

**Submission
No 89**

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

Name: Anne Heath Mennell

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SUBMISSION TO THE INQUIRY INTO THE VICTORIAN PLANNING FRAMEWORK

Acknowledgement

I acknowledge, with deep respect, the traditional owners of this land on which I live and write. I pay my respects to elders past and present and to the many Aboriginal people who did not make elder status. I stand for a future that profoundly respects and acknowledges Aboriginal perspectives, culture, language and history.

Introduction

I am writing this submission as an individual member of the public. I was born and grew up in Yorkshire, England and first came to Australia in 1974. I have lived, for varying periods, in Sydney, Canberra and Brisbane and Victoria has been my home since 1985. Having lived in Melbourne for sixteen years, I moved to the south eastern shores of Western Port, in 2001. I have now spent more than half my life in Australia and, now retired, I hope to live out my remaining years in this beautiful part of the country, which I have grown to love.

Context

I have no particular expertise in planning, architecture, construction, engineering, or other related fields but I do have an interest in the connections humans have with the natural world, of which we are all part. Research abounds on how fundamental, even vital, it is for humans to remain connected with the natural world to be healthy in mind, body and spirit. I believe we must ensure that future generations have access to the wonderful world we know today – flora, fauna, a variety of healthy landscapes and habitats to support them - and to ensure that we restore balance in the complex systems we have so carelessly disrupted, degraded and destroyed in the past and continue to do so in the present.

Sadly, much of the destruction of our natural world is due to ‘development’ in its various forms. Victoria is the most cleared state in Australia and the Legislative Council Environment and Planning Committee (EPC) has just reported on its **Inquiry into Ecosystem Decline**. In recent times the EPC has also undertaken an **Inquiry into Environmental Infrastructure** needed, especially in urban areas. The Department of Environment, Land, Water and Planning (DELWP) recently undertook a consultation process looking at Melbourne’s **green wedges and peri-urban areas** surrounding Melbourne as part of refining Plan Melbourne 2017–2050.

The Executive Summary of the DELWP report concluded,

‘While these areas [green wedge and peri-urban] have been largely protected from urban encroachment, **existing policy and planning measures are no longer effective** (my emphasis) as we see:

- increasing land speculation and pressure to convert farmland to other uses

- increasing appetite for rural lifestyles and use of these areas for a range of urban activities
- incremental and irreversible loss of land that is agriculturally productive or has important non-urban uses
- more land use conflicts, particularly where urban areas adjoin rural areas.’

A great deal of work has been undertaken by these Inquiries and I would encourage this Committee to engage with the submissions, hearing transcripts, reports and recommendations they produced in order to inform its own work.

Terms of Reference

The breadth of the Terms of Reference is very telling. They give an indication of just how problematic the existing Planning Framework has become and even include an opportunity for the Committee to consider additional matters it considers relevant.

There can be no doubt that the current ‘systems’ are no longer effective and need drastic revision and modernisation. Existing legislation, regulations, policies, planning schemes, strategies, guidelines and frameworks are hindering solutions and enabling the problems facing our environment, rather than confronting and resolving the problems.

1. Housing

Shelter is a basic human need and everyone in Australia should have access to a secure, affordable, well-built, sustainable home. Using housing as an investment vehicle, rather than as a home to live in, has resulted in distortions to the housing market, which benefit investors but shut out potential first time buyers and people with low incomes.

I urge the Committee to:

- explore better ways to finance purchase of a home. So many people, including professionals, are working on short term contracts, part-time or in other insecure employment and are unable to access a traditional mortgage or save for the required deposit.
- Revisit current population policies to ensure that the settings are still appropriate for a State which is already struggling to provide the necessary infrastructure and services which make Victoria ‘the place to be’.
- Consider the implications of our rapidly increasing population and the consequent expansion, growth and spread of housing developments, especially around small regional centres and in peri-urban areas.

2. Environmental Sustainability and Vegetation Protection

It is interesting that this is the only Term of Reference which has no sub-headings to guide someone as to specific areas of interest to the committee. As noted above, development pressures and the current planning framework are at the root of so many environmental issues we are facing.

It is also interesting to note the use of the term ‘vegetation’ in this context. The word implies indiscriminate plant life which could be a field of cabbages as much as an area of endangered remnant landscape. I hope this does not reflect the committee’s world view. Use of words such as ‘habitat for flora and fauna’, ‘food for life-forms including humans’, ‘support for health and wellbeing’ and ‘endangered landscapes’ might be more indicative of the importance of this issue to a review of planning policies.

