pointing to a potential gap in the equity of access to TPOAR.

Second, there appears a 'wealth and educational effect' in patterns of objection and appeal. Development applications in areas of higher relative advantage are more likely to receive objections and more likely to receive larger numbers of objections per



application than those in areas of lower relative advantage. Further, of those development applications that receive resident objections, those in areas of higher advantage are significantly more likely to result in an appeal against the local government determination. These results suggest that the wealth effects observed by Huxley (2002), Woodcock et al. (2009) and others in relation to resident opposition in particular neighbourhoods in Melbourne 'hold' across the whole metropolitan area. However, it is important to note that while there is a clear bias toward areas of high socio-economic advantage, areas of lower advantage do use TPOAR to contest HDH. Indeed, where a proposal sufficiently challenges individual and/or community values, TPOAR is being used to contest HDH regardless of the level of socio-economic advantage.

### **10.3 TPOAR and in-principle opposition to HDH**

The refashioning of TPOAR as an instrument to oppose HDH represents a variation in its conventional role as a mechanism of community oversight in planning. This variation is testimony to the ways that the boundaries of public participation in planning are being reshaped by the restructuring of cities around more compact forms. To successfully contest a planning decision in a court of appeal, third parties nonetheless need to demonstrate that the planning decision does not meet state or local planning policy guidelines.

Qualitative interviews confirm that only some of the reasons people object to determinations can be considered in merit-based planning reviews. Key concerns that can be considered in a court of appeal included: height and number of dwellings; provision for car parking; and controls on overlooking. However, residents were also motivated by the desire to exclude particular social groups from the neighbourhood. Objectors in two advantaged locations perceived HDH as low-cost accommodation, attracting students and renters. The latter are perceived to bring the status of the neighbourhood down, along with property prices. Even where residents reported general acceptance of new neighbours, including social housing neighbours there was still concern about the potential rate of social change. Therefore, many of the groups seen to be most in need of well-located and affordable housing, including renters, and students, were those who troubled established residents the most. Coupled with the tendency for areas of higher relative advantage to object more often and more frequently than those in areas of lower advantage, this suggests that in the context of compact city policies, TPOAR are being refashioned as mechanisms to protect established lower-density neighbourhoods from in-fill development and its future occupiers.

However, this is only part of the story. The rationale for opposing HDH was not only framed in terms of keeping unwanted social groups out of the neighbourhood. It was also about protecting the existing benefits of low-density urban form. This included having ample parking space. On-street parking was seen to be important in lower-density neighbourhoods in terms of maintaining social life, where the increased competition for car spaces accompanying HDH meant worrying where friends would park and children would safely play. HDH also meant embracing delays in leaving and returning home, competing for car parking spaces and over-loaded public transport. Adjacent property owners also have expectations of light and privacy that may be restricted by controls around overlooking and daytime analysis of planning. The wealth tied up in homes, through both renovation and equity, was threatened by HDH in terms of home improvement deemed wasteful in the light of height controls and potential relocation to lower-density neighbourhoods; and in terms of house prices. As HDH is generally seen in higher-income neighbourhoods as a 'down-market exercise', it was seen to threaten neighbourhood property values.

These reasons for opposition to HDH are testimony to the strong attachment among many residents to financial and social benefits and investments in low-density dwelling. However, unless the planning authority has permitted development that exceeds maximum controls, none of these criticisms of HDH will be 'winnable' in a court of appeal. The implications in terms of participatory planning processes are twofold. First, people may oppose HDH on grounds that are not contestable in a court of appeal, taking up valuable time and resources. Second, these issues inevitably remain unresolved through appeal and provide no avenue to generate or build community support for HDH.

#### **10.4 Balancing resident opposition, housing supply and participatory planning outcomes**

The diversity of reasons for objecting to HDH provide an important insight into the challenges of brokering community support in relation to higher density housing in established suburban areas. In this section we sum up the effectiveness of three of these approaches in terms of balancing housing supply with participatory planning outcomes in the context of compact cities and social housing policies.

