

**Submission
No 173**

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

Name: Mr Chris Sutton

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The Secretary
Legislative Council Environment and Planning Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Sir/Madam,

Please accept my submission to the Environment and Planning Committee enquiry on the adequacy of the Planning and Environment Act 1987 and the Victorian planning framework in relation to planning and heritage protection:

State and local population policy

A major policy failure of State (and Federal government) since the 1980's has been the lack of population policy that articulates a population target that supports a sustainable economy and environment. The unconstrained pursuit of population growth to support economic growth has eroded the liveability of Melbourne suburbs and the environmental integrity of our grasslands and vegetated surrounds. The urban growth boundary continually expands like adding more notches on a belt to accommodate an ever expanding waistline.

The housing industry is delivering an appalling new housing business model characterised by excessive built form with a gross inadequacy of space for children to play and explore outdoors. These houses have a paucity of green space and vegetation to provide visual beauty and natural cooling during the warmer (and warming) months.

Government has failed to impose appropriate housing standards that support a sustainable balance of housing and open space for outdoor activity and vegetation. The demand for housing in Melbourne's leafy suburbs for its liveability will always contrast with the sub-standard amenity of these new suburbs.

We are failing to provide the opportunity for all residents in Melbourne to live in pleasant and well serviced suburbs. Unfortunately delivering this objective continues to destroy the amenity of established suburbs.

A map of Melbourne shows that successful planning of our suburbs with vision and respect for liveability ceased in the 1970s when the urban growth boundary largely coincided with the end of the rail and tramway network. The growth of the Melbourne urban boundary, largely since 2000 is characterised by a period of unplanned and excessive population growth supported by the lazy subdivision of once productive rural areas with a lack of infrastructure and public transport links.

The experience of the pandemic proved that Melbourne people do not support unchecked excessive population growth and the resulting negative impact on our suburbs. The government needs to develop sustainable population growth policies that do not rely on

the insatiable demands from the building and retail industries to support their poor business models.

The State government must develop a population policy for Melbourne and Victoria that nurtures and not erodes our liveability.

Environmental sustainability and vegetation protection

Following on from comments above, the introduction of new planning policy in the 1990s supporting medium density housing has contributed to a disgraceful erosion of the liveability of Melbourne suburbs. Sadly we are no longer the once proud Garden State.

The building industry continually bleats for more planning reform which essentially involves weakening the controls to allow the unrestricted advance of their failed and detested business model of excessive built form and destruction to our natural environment.

Recognising the valued vegetation of Beaumaris where I live, the Bayside City Council implemented a Vegetation Protection Overlay (VPO) over Beaumaris and Black Rock with a Significant Landscape Overlay (SLO) implemented over a small pocket of Beaumaris.

Despite the vegetation protection objectives and of the VPO and SLO I have watched both medium density and single developments inexorably destroy our valued vegetated environment. The VPO and SLO have proven to be largely impotent achieving meaningful protection of our valued vegetated environment.

During 2021 I endured a four day VCAT hearing for a proposed single dwelling development in the SLO area of Beaumaris. The Council planners supported the application and VCAT granted a permit.

I presented to the planning panel that supported implementing the SLO. At the time I never believed the SLO would prove so ineffective protecting the vegetation character of this area. The outcome at VCAT proved to me that even with one of the supposedly strongest planning controls for vegetation there is No effective planning control to protect the sustainability of our urban environment from the pressure on local councils and VCAT to support the unsustainable housing growth strategies of the State government.

At the VCAT hearing the applicant's planning representative used the two most common tactics developers use to justify the destruction of valued and protected vegetation.

Firstly an arborist provided a report classifying most trees on the site of being less than optimal health and structure and not worthy of retention. Secondly, an urban designer claimed the vegetation character of the area had limited merit and its replacement with built form, paved surfaces and a marginalised area of replacement vegetation would make a positive contribution. It is insulting to residents with a deep connection to their suburb to have planning experts continually belittle its intrinsic beauty and sense of place.

The use of arborists is a flawed basis for assessing vegetation. Vegetation is more than just large trees. It comprises the smallest of plant life from moss, grasses and small to medium sized shrubs and bush. Arborist reports only focus on medium to large trees ignoring the significant contribution all vegetation makes to the character and ecological values of a site. Furthermore, arborist reports repeatedly assess most trees on a site as

not worthy of retention and fail to recognise that most trees in urban settings do not display the superior structure and health of the trees seen growing in a botanical garden or park.

Despite their less than exemplary health and structure most trees and smaller vegetation in combination make a significant and valued contribution to urban character and liveability. Unfortunately through the use of arborist reports, most if not all vegetation is removed and replaced with built form, paving, decking and pools.

Council planners and VCAT justify approving applications for vegetation removal by imposing a replacement planting scheme. Too often the replacement planting is not planted, does not survive, is removed by new owners or simply does not have the required space to reach maturity and replace the valued vegetation character that was removed.

Delivering certainty and fairness in planning decisions for communities

Victorian planning schemes have extensive objectives and statements detailing the importance of residential amenity, sense of place, cultural identity, liveability and protection of natural environments. From when I first referred to the Bayside Planning Scheme over 10 years ago it has grown from around 650 pages to over 1000 pages.