This term of reference covers a huge range of issues and problems which cannot be readily and succinctly distilled in this submission. I will therefore focus on a current local campaign which gives an idea of the problems caused by current policies from a community perspective.

Case Study – Save the Western Port Woodlands (SWPW)

The SWPW campaign has grown out of the SERA Project outlined in Reference (3) below. The campaign is valiantly defending the “right of nature to survive” in my local area.

On the eastern shore of Western Port is a scattered chain of reserves and areas of remnant coastal woodland, from Lang Lang to Grantville, which makes up the last 1% of native vegetation in Bass Coast Shire. They provide habitat for a huge number and variety of mammals, marsupials, birds, bats, invertebrates, amphibians, insects, plants (especially native orchids), fungi, lichen, bacteria, mycorrhiza – all of which have their part to play in a healthy eco-system. Remove even one and the balance will be disturbed, usually not for the better. We still have little understanding of the complexities of these relationships so have little hope of being able to ‘restore’ or ‘replace’ them.

For many years the community has been trying to protect these remnants and reserves in the hope of reconnecting them into wildlife corridors and even having the area declared a national park for the enjoyment of all Victorians.

Unfortunately, large areas are covered by sand leases, many of them granted last century, 20-30 years ago, when concerns about protecting natural landscapes was not so strong. There are 19 sand mines currently operating in the forest corridor between Nyora and Grantville, including some in declared reserves. Seven more are seeking work authorities to activate and/or expand their operations to meet the demand for sand to make concrete for Melbourne’s ‘Big Build’. If this is allowed, these areas will be destroyed for ever. The lifespan of some quarries is thirty years and ‘off-setting’, ‘restoration’ or ‘re-vegetation’ at that point will never be able to replace what will have been lost.

If the planned expansion of sand mining is sanctioned by the State Government, it has the potential to destroy much of the Western Port woodlands, thus calling into question the role of the *Marine and Coastal Act 2018* and the environmental credentials of the Andrew’s Government to protect this environment from further desecration.

These areas belong to all of us but mining will destroy all vegetation on the surface to extract the sand and gravel beneath. The processes involved have the potential for adverse impacts on nearby waterways, including Western Port. Once destroyed, the vegetation and all the lifeforms it supports can never be replaced.

From a planning perspective, the State Government has identified sand and gravel as strategic resources. Legislation, regulation and strategic planning schemes support the extractive industry at the expense of the natural environment. Lease-holders naturally wish to take advantage of this situation to expand and increase their profits. They are legally entitled to extract these resources despite the resulting destruction. Local Council policies, planning frameworks, regulations etc. are completely ignored and Council's decision-making role taken over by VCAT or the Minister. Councils and communities are powerless and reduced to begging for projects to be refused or even amended to reduce environmental impacts.

Ideally, an effective planning framework would take a strategic view of such a situation. The whole issue of sand mining in this area would be investigated and would involve a comprehensive impact assessment including cumulative impacts on the environment. These proposals should not be judged in isolation. Some sand mining may be inevitable but the long term impacts, sequencing and restoration obligations should ensure that short term impacts are minimised and future prospects for the natural landscape are enhanced. Under such a framework, a Minister would exercise environmental stewardship by considering the big picture, applying precautionary principles and being willing to make difficult decisions.

I urge the committee to have the courage to 'grasp the nettle', and recommend a complete overhaul of the legislation relating to environmental sustainability before we lose any more of our natural environment to development pressures seeking to urbanise and industrialise the few remaining remnants of our natural landscapes.

3. Delivering Certainty/Fairness in Planning Decisions for Community

This is a true story. A notice appears in the local paper of an application for a planning permit or something similar. The proponent has been developing their proposal for many months and engaging experts to support their case but the closing date for public objections/submissions is only two weeks away. Reams of documentation are available online, many technical in nature. Community members who object to the proposal have little time to produce submissions. The proposal will be considered by the local council, with a decision often required within a tight timeline. If rejected by the council, the proponent takes the matter to VCAT. The council has to use scarce resources to defend its decision and the proponent can call on legal and other experts to press their case. Community members rarely have the resources to take a matter to VCAT or pay expert witnesses.

In some cases, the proposal is 'called in' by the Minister at the proponent's request, before it can be considered by the council resulting in panel hearings. Community members who have objected to the proposal can ask to be 'heard' by the panel usually for a very short time in comparison with the time given to the proponent and their expert witnesses. These community members generally lack detailed knowledge or expertise and have little credibility in comparison. David and Goliath spring to mind with David losing the battle most of the time.

Proponents argue that the current framework is too complex, costly and too slow and doesn't work for them. Communities feel the current processes are weighted against both councils and community concerns and the only 'certainty' is that proponents will win their case.