##### **Managing reputational costs and building community support in fast-tracking**

Fast-track planning approval is often seen as an effective way to facilitate contentious development, particularly if the development contributes significant social benefit to cities. Social housing is a typical example: it suffers reputational challenges and widespread stigmatisation but is one of the key mechanisms through which policy-makers can help achieve social justice in cities (Fincher & Iveson 2008). Many jurisdictions have planning policies that fast-track affordable housing, and as we saw in case one, funding under the SHI was awarded subject to fast-track planning approval.

However, case one also showed that the removal of notification can generate anger, frustration and mistrust within communities about government planning and approval processes. In the case reported on here, residents were not opposed to social housing or HDH in principle (though they did prefer slightly lower building height). Without notification that a development proposal of nine stories had been approved in the street adjacent to their properties, they described the planning process as 'offensive' and 'appalling'. This fuelled a wider perception of the developer as breaking 'the rules' of the planning process and pursuing a 'high-tower' agenda through the SHI. Residents lost no time in developing an extensive informal marketing campaign that raised the profile of the site and exposed the framework of exceptionalism underpinning the planning process. Over a period of five months, the group notified several hundred people. Product cost consequences of this opposition are not felt in development time-lines (which delivered an impressive 6 houses per month) but are felt in terms of the negative marketing campaign against the planning process, profession and politicians.

Notably, in this case, residents were not ostensibly opposed to social housing, or to HDH. More widely, the neighbourhood is known for a tendency to embrace policies of social and environmental justice, evident in the growing support for the Greens party experienced in the 2010 election. In this case, the process of fast-tracking missed an opportunity to build a support base for compact city and affordable housing agendas in a politically progressive neighbourhood. It is likely that more sensitive design, situated in the local context with open interfaces between dwellings that enable informal encounter with new residents, as well as the potential for community-based

(and not-for-profit) businesses in the retail space along with a more consultative approach, would have generated significant community buy-in.

In sum, the benefits that might be accrued through fast-tracking HDH and social housing in terms of housing supply need to be weighed up against the longer-term loss of public support and faith in planning and political process, and missed opportunities to develop community-supported, affordable housing in socially and politically progressive neighbourhoods.

### **Developing shared communication between planners and non-planners in early consultation at the strategic planning level**

Early consultation at the strategic planning level is an alternative to fast-tracking. It allows residents to have a say about the strategic goals and guidelines of their neighbourhoods. There are a number of variations on this model, ranging from the collaborative development *Melbourne 2030* to highly localised strategic planning in the UK.

In the case we looked at (case two), early consultation related to the designation of HDH in the whole LGA. Here, the local council had adopted a pro-active stance toward managing residential densification and embarked on an amendment to the planning scheme to designate HDH within certain areas. This process involved multiple stages of third party notification and consideration of submissions. Despite this, those residents whose properties were affected most by the amendment were unaware of the planning amendments underway.

The case highlights one of the key limits of upfront consultation at a strategic planning level. Namely, while engaging residents early enhances opportunities for shared understandings and communities of planning practice, early engagement also generates new demands on strategic planning teams for robust, clear and locally situated information that can be imparted continuously through the planning process (including in this case, drafting, modification, redrafting, panels review and amendment). The development of communication processes is critical, because, although residents are very aware of the financial and social contexts in which their homes are situated, they are far less conscious of its place in relation to planning controls.

When asked which of the three planning approaches they would prefer, most interviewees supported early consultation at a strategic level; however, local council officers were unanimous in their view that the perceived merits of this approach would hinge on significant resources, and the 'strength' and 'detail' of the upfront planning process and goals. This view was matched by a number of residents, particularly those in case two and case three, who felt the model of early engagement would be unworkable in the face of diverse resident viewpoints.

In sum, the effectiveness of upfront consultation at the strategic level hinges on the commitment of resources at the local government level to the development of shared understandings between planning and non-planning communities and the generation of robust, clear and locally situated information that can be imparted continuously through the planning process.

### **Aligning local and state policy positions on HDH to avoid over-use of appeals system**

Not all jurisdictions have TPOAR, but in those that do, third parties have the right to object to planning decisions. However, our research suggests the conditions for a successful third party appeal are narrower than generally assumed. Infact, a

successful appeal against HDH needs to show that planning decisions were made without due regard for the controls and guidelines in local and state planning policies. This raises an important question around the way in which local and state policies interact in relation to HDH.

