

What do third party objection and appeal rights mean for social and medium density housing?

THIRD PARTY OBJECTION AND APPEAL RIGHTS ARE ONE WAY GOVERNMENT PLANNERS TRY TO BALANCE NEEDED INCREASES TO HOUSING SUPPLY WITH THE REASONABLE RIGHTS OF RESIDENTS TO SHAPE THEIR NEIGHBOURHOODS. IN ORDER TO REDUCE OBJECTIONS AND INCREASE RESIDENT SUPPORT FOR HIGHER DENSITY HOUSING, EFFECTIVE COMMUNICATION AND PLANNING STRATEGIES ARE REQUIRED.

KEY POINTS

- Third party objection and appeal rights (TPOAR) to resist higher density housing in Melbourne were socio-spatially uneven with rights more prevalent in certain local government areas (including Stonnington, Boroondara, Whitehorse and Darebin).
- Just over one in four residential development applications in the study (26%) received objections. For larger development proposals (more than 10 dwellings), the rate of objection was one in three (35%).
- Objections were most likely to occur in areas where households had higher levels of education and wealth.
- Residents often resist higher density housing for reasons that cannot be considered in merit based planning reviews, including a desire to exclude particular social groups (particularly renters and students) from the neighbourhood.
- Submitting an objection imposed costs on both the objector and developer. This undermined higher density

This bulletin is based on research conducted by Dr Nicole Cook, Dr Elizabeth Taylor, Dr Joe Hurley and A/Prof Val Colic-Peisker at the AHURI Research Centre—RMIT University. The study investigated the nature, extent and variation of the impact of third party objection and appeal rights on the supply of higher density and social housing, and the implications for participatory planning outcomes.

development in certain areas and produced mixed outcomes in terms of housing supply and participatory planning goals.

- Fast tracking and early upfront consultation streamlined housing supply, but this generated new challenges in terms of communication demands and reputational costs for planners.

CONTEXT

Higher density housing and social housing are critical aspects of compact city and affordable housing policies in Australia. However, planned implementation has incurred 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.

Third party objection and appeal rights have been associated with greater public participation and accountability in planning and development assessment processes. However, using TPOAR to oppose higher density housing has generated delays in housing supply and compromised compact city and social housing objectives.

RESEARCH METHOD

The research evaluated the extent TPOAR was used to contest higher density housing over a two-year period and compared its effectiveness with two other planning approaches—a fast tracked application process and one which incorporated early ‘up front’ community consultations. Stakeholder perceptions of these different processes were explored through case studies of the three approaches.

The quantitative analysis of TPOAR was based on a merged dataset of residential planning permit activity in Victoria over 2009–10 and focused on residential permits within metropolitan Melbourne. It established the impact of TPOAR on housing supply as well as looked for socio-economic, educational and other biases.

The case studies explored participatory planning outcomes for TPOAR and its alternatives. Residents, developers and planners were interviewed to investigate the nature of resident opposition, its impact on the housing supply timeline and perceptions of the planning process.

KEY FINDINGS

Patterns of third party objections

Exemptions to normal TPOAR in Victoria were widespread, were varied and often excluded higher density housing from notice, decision and appeal requirements. The result was a complex array of differing requirements and exemptions for permits and for the provision of TPOAR on housing developments. Larger developments were more likely to be exempt from normal TPOAR. Seven in ten residential development applications in Melbourne were open to TPOAR, with larger developments more likely to be exempt.

Of those open to TPOAR, just over one in four applications (26%) received objections. For larger development proposals (more than 10 dwellings), one in three (35%) received an objection.

Applications typically received small numbers of objections (between one and three). However, a minority (14.1%) of applications were highly contested, receiving 10 or more objections. For major projects of 10 or more dwellings, a higher incidence of appeal was evident—18.2 per cent compared with 7.1 per cent for all residential planning permits. Major projects were more likely to bypass TPOAR or, where these rights existed, to be contested at Victorian Civil and Administrative Tribunal (VCAT).

The most common type of appeal was first party appeal against a council refusal or failure to determine an application. These first party appeals and failure to determine cases were strongly associated with objection numbers. Overall 56 per cent of appeals originated from a first party but included third party objections.

The objectors

Access to TPOAR varied by suburb and its socio-economic profile. Patterns of objection and appeal also reflect a 'wealth and educational effect' (see Figure 1 below), with applications in areas of higher SEIFA¹ ranking more likely to receive objections, more likely to receive larger numbers of objections, and more likely to involve a VCAT appeal.

The reasons for objections

Common objections related to the development's effects on traffic flow and parking, and a concern that the density was out of context with the surrounding neighbourhood, which was generally no more than two storeys in height. Part of the issue with building height also related to anticipated losses of privacy and light. Higher density housing was seen as opening up the neighbourhood to undesirable residents, particularly students and renters, who were perceived as bringing down the status of the area, as well as property prices.

Qualitative interviews suggested that many of the reasons people object and appeal higher

density development determinations cannot be considered in merit based planning reviews. This included a desire to exclude particular social groups, as well as preserving the social and economic benefits of low-density living.