This scenario is not consultation in any sense of the word, nor is it fair or equitable. Reform options should include a requirement for genuine consultation processes which are responsive to community concerns. Any 'streamlining' or 'red-tape reduction' should not curtail genuine consultation.

Case Study: SERA Project

The Victorian Government recently completed the Strategic Extractive Resource Areas (SERA) pilot project at two sites. The aim was to give certainty to the extractive industry to provide raw materials for Melbourne's Big Build.

The project elevates the importance of extractive resources at the expense of a natural environment with high biodiversity values, landholders such as farmers and traditional custodians, activities such as tourism and other key planning considerations. Planning for extraction sites will be prioritised above all other potential uses. Existing planning processes, which currently provide some protection for sensitive sites, will be weakened. There will no longer be any requirement for public notification and participation so local communities will be excluded from the planning process. Local Government input will be severely restricted.

The Report of the Inquiry into Ecosystem Decline recommended the opposite, concluding that there is a 'need for greater support and enhanced powers for local government authorities in order to protect the State's remaining native vegetation'.

Councils and communities argue that planning controls should continue to be robust, comprehensive, consultative and transparent. Where proposals are in competition with other uses there should be a process of assessment which could result in re-negotiation or compromise to minimise conflict.

Careful consideration and balancing of competing objectives should be co-ordinated within State Government to reduce the occurrence of contradictory initiatives where different Departments and agencies are working against each other or, within DELWP, where there is great potential for conflicts of interest.

4. Protecting Heritage

I have no expertise in this area but, as an ordinary citizen, it is obvious that the current criteria and processes for heritage protection are inadequate, complex, slow, expensive and are often not seriously enforced. There are many structures in Victoria which are currently un-protected and even those which are protected in some way remain vulnerable to opportunistic demolition and developers who successfully appeal Council decisions. Councils attempt to enforce their planning schemes but do not have the staff or other resources to fight developers with deep pockets at VCAT. Neither do concerned community groups fighting to defend the history and heritage of their neighbourhood.

The term 'heritage' is often used in connection with the built environment so I was pleased to see that the committee is considering penalties for tree removals specifically. Established parks, historic gardens, trees and other similar features are also part of our heritage. Trees are particularly vulnerable, especially if they are on private land. Even trees which are

supposedly protected by being listed on Council Registers of Significant Trees or similar schemes, are being felled with impunity and without penalty. This should not be allowed to continue.

Changing this system will not be easy but it has to be done if our State is to escape the worst excesses of dollar driven development. Whether any of the proposals in the Terms of Reference will help is for others to assess but changes are vital before we lose more of our built and natural heritage.

I urge the committee to make recommendations ensuring effective reforms are made to safeguard our irreplaceable heritage.

5. Ensuring residential zones are delivering the type of housing that communities want

Communities are made up of many different people with varied needs. Single people, large migrant families, older women, the elderly and those with disabilities will all have differing needs and preferences at different stages of their lives. Much of the housing currently being built does not offer a variety of options to meet these diverse needs.

The current methods of developing large housing estates results in dense housing built to maximise profits for developers. Schools, shops, medical facilities, public transport, upgraded roads and sewerage systems, sports facilities, libraries and other amenities only appear much later. Young families are forced to run two cars as the breadwinner takes one to work and the other has to drive to schools, shops etc., which are often some distance away. Apparently, on some estates, the roads are not wide enough for a bus to drive on or turn so public transport is impossible.

Too often over-dense housing development results in the destruction of all vegetation on the site including mature trees. Too often this happens to trees supposedly covered by various preservation orders. This destruction need not occur if developers were willing to be flexible in the design and planning stage.

Very little of the housing being built seems to be environmentally sustainable. I am aware of a supposedly five/six star, two storey town-house in Melbourne which has a split system in all three bedrooms as well as the living area and is surrounded by a sea of concrete. Black roofs are the norm on new-builds which research has shown increases the 'heat island effect' in urban areas. In western Sydney, Councils are painting dark roofs and roads white to try and ameliorate this effect. It is common on new-builds to see a couple of small, token, solar panels on a large roof, right next to a huge air-conditioner.

Some architects and urban designers in the 1950s acknowledged that open space had great aesthetic, social and ecological value. They viewed cities as habitats for people, rather than simply as economic machines, transportation nodes or grandiose architectural stage sets. Respected planning academic, Michael Buxton, has produced a research report, *Growing Pains: The Crisis in Growth Area Planning* which considers the urban design flaws and planning failures in outer growth areas. He recommends:

‘The development and regulatory regimes in growth areas should be reformed to mandate the delivery of solar-oriented, environmentally sustainable dwellings ...’