It is not always the case that state and local policies are aligned in relation to HDH. This may reflect limits in resources at the local government level, or other challenges facing policy implementation. Case three provided a typical example, where the site was zoned 'Residential 1' in the LPS and characterised by low-density housing with a distinctive leafy, suburban character. However, it also bordered a business zone to the south, was within seconds of a major tram route and major retail strip. Within the context of *Melbourne 2030*, the site is considered a prime location for densification. The conflicting local and state planning policies were used by the residents/elected members and developer to argue for reduced and increased density (respectively) over a seven year period. The precise policy for the site and its interpretation was 'worked out' through appeal.

Perhaps unsurprisingly of the three cases, this process of intense deliberation produced a more locally situated development, with strong interface and design outcomes, the maintenance of a public access-way, sunken car park and improvements in building design (in terms of minimum balcony size, orientation and light). It is notable that of the three cases, the development that best meets community views and housing supply progressed through appeal. However, the process was costly. The developer estimated the cost to their firm at \$3m in fees, holding costs and design costs. The resident group estimated their costs at \$170 000. This is not an avenue that is open to areas of lower relative advantage; or for many developers.

In sum, the use of TPOAR to successfully resist HDH hinges on the ability of objectors to show that planning decisions fail to address or meet local and state planning policy guidelines. If local and state planning policies have poorly articulated or differing positions in relation to HDH, and TPOAR are available, it is likely these rights will be used to define these policies by appeal. While there is no doubt this increases the opportunities for deliberation and mediation (and might in the end, produce a more situated development), it is also a costly way to resolve the tension between HDH and opposed third parties.

Together, the three case studies raise two new policy issues and a financial challenge. First, fast-track and early upfront consultation can potentially streamline housing supply, but they generate new challenges: namely, reputational costs for planners and new communication demands. Second, without the alignment of state and local policy in relation to HDH, courts of planning appeal will be exhausted by appeals (influenced) by residents from relatively advantaged neighbourhoods protecting their neighbourhoods against HDH. At the heart of these cases is the need for cost-effective policy development, in terms of both shared understandings between resident and planners about HDH and social housing, and agreed standards for a locally situated product.

## **10.5 Policy implications**

Despite the uneven ways in which third party involvement in planning shapes the supply of HDH and social housing, building resident support for planning policies are critical in the transition from low-density to higher density form. Whether public policy-makers can bring the public along with these changes hinges on a number of factors.

### **Can policy-makers at the local and state level develop agreed policy positions in terms of the location and supply of social housing and HDH?**

Both HDH and social housing provision are key public policy goals in Australian cities. Yet these policies are often interpreted differently at local and state levels. Conflicting local and state controls for HDH in Melbourne make development proposals for HDH reasonably vulnerable to objections and appeals. With clearer alignment and consistency of state and local planning policies in relation to HDH, opportunities for objection and appeal against HDH will be minimized and planning for HDH will be taken out of the appeals tribunal.

### **Can policy-makers at the local and state level develop guidelines for high-quality, cost-competitive HDH and social housing?**

The transition to HDH marks an ideological shift in how we live but there has been remarkably little public debate about why this transition is important and what residential densification should (or could) look like. HDH is often contentious among residents where building design and street interfaces are poor. There are also a lack of planning guidelines and controls that define and/or encourage a high-quality, locally situated product.

The policy gap is felt throughout the planning system in relation to housing supply and participatory planning outcomes. High-tower, fortress-style design in low-density neighbourhoods can exacerbate the reputational challenges for the profession and the planning process. Public debate and policy guidelines that define a high-quality, locally situated product that facilitate community encounter and practices of 'neighbouring' will help build community 'buy-in' for HDH. Design guidelines can also help leverage local councils in developing strong marketing materials and communication strategies. Moreover, with the alignment of design controls for HDH at the state and local levels, high-quality and well-located HDH will be extended across the metropolitan area; overcoming the current wealth and educational bias in the delivery of locally situated product.