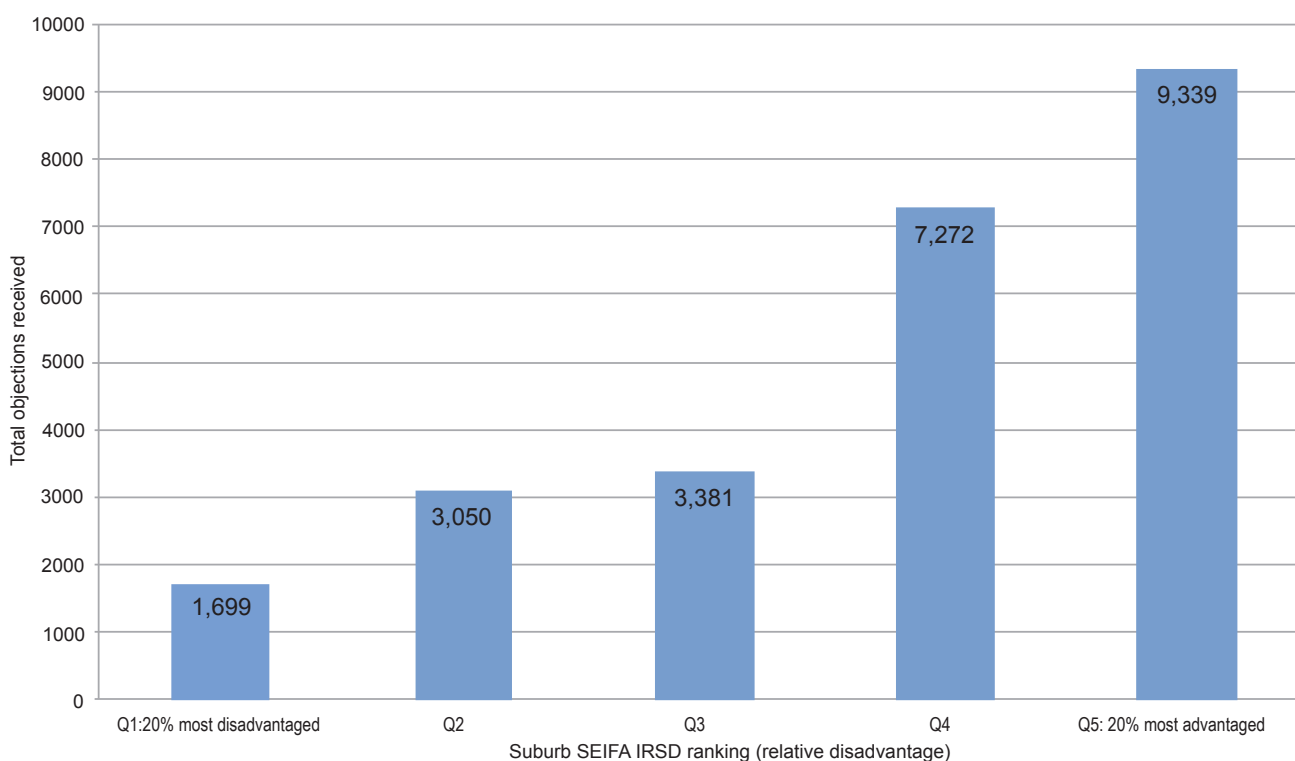
The costs of TPOAR

Of the three cases examined, the one with TPOAR provided the most opportunity for deliberation and debate producing a locally situated development that took four applications over seven years before it was approved. The developer estimated the cost of multiple appeals was around \$3 million, while the residents spent \$170 000. Taking into account the time from the preliminary application to completion of construction, housing supply was reduced with less than one dwelling a month being delivered. State and local planning policies around higher density housing were not aligned in this case, leaving the case to be 'worked out' through the appeal process.

Benefits and costs of other processes

Fast track planning approval of social housing (without TPOAR) delivered strong housing supply

FIGURE 1: TOTAL OBJECTIONS RECEIVED, BY SEIFA QUINTILE OF SUBURB



¹ SEIFA (Socio-Economic Indexes for Areas) ranks areas in Australia according to relative socio-economic advantage and disadvantage.

outcomes (six dwellings per month) but generated anger, frustration and mistrust about government planning and approval processes. A key problem was the lack of notification, which was linked to the fast tracking process.

Early upfront consultation potentially streamlined housing supply, but generated challenges in terms of communication demands.

On balance, residents felt that TPOAR were more attractive than 'sorting it out years before'.

POLICY IMPLICATIONS

As residents in areas of higher relative advantage object more often and more frequently than those in areas of lower advantage, this suggests TPOAR were being used to protect established lower density neighbourhoods from in-fill development and its future occupiers.

Developing standards of design, effective communication measures and community supported flagship projects will all help to raise the quality of debate and the range of stakeholders who become involved in consultation around higher density housing. However, planners also need adequate training and preparation (and/or the appropriate professional support) to frame public consultation within policies and practices of non-discrimination.

The stigmatisation of social housing has real impacts on its delivery. In neighbourhoods that don't oppose social housing, the blanket

commitment to fast tracking can inhibit opportunities to develop community-supported social housing and higher density 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.

Bridging the gap between planning and non-planning stakeholders is a significant challenge that involves developing shared understandings around high density housing 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'.

FURTHER INFORMATION

This bulletin is based on AHURI project 30678, *Resident third party objections and appeals against planning applications: implications for medium density and social housing*.

Reports from this project can be found on the AHURI website: www.ahuri.edu.au or by contacting AHURI Limited on +61 3 9660 2300.

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ACKNOWLEDGMENTS This material was produced with funding from Australian Government and the Australian States and Territories. AHURI Limited acknowledges the financial and other support it has received from the Australian, State and Territory Governments, without which this work would not have been possible.

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