

**Submission  
No 203**

**INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN  
PLANNING FRAMEWORK**

**Name:** Mr Kristian Hansen

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## Inquiry into the protections within the Victorian Planning Framework

Mr Kristian Hansen

**Organisation Name:**  
**Your position or role:**

### YOUR SUBMISSION

**Submission:**

Parliament of Victoria

Enquiry into the protections within the Victorian Planning Framework

#### Housing affordability

Two factors are usually identified as being behind house price growth: constraints on housing supply (including planning systems), and economic policy favouring housing as an investment class. A third factor is population growth, and whether housing supply can be reasonably expected to keep up with demand from this population growth. Two issues deserve more thorough investigation. Firstly, the disconnect between the Federal Government's management of immigration and population growth, and the states' role in dealing with the accommodation consequences. Secondly, the factors which have historically led the great majority of the immigrant population to settle in Sydney and Melbourne.

Access for first home buyers is at heart a political issue, because first home buyers are outnumbered by home owners who want to see their property values increase. To improve opportunities for FHBs, either something would have to be done to lower property prices to a more achievable level, or FHBs would have to be financially favoured relative to other prospective purchasers. The first would require lowering property values, which the property owning classes would never tolerate. The second would require the investing classes being displaced from the housing market, which would be equally unpalatable given the sacred-cow status of negative gearing confirmed in the campaigning for the last Federal election.

I remain sceptical of achieving mandatory affordable housing. As housing is now treated as something to buy, sell and invest in as much as something to live in, it is just about the ultimate market commodity. Ultimately, any property transaction will find itself subject to market forces. Mechanisms to achieve affordability should certainly be investigated, but they are likely to be difficult to achieve in practice. The same applies to the cost of rent - for better or worse, market forces are likely to have the final say.

#### Environmental sustainability

So much of sustainability in built form comes back to simple fundamentals, such as thermal massing, solar orientation, natural ventilation and use of eaves. However, in practice, home buyers are known to favour maximum floorspace or certain styles or appearance. Given that this purchase will typically be the single largest that a person will ever make, persuading them to sacrifice their perceived ideal in favour of sustainability would be politically tricky.

It may be an error to express sustainability in terms of 'vegetation protection'. It may be that vegetation requires less protection and more management. For example, tall canopy trees are valued for their landscape and character value, but their environmental value might also be achieved by other more compact forms of vegetation that can be fitted into the tighter spaces of higher-density cities. The equivalent biomass and ecological value might be achievable through shrubs and ground covers. It might be better to formally separate 'environmental sustainability' (environment) from 'vegetation protection' (landscape).

## Certainty and fairness in planning decisions

'Certainty' is effectively impossible to achieve, and should be acknowledged as an unachievable ideal. Different places and different sites have their different opportunities and limitations. Different places can have different grounds for favouring or not favouring development. In any given location, a range of options may be available for achieving reasonable development. 'Certainty' has a powerful appeal to the fundamental human desire for security and comfort, but it can only come at the expense of flexibility, that being the ability, and need, to consider various options for outcomes in different circumstances.

'Fairness' is one of the most diabolically loaded and subjective terms in planning, and in my experience can often reveal a misguided sense of entitlement. I have observed an exaggerated and unjustified view that planning is there to provide what 'we want', and that any deprivation of these wants is by definition 'unfair'. In practice, any achievement of 'fairness' becomes a balancing act - fairness to a wider community might be at the expense of fairness to an individual, or vice-versa. Any effort to address the concept of fairness must include an unambiguous recognition that decisions are not 'unfair' simply because they result in disharmony or dissatisfaction.

The case for mandatory height limits needs to be made more substantial. There can be tangible detriment caused by building height, such as shadowing affecting solar access and energy efficiency. Other outcomes are more psychological. This is not to say that such impacts are not real and should not be considered, but it should be made clear that a building is not worse simply because it is taller. Mandatory height limits must achieve a recognisable beneficial outcome, not merely satisfy a desire for a certain appearance.

I have observed a fundamental public misunderstanding about the role of VCAT, and it is related to a fundamental misunderstanding about the role of planning and of councils. When acting as a Responsible Authority under the Planning and Environment Act, the role of a council is to make decisions in the wider public interest as determined by the provisions and policies in the planning scheme. There is a public misconception that councils are supposed to make their decisions according to expressions of public will as expressed through such means as permit application objections. While in practice the democratic election of councils can mislead communities into thinking councils are obliged to 'go with the gallery', in actuality every citizen is entitled to expect that every level of government will adhere to its own rules of engagement. VCAT is too often criticised as being 'undemocratic'. VCAT is part of the judicial system, and as such has a fundamental obligation to be a legal body, not a democratic one. Communities will be better served through better awareness of how VCAT operated in practice, and how appellants should prepare, structure and advocate their case in a hearing.

## Heritage

Heritage is a particularly difficult matter for the planning system to address. It is inherently subjective, requires expensive expertise to confirm its existence, requires lengthy, contentious and expensive processes to achieve any sort of formal recognition, and is ultimately dependent on the commitment of individual land owners to maintain. It is hard to see how these various disparate issues can be resolved through the planning system.

Separating heritage protection from wider planning issues, such as a separate tribunal, is risky. Heritage is often conflated with wider concerns of character and aesthetics, which the planning system has a legitimate role in addressing. It is certainly essential that panels and VCAT have members available with an appropriate level of heritage understanding. There is also difficulty for councils in accessing appropriate heritage knowledge and expertise, particularly in rural areas.

The issue of how much an individual property owner has a responsibility to the wider community for maintaining heritage remains a thorny one. While the example of a person buying a property with heritage controls is a reasonably straightforward one of caveat emptor, it is murkier when a heritage obligation is

forced on a property (often against the owner's will) post-purchase. The owner may be left with a substantial financial burden of maintenance which they did not freely accept. Under such circumstances there may be a legitimate claim for some degree of public financial support, that it may not be reasonable for a property owner to bear that burden entirely on their own.

### Residential zones

The wording in the TOR is poor. It is not the role of residential zones to deliver housing that communities want, it is to provide residents with the accommodation they need. Housing is one of the most basic and fundamental of human rights. The role of housing is first and overwhelmingly foremost to provide suitable accommodation for its occupants. Whether that housing is what the 'community wants' is a minor matter by comparison. The planning system owes it to everyone to clearly and unambiguously prioritise needs over wants, and to confront the 'big three': total housing numbers required for a growing population (as COVID constraints sort themselves out); housing suitable for one- and two-person households as opposed to the nuclear family housing types that have dominated 'suburbia' as we know it; and housing close to destinations such as town centres and transport, that gives occupants the chance to get out and have a life without having to contribute to clogging up roads with motor vehicles.

Ultimately, zones in planning schemes are not sufficient to determine design outcomes. There will need to be accompanied by proper design tools in mechanisms such as overlays. Reflecting on earlier comments regarding land owners ignoring environmental considerations in favour of their 'dream home', it may be that councils need to be able to offer one-on-one design advice to owners and developers to back up planning scheme content and try to achieve optimum outcomes.

### FILE ATTACHMENTS

**File1:**

**File2:**

**File3:**

**Signature:**

Kristian Hansen