### **Can policy-makers develop shared understandings with non-planners about HDH and social housing?**

While residents tend to be aware of the financial and cultural and practical values of their homes, they are far less attuned to the planning frameworks that link their property to the wider world of urban restructuring and urban planning policy. HDH and social housing policies are also 'against the grain' for many residents who have their wealth tied up in, and status derived from, owner-occupation. As a result, HDH poses a cultural and ideological shift. This is a significant challenge that involves the development of shared understandings around HDH, social housing and planning processes across diverse communities. Information tools require a high level of locational specificity, procedural clarity and immediacy. Currently, the development of locationally relevant planning knowledge is dominated by resident action groups, whose websites provide information about planning processes and proposals at the neighbourhood and street level, albeit with a strong anti-planning and anti-HDH message.

Critically, the development of shared communication and understanding hinges on committed upfront support and cost-effective communication and marketing strategies to help residents feel 'at home with strategic planning'. Deliberation takes time and can be costly to deliver, so ways to streamline consultation (and its administration) are essential.

### **How can policy-makers make the most of opportunities in progressive neighbourhoods to develop community-supported HDH and social housing?**

The stigmatisation of social housing has real impacts on the delivery of affordable housing in many jurisdictions. However, in those neighbourhoods that do not oppose social housing, the blanket commitment to fast-tracking can inhibit opportunities to develop community-supported social housing and HDH. Even though they may not exhibit in-principle objection to social housing and HDH, these neighbourhoods will likely still have the 'usual' concerns with building design, opportunities for social interaction with new residents, the provision (and location) of car parking and environmental features. While the exclusionary impulses of many neighbourhoods should not be under-estimated, the tendency to assume all neighbourhoods are equally prejudiced against social housing reduces opportunities for projects that develop collaborative and community-supported HDH and social housing. As public providers seek greater collaboration with the private sector in the provision of affordable housing, community-supported HDH and social housing are critical in reversing their stigmatisation.

Rather than using a 'one size fits all' fast-track approach in the provision of social housing, there are opportunities to develop a series of benchmark projects in progressive neighbourhoods that balance housing supply with participatory planning outcomes, and high-quality, locally situated design.

### **How can policy-makers acknowledge and limit socially exclusionary practice in public debate over HDH and social housing?**

The challenge of making opportunities for public participation in planning equally available is well-established in collaborative planning policy and practice (Carson 2001). While models of upfront consultation are often presented as a way to empower communities, it is not always the case that residents will act in the public interest. This study showed residents' opposition to HDH based on the exclusion of renters and students. Moreover, those people most likely to become involved in formal planning processes are from neighbourhoods of higher relative advantage, so there is a risk that the 'community focus' of upfront strategic planning models will facilitate participation by the same group. The 'democratisation' of participatory planning around HDH is therefore a complex process. Developing standards of design, affordable and effective communication measures, and community-supported examples will all help to raise the quality of debate and the range of stakeholders who become involved in consultative approaches. However, planners also need adequate training and preparation (or the appropriate professional support) to frame public debates within policies and practices of non-discrimination.