Despite all the statements and objectives in the planning schemes dedicated to protecting our suburban environments, all the studies, planning scheme amendments and submissions by local residents, the destruction to our urban environments continues unabated.

The supposed reforms of Neighbourhood Residential Zones and the garden space requirement failed to stop the spread of excessively large medium density and single dwellings eroding the valued character of our suburbs. Acquiescing to the relentless pressure from the building industry the State government pushes ahead with the offensively described Smart planning reforms which is simply a weakening of planning controls and resident rights. There is nothing Smart about a planning system that supports Dumb planning outcomes to support the building industry interests to the detriment of residential amenity.

Many residential planning schemes lack meaningful provisions for councils to control the excessive size of both medium density and single dwellings. Allowing maximum site coverage requirements up to 60% leads to excessive built form with little room left for meaningful outdoor recreation space and vegetation. The benefits of setting minimum garden space areas is ineffective by allowing this area to include decks and pools.

The planning system must ensure dwellings sit within and respect the urban environment and prevent excessive built form dominating its surrounding environment and crowding out space for vegetation.

Building Permit Compliance

A major failure of the planning system has arisen with the introduction of the competitive building permit system in 1994 which transferred building approvals from local councils to the private sector. Significant destruction to neighbourhoods and vegetation character has been caused by excessively large new single dwellings which do not require a planning permit.

The Victorian Auditor General conducted a review of compliance with building permits in 2011 and made the following comments:

The audit found the Building Commission cannot demonstrate that the building permit system is working effectively or that building surveyors are effectively discharging their role to uphold and enforce minimum building and safety standards.

Ninety-six per cent of permits examined did not comply with minimum statutory building and safety standards. Instead, our results have revealed a system marked by confusion and inadequate practice, including lack of transparency and accountability for decisions made.

In the absence of leadership, guidance and rigorous scrutiny from the commission, councils have adopted a largely reactive approach to enforcing the Building Act 1993 that offers little assurance of compliance within their municipalities.

Consequently, there is little assurance that surveyors are carrying out their work competently, that the Building Act 1993 is being complied with, and the risk of injury or damage to any person is being minimised.

Regarding the role of local councils the Auditor General stated “*significant opportunities exist for councils and the commission to work together more effectively to monitor the building permit system.*”

I have requested the Bayside City Council building department to investigate possible instances of new single dwellings exceeding the maximum site coverage of 50%. In response the Building Department referred me to contact the building surveyor. It is blatantly unreasonable to expect a resident to challenge a building surveyor on an issue of compliance, particularly if non-compliance applies.

The lack of action by local councils to proactively confirm single dwellings comply with building regulations is a disgrace. Residents have no ability to ensure that new single dwellings are in compliance with building regulations and not eroding neighbourhood character by exceeding site coverage and setback regulations. There is little evidence that the Auditor General findings of excessive non-compliance with building regulations in 2011 does not still apply in 2022.

The lack of proactive checking of compliance with building regulations by local councils allows the dwellings to exceed site coverage and setback regulations with limited or no consequence. From observation many new single dwellings appear to exceed site coverage and setback regulations. To confirm whether this reflects the lack of proactive compliance action by Bayside Council building surveyors I submitted the following question to the Bayside City Council Ordinary meeting in October 2021. The question and response follow:

Question

- a) *What enforcement powers does Bayside Council have to ensure new single dwellings comply with the Building Regulations requiring buildings must not occupy more of the allotment than the Bayside neighbourhood residential zone site coverage requirement of 50% and*
- b) *What actions does Bayside Council undertake to ensure that all new single dwellings comply with this legal requirement?*

Response

a) *The requirement for site coverage is covered by the Building Regulations 2018, Regulation 76. It states in part that buildings must not occupy more than (50% -Bayside variation), of an allotment. It further notes that a report and consent, R&C (special siting dispensation) may be sought from Council 'to an application for a building permit' in relation to a design that does not comply with this regulation.*

In other words, should a building permit be required for a new dwelling and/or garage, or for an addition or alteration to a dwelling and/or garage, the maximum site coverage must be considered.

b) *It is the responsibility of the relevant Building Surveyor when assessing and issuing building permits to ensure that this regulation is complied with – or a R&C sought. In most instances, building permits are issued by the private sector; however, should Council issue a building permit the same provisions would apply.*

The response to my question confirmed that Bayside Council is taking little or no action to ensure new single dwellings are in compliance with building regulations. Based on this response and my observations I have no confidence that new single dwellings in Beaumaris comply with building regulations reflected in the significant erosion to neighbourhood character caused by these dwellings.

I strongly recommend this committee re-examines the findings and recommendations of the Auditor General report to determine what action is needed to address non-compliance with private surveyor issued building permits with a particular focus on the failure of local council building surveyors to undertake compliance activity.

Unfortunately I had limited time to devote to preparing this submission and hope my comments are relevant and clear.

Thank you for the opportunity to make a submission to assist informing the committee of the significant damage being inflicted on the liveability of Melbourne suburbs and wider Victoria by the gross failings of the Victorian planning system.

Yours Sincerely,

Chris Sutton