These problems should not be happening and I urge the Committee to:

- explore ways to ensure that housing in the future is varied: apartments, units, small dwellings, larger homes for big families, high rise and low rise, so that everyone - whether singles or families, older women, the elderly, the homeless or those with disabilities - has a choice of accommodation which is appropriate for their needs.
- recommend that future developments are held to a higher standard of forward planning and design, to ensure current problems do not continue.
- build on the work of the Inquiry into Environmental Infrastructure which looked at improving access to environmental infrastructure (parks and open space, sporting fields, forest and bushland, wildlife corridors and waterways). This should ensure that new housing will provide an attractive, healthy environment where people can enjoy their neighbourhood as well as their home.
- Investigate ways to prevent or regulate over-development, poor design, inappropriate and unsustainable developments.

6. Other Relevant Matters

The Importance and Value of Gardens

There is no doubt that most cities, including Melbourne, need more public open space, as they continue to grow. People need ready access to parks, open spaces, sports grounds, forest, bush and wildlife corridors, rivers and waterways. These are vital at any time but we have realised their value during the pandemic. Regulations need to be in place to ensure that any new development projects are required to retain sizable open spaces with multiple potential uses.

Private Open Space

I suggest to the committee that public open spaces should be complimented by better provision of private open space in the form of gardens. Gardens have long been designed as restorative places, sanctuaries and retreats from the stresses of life – from great urban green spaces to the humblest suburban backyard.

For many working adults, pre-pandemic, the lack of free time and water restrictions made maintaining a garden difficult. Lack of space, time, water and exposure to the gardening experience, have all contributed to a perceived loss of interest in gardening in recent times and yet gardening remains one of the most popular hobbies/recreational activities in Australia. As covid restrictions tightened, people lucky enough to have access to a garden discovered that their garden and gardening helped them through this time, providing benefits to their physical and mental health and in so many other ways.

Beyond the passive enjoyment of a garden, researchers have studied the role of actively caring for plants as a therapeutic and educational tool. Therapeutic horticulture has become a recognised treatment for stress and depression and has served as a healing aid in

settings ranging from prisons and mental health treatment facilities to schools and hospitals.

There is a great deal of research now available on the benefits of getting your hands in the soil, nurturing green life and, in the process, providing nourishing, fresh food. Horticultural therapy involves doing all those things, helping reduce blood pressure, improving flexibility and movement, reducing stress and anxiety, improving mood and giving purpose to our days. The list of the benefits gardening provides, to individuals and communities, is becoming longer all the time. Decent sized backyards offer benefits that public parks, reserves and other forms of public open space do not, including ensuring the well-being of pets and the safety of small children to play independently.

Despite the increasing amount of evidence supporting the benefits provided by gardens, we have become resigned to their wholesale loss as an 'inevitable' part of the process of densification and infilling. This is a world-wide phenomenon in large cities, not just in Melbourne. High land values in inner suburbs mean developers buy properties, pay for demolition and site clearance, redevelop and build a huge house, multiple apartments or town-houses and still make a worthwhile profit. Urban sustainability runs a poor second to profit.

This is not simply a problem in the inner suburbs. In outer suburbs, blocks have become smaller to ensure 'affordability' and houses have become bigger, covering almost the entire block and reducing sunlight and ventilation. There is no room for a shed, washing line, trees or water-tanks, growing vegies, playing games or any real contact with the natural world. Many people have adopted dogs during the pandemic. I hope that they all have a back yard to play in and open spaces nearby.

Housing is increasingly seen as an investment and the investment is in the building not the space around it. Home-owners maximise their investment by 'up-sizing' regularly to higher value property in 'better' suburbs. They don't stay long enough to bother planting anything which will be left behind before it grows to maturity.

There is general agreement that we need to increase our housing stock, to house the predicted rise in population, by increasing inner city densities and reducing suburban sprawl. Disappearing backyards are seen as unavoidable collateral damage but this is not inevitable. Adjunct Professor Tony Hall, of Griffith University, addressed the issue of disappearing backyards in his book, *The Life and Death of the Australian Backyard*. He deplores the lack of appreciation of the environmental and social role of suburban gardens and the absence of debate and concern at their loss.

Based on a detailed quantitative study, he discusses the nature, uses and meaning of the traditional Australian backyard, recent changes and suggests possible remedies. He argues that vegetation surrounding a dwelling plays an important role for communities in microclimate, storm drainage and biodiversity, irrespective of whether current residents use their backyard.

Of course, not everyone wants a backyard. With long working hours and commutes, a house has become a place to sleep in, children play on computers in their bedrooms and many people don't want to spend weekends mowing lawns. This is undoubtedly true but

there are disadvantages to these trends which extend beyond the life of the current occupants. If future occupants want (or need) to grow vegies, have space for play, shade trees, fruit trees, a worm farm or compost bins, provide habitat for remnant wildlife or have an attractive outlook rather than an ugly fence, they will find it impossible. Once the land is built on, it's gone for generations.

The reality is that we don't need to sacrifice backyards in order to reduce sprawl or increase density. Evidence from Britain, provided by Hall, shows that densities of double or triple those found in Australia can be achieved without losing usable backyards. He suggests solutions including changes to planning codes on set-backs and plot coverage and promotion of new, more sustainable house designs reflecting Australian traditions and landscapes. He also suggests we have a debate on the increasingly stressful lifestyles of city dwellers and commuters. The pandemic has brought this to our attention very forcefully and many people now working from home have discovered, or re-discovered, the pleasures and benefits of gardens and gardening.

As a community, we have a choice. Hall presents a strong case for the retention of significant green areas around dwellings and stresses the importance of the backyard for the community as a whole and for the environment. He provides evidence that higher density building does not automatically mean the loss of gardens. Hall proposes ways of reversing the current trend, including changes to relevant planning regulations and policies. He recommends the use of 'advisory general design guides', which are used in Britain to facilitate voluntary cooperation between developers and planning authorities early in the development process. This does happen in Australia where developers are required to have management plans for storm water, retain significant vegetation and provide a minimum of public open space. These do not always have the desired effect, especially the retention of native vegetation. There are no requirements to provide useful private open space.

There is an argument that new housing has little backyard provision because people do not want gardens anymore and should be able to exercise consumer choice. Hall counters that 'there are advantages to the provision of back yards that are not related to individual preferences but to the general public good' and that 'the backyard is part of an environment whose sustainability and quality affect everyone, not just the individual residents'. Given that dwellings are built to last for sixty years or longer, Hall argues that 'well-planned housing schemes should be designed to be robust over time, ie 'they should be able to adapt to changing patterns of use without requiring major reconstruction'. People may not want to have back gardens at present but current building trends rule them out permanently.

Views, natural light, ventilation, space for trees, runoff absorption and biodiversity are benefits which cannot be retrofitted easily. If existing residents do not want an outlook, garden, pool, trees or shed, future residents may want or need to grow some of their own food or have space for their children to play. These options should not be ruled out completely. It is worth remembering that in the inner, older suburbs, houses with established gardens, in tree-lined streets, are considered very desirable and these amenities add value to those properties.

Strategic Planning

Long term strategic planning is always difficult, especially in such a complex, contested area as planning. It is obvious that the current planning system is no longer fit-for-purpose. It is not meeting the needs of governments, developers or for councils and communities. It is often uncoordinated, unbalanced, inefficient, inconsistent and inequitable. Various parts of government have different and sometimes conflicting priorities. Within DELWP itself there seems to be a lack of coordination with differing priorities, decisions and initiatives which are at odds with each other. This results in confusion and uncertainty and often provides loopholes which can be exploited. State, regional and local policies do not always appear to be aligned or consistent resulting in appeals from proponents to a higher authority, often with inappropriate or negative outcomes.

It is vital that strategic planning at government level must address these issues and develop more effective coordination and integration methodologies and find better ways of resolving the inevitable differences in priorities. It is important that the planning system balances economic, social and environmental considerations appropriately to secure a sustainable future for the state and for current and future generations.

Summary

It is past time for our environment to become the first priority of decision makers rather than being relegated behind the needs of the economy, vested interests or ambitious politicians. Someone once said, 'without the environment, we don't have an economy'. Without the environment, we don't have anything worth having, not even life itself. Instead of making false choices between the environment, the economy or development, instead of thinking in terms of 'either/or', could we reframe our thinking and consider 'both ... and?'

With good will and a willingness to seek out creative responses there is some hope that it is still possible to preserve and protect our natural environment and all who live in it. But, we are running out of time! And we really are all in this together!

From my perspective as an individual citizen with no power and little influence on the outcomes, my only avenue is to write submissions such as this and hope someone will read them and will work towards improving the situation. Where this is a will there is a way ...

I commend the Committee for undertaking this Inquiry on behalf of Parliament and trust that its report and recommendations will be accepted and appropriate actions taken.

Thank you for your time in considering this submission,

Anne Heath Mennell,

[REDACTED]

30 January 2022

You may think that I'm a dreamer, but I'm not the only one ...