## REFERENCES

- Albrechts, L. 2004, 'Strategic (spatial) planning re-examined', *Environment and Planning B: Planning and Design*, 31: 743–758
- Alexander, I. 1998. 'Community Action and Urban Sustainability: Hope for the Millenium', *Urban Policy and Research* 16(2): 107–116.
- Arnstein, S. R. 1969 A 'Ladder Of Citizen Participation', *Journal of the American Institute of Planners*, 35(4): 216–224
- Atkinson, R. and Jacobs, K. 2008, *Public housing in Australia: Stigma, Home and Opportunity*, Paper No. 01, Housing and Community Research Unit, University of Tasmania, Hobart.
- Badock, B. and Beer, A. 2000, *Property Ownership and Housing Wealth in Australia*, Melbourne University Press: Melbourne.
- Ball M, 2011, 'Planning delay and the responsiveness of English housing supply', *Urban Studies* 48: 349–362.
- Ball, M., Allmendinger, P. and Hughes, C. 2009, 'Housing Supply and Planning delay in the South of England', *Journal of European Real Estate Research*, 2(2): 151–169.
- Beer, A. Kearins, B. & Pieters, H. 2007, 'Housing Affordability and Planning in Australia: The Challenge of Policy Under Neo-liberalism', *Housing Studies*, 22(1): 11–24
- Blunt, A. and Dowling. R. 2006. *Home*. Routledge: New York.
- Bramley, G. (forthcoming) 'Localised planning, local sentiment and planning stances: evidence and likely outcomes for housing in England' *Town Planning Review*
- Bunker, R., Gleeson, B.J., Holloway, D. and Randolph, B. 2002, 'The local impacts of urban consolidation in Sydney', *Urban Policy and Research*, 20(2): 143–167.
- Bunker, R., Holloway, D. and Randolph, B. 2005, 'The expansion of urban consolidation in Sydney: Social impacts and implications', *Australian Planner*, 42(3): 16–25.
- Carson, L. 2001, 'Innovative consultation processes and the changing role of activism' *Third Sector Review*, 7(1): 7–22
- Cook, N. 2011, 'Rethinking public participation: the role of non-experts in the development of third party objection and appeal', *State of Australian Cities Conference*, Melbourne, 29 November – 2 December, 2011.
- Cook, N, Taylor, E, Hurley, J. Colic Pesiker 2012. *Resident third party objections and appeals against planning applications: implications for higher-density and social housing*. AHURI Positioning Paper No 145. Melbourne: Australian Housing and Urban Research Institute.
- Colic-Peisker, V. and Johnson 2010. 'Security and Anxiety of Homeownership Perceptions of Middle-class Australians at Different Stages of their Housing Careers: housing', *Theory and Society* 27(4): 351–371.
- Dear, M. 1992, 'Understanding and Overcoming the NIMBY Syndrome', *Journal of the American Planning Association* 58(3): 288–300.

- Devine-Wright, P. 2009, 'Rethinking NIMBYism: The Role of Place Attachment and Place Identity in Explaining place-Protective Action', *Journal of Community and Applied Social Psychology* 19: 426–441.
- DPCD 2009, 'Amendment VC56: Government funded social housing' Advisory Note.
- Dovey, K., Woodcock, I. and Wood, S. 2009, 'A test of Character: Regulating Place-identity in Inner-city Melbourne', *Urban Studies*, 46(12): 2595–2615.
- Dowling, J. 2009, 'A Stigma That Hits Home', *The Age*, 6 October, Melbourne.
- Dowling, J. 2011, 'Planning reform blocks appeals', *The Age*, 12 March, Melbourne
- Craig, S. 2010 'Residents battle Coburg East tram depot development', *Moreland Leader*, 8 March 2010 accessed online: <http://moreland-leader.wherilive.com.au/news/story/residents-battle-coburg-east-dev> (date accessed: 24.1.2012).
- Engels, B. 1999, 'Property ownership, tenure, and displacement: in search of the process of gentrification', *Environment and Planning A*, 31: 1473–1495.
- Ellis, G. 2002, 'Third party rights of appeal in planning: Reflecting on the Experience of the Republic of Ireland', *The Town Planning Review*, 73(4): 437–466.
- Ellis, G. 2004, 'Discourses of objection: Towards an understanding of third party rights in planning', *Environment and Planning A*, 36: 1549–1570.
- Fincher, R. and Iveson. K. 2008, *Planning and Diversity in the City: Redistribution, Recognition and Encounter*. Palgrave MacMillian: Hampshire
- Finkler, L. 2006, 'Third Party Planning Appeals: The Situation in Ontario', *Planning Theory & Practice*, 7(3): 348–350.
- Gallent, N. and Robinson, S. 2011, 'Local perspectives on rural housing affordability and implications for the localism agenda in England', *Journal of Rural Studies* 27(3): 297–307
- Ghosh, S. and Head, L. 2009, 'Retrofitting the Suburban Garden: morphologies and some elements of sustainability potential of two Australian residential suburbs compared', *Australian Geographer*, 40(3): 319–346
- Goodman, R., Buxton, M., Chhetri, P., Taylor, E. and Wood, G. 2010, *Planning and the Characteristics of Housing Supply*, Australian Housing and Urban Research Institute Final Report No 157, AHURI: Melbourne
- Gunder, M. and Hillier, J. 2009 *Planning in ten words or less: a Lacanian entanglement with spatial planning*. Ashgate: Surrey.
- Healey, P. 1997, *Collaborative Planning: Shaping Places in Fragmented Societies*, Macmillan: Hampshire.
- Huxley, M. 2002, *This Suburb is of Value to the Whole of Melbourne: Save our Suburbs and the Struggle Against Inappropriate Development*, Institute for Social Research, Swinburne University: Melbourne
- Jacobs, K., Atkinson, R., Colic-Peisker, V., Berry, M. and Dalton, T. 2010, *What future for public housing? A critical analysis*, Australian Housing and Urban Research Institute Final Report No 151, AHURI: Melbourne.
- Kelly, J.F., Weidmann, B. and Walsh, M. 2011, *The Housing We'd Choose*, The Grattan Institute: Melbourne



- Lawson, J, Berry, M, Milligan, V, and Yates, J. 2009, 'Facilitating Investment in Affordable Housing- Towards and Australian Model', Housing Finance International, September, pp 18–26
- Legacy, C. 2012. 'Achieving Legitimacy Through Deliberative Plan-Making Processes- Lessons for Metropolitan Strategic Planning'. *Planning Theory and Practice*. 13(1): 71–87.
- Lewis M. 1999, *Suburban Backlash: the Battle for the World's Most Liveable City*, Bloomings Books: Hawthorn.
- Maginn,. P.J., Thompson, S.M., and Tonts, M., 2008. *Qualitative Urban Analysis: An International Perspective*. Elsevier: Oxford.
- Manningham City Council 2005. *Manningham Planning Scheme – Amendment C50 'Letter to Affected Parties'* 26 April.
- Mee, K. 2007, "'I Ain't Been to Heaven Yet? Living Here, This is Heaven to Me": Public Housing and the Making of Home in Inner Newcastle'. *Housing, Theory and Society* 24(3): 207–228
- NHSC (National Housing Supply Council) 2010, *State of Supply Report 2010*, National Housing Supply Council, Canberra.
- Moore, T., Morrissey J. and Horne, R. 2011, *Future Policy Directions From Zero Emissions Housing in Australia, Implications from an International Review and Comparison*. State of Australian Cities Conference: Melbourne.
- NHSC (National Housing Supply Council) 2010, *State of Supply Report 2010*, National Housing Supply Council: Canberra.
- NSW Government 2012, *A New Planning Sydney For NSW: Green Paper NSW Govt.:* Sydney.
- NSW SCSD (New South Wales Standing Committee on State Development) 2009, *Inquiry into the NSW Planning Framework, Report 34*, New South Wales Parliament: Sydney
- Productivity Commission 2011, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, Australian Government: Canberra.
- Powe, N. A. and Hart, T. 2011 'Housing development and small town residential desirability: Valued aspects, resident attitudes and growth management', *Town Planning Review* 82(3): 317–340.
- Randolph, B. 2006, 'Delivering the compact city in Australia: Current trends and future implications', *Urban Policy and Research*, 24(4): 473–490.
- Roodbol-Mekkes, P. H., van der Valk, A. J. J. and Altes, A. K. K. 2012, *The Netherlands spatial planning doctrine in disarray in the 21st century Environment and Planning A* 44: 377–395.
- Ruming, K. 2011, 'Understandings of Social Mix and Community Opposition to Social Housing Constructed under the National Building Economic Stimulus Plan' *State of Australian Cities Conference*, Melbourne, 29 November – 2 December.
- Ruming, K., Mee., K., McGuirk, P. 2004, 'Questioning the Rhetoric of Social Mix: Courteous Community or Hidden Hostility?' *Australian Geographical Studies* 42(2): 234–248.

