

Inquiry into the protections within the Victorian Planning Framework

Mr William Marshall

Organisation Name:
Your position or role:

YOUR SUBMISSION

Submission:

Submission is in 2 parts.

1. Stronger and more consistent planning regulations to protect Victoria's urban tree canopy from reckless development.
2. Change to VCAT process to reinstate fair and equal representation in urban development appeals

FILE ATTACHