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Andrew Grear
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Planning, Building and Heritage

Email: planning.systems@delwp.vic.gov.au

Dear Sir

Proposed planning reforms to facilitate public housing, community care accommodation and improving rules for rooming houses

I refer to the letter to Surf Coast Shire CEO Keith Baillie identifying proposed changes to planning schemes which are described as:

- Facilitation of public housing
- Community care accommodation (which supersedes community care unit and crisis accommodation)
- Rooming House which supersedes shared housing.

Thank you for providing the opportunity to provide comment in relation to the proposed changes.

Overall Surf Coast Shire Council supports the proposed reforms; however Council has a significant concern about an unintended consequence of the proposed changes to Clause 52.23 Shared housing which would see this replaced with the new Rooming house provisions. Specifically, this concern relates to the loss of the exemption afforded by Clause 52.23 to use a single dwelling (using the term as a description of the form of development) for non-residential accommodation, such as a holiday house or single tourist accommodation unit.

As a significant proportion of housing within the Surf Coast Shire is used to provide holiday accommodation, either by the owners of the land who reside elsewhere or for paying guests (holiday home rental), the proposed change would create a significant impact for Council in that they would now require a planning permit.

Short term accommodation uses do not fall within the planning scheme dwelling definition – *"a building used as a self-contained residence"* – by virtue of the fact that the use is not as a residence. Instead short term accommodation falls within the broader use term "Accommodation" which is a section 2, permit required use, in the residential zones. Presently the shared housing provisions of Clause 52.23 can, in most circumstances, be relied upon to exempt the use from requiring a permit.

This is a situation which was covered in depth by Deputy President Gibson in the decision of *Armato v Hepburn Shire* [2007] VCAT 603. In that decision DP Gibson commented:

> *25 I consider that the same reasoning is applicable to characterising land uses within the accommodation group. In my view, none of the defined land use terms*

included in the accommodation group readily covers the type of accommodation provided in the present case, namely a single house (or flat etc) which is used for the purpose of short term rental accommodation but which is not a residence in terms that no one lives or resides there permanently or for considerable periods of time. It is surprising that there is no specific definition that encompasses short term, single unit accommodation such as holiday houses and tourist accommodation like Holly Lodge. In these circumstances, such accommodation units must be characterised as "accommodation". It is a situation where the separate, specific land use terms nested below accommodation in the accommodation group in Clause 75.01 do not "cover the field" of the head land use term.

In relation to the provision for Shared housing, she commented:

> 57 *In my view, if the government considers that tourist or short term accommodation should not have the benefit of the exemption from the need for a planning permit provided by Clause 52.23, then the Victoria Planning Provisions and all planning schemes should be amended accordingly. But based on the planning scheme as it is today, my conclusion is that where accommodation of any sort, including tourist or other short term accommodation, is of a domestic scale and meets the requirements of clause 52.23 in terms of being in an area or zone which is used mainly for housing, provides self-contained accommodation and does not have more than 10 habitable rooms, then under the operation of clause 52.23 it does not need a permit.*

It follows that Council's concern is that should the provisions of Clause 52.23 be amended so that it no longer covers housing used to provide short term holiday accommodation, that all housing within the Shire not being used as residences would require a permit for use as Accommodation. Given this is a significant proportion of housing within the Shire (up to 70% in a township like Lorne and Aireys Inlet) this would create a significant regulatory burden in increased planning permit applications, determination of existing use rights and enforcement.

It is believed that many other local government areas, in particular non-metropolitan Councils, would be similarly affected by these changes.

We advocate that there be a more thorough review of relevant residential development provisions before proceeding with the proposed reforms, including:

- The definition of Dwelling be reviewed, in particular the use of this term to describe both a land use and a form of development (for example the inclusion of 'dwelling' within the definition of group accommodation and the permit requirements of the residential zones to construct two or more dwellings).
- Specific provisions relating to holiday house and similar accommodation be introduced to facilitate reasonable use within residential areas.

If you have any enquiries concerning this matter please contact Ben Schmied on 5261 0600.

Yours sincerely

Ransce Salan
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