- Ruming, K. Houston, D. Amati, M. 2012 'Multiple Suburban Publics: Rethinking Community Opposition to Consolidation in Sydney' Geographical Research doi: 10.1111/j.1745-5871.2012.00751.x
- Searle, G. 2004, 'Planning Discourses and Sydney's Recent Metropolitan Strategies', Urban Policy and Research, 22(4): 367-391.
- Searle, G. 2007, Sydney's Urban Consolidation Experience: Power, Politics and Community, Griffith University Research Papers, Brisbane
- Smith, S.J. 2008, 'Owner-occupation: at home with a hybrid of money and materials', Environment and Planning A 40: 515-519
- Solomou, A. and Sullivan. E. 2011, Alternative dispute resolution in land use disputes- two continents and two approaches The Urban Lawyer 43(4): 1035.
- Stonnington City Council 2003, Council Officer's Recommendation 14-16 Elizabeth Street, 6-10 Warner Street & 10A Ashley Grove Application No. 0184/03
- Stonnington City Council 2004, Council Officer's Recommendation 14-16 Elizabeth Street, 6-10 Warner Street & 10A Ashley Grove Application No. 980/04
- Stonnington City Council 2005, Council Officer's Recommendation 14-16 Elizabeth Street, 6-10 Warner Street & 10A Ashley Grove Application No. 949/05
- Stonnington City Council 2010, Council Officer's Recommendation 14-16 Elizabeth Street, 6-10 Warner Street & 10A Ashley Grove Application No. 0150/10
- Sturzaker, J. 2011, 'Can Community Empowerment Reduce Opposition to Housing? Evidence from Rural England' Planning Practice and Research 26(5): 555-570.
- Townsend, S. 2011. Survey: reforms mean hike in appeals. Planning 4 Nov. p.6
- Trenorden, C. 2009, 'Third-Party Appeal Rights: Past and Future', Town Planning Law Conference 2009, Perth, [http://www.sat.justice.wa.gov.au/files/10\\_Hon\\_Judge\\_Christine\\_Trenorden\\_Presentation.pdf](http://www.sat.justice.wa.gov.au/files/10_Hon_Judge_Christine_Trenorden_Presentation.pdf)
- Vallance, S., Perkins, H.C. and Moore, K. 2005, 'The results of making a city more compact: Neighbours' interpretation of urban infill', Environment and Planning B: Planning and Design, 32: 715-733.
- Valuer General 2010. A Guide to Property Values 2010, Department of Sustainability and Environment / Land Victoria.
- Van Dijk T. and van der Wulp, N. 2010, 'Not in my open space: Anatomy of neighbourhood activism in defence of land use conversion', Landscape and Urban Planning 96: 19-28.
- VicUrban n.d 'The Nicholson East Coburg' Accessed Online at: <http://www.vicurban.com/cs/Satellite?c=VPage&cid=1265926533547&pagename=VicUrban%2FLayout&site=VicUrban&oid=1265926533346> Date accessed 18 April 2012
- Victorian Civil and Administrative Tribunal Rowcliffe Pty Ltd v Stonnington CC [2006] VCAT 2017 (6 October 2006) AUSTLII databas, Accessed 27 February 2012.
- Victorian Civil and Administrative Tribunal Rowcliffe Pty Ltd v Stonnington CC [2010] VCAT 1977 (10 December 2010) AUSTLII databas, Accessed 27 February 2012.

- Victorian Civil and Administrative Tribunal 2003. Planning and Environment List Rowcliffe Pty Ltd v Stonnington CC. P1446/2003
- Victorian Civil and Administrative Tribunal 2005. Planning and Environment List Rowcliffe Pty Ltd v Stonnington CC. P499/2005
- Waite, R. 2011. Planning by appeal on rise. *Architects' Journal* 234(8): 6.
- Willey, S. 2006, 'Planning Appeals: Are Third Party Rights Legitimate? The Case Study of Victoria, Australia', *Urban Policy and Research*, 24(3): 369–389.
- Woodcock, I. Dovey, K and Wollan, S. 2009, Not in my republic: resident opposition to intensification in inner-city Melbourne State of Australian Cities Conference, Perth
- Woodcock, I., Dovey, K., Wollan, S. and Robertson, I. 2011, 'Speculation and Resistance: Constraints on Compact City Policy Implementation in Melbourne', *Urban Policy and Research* DOI: 10.1080/08111146.2011.581335
- Yates, J. 2001, 'The rhetoric and reality of housing choice: The role of urban consolidation', *Urban Policy and Research*, 19(4): 491–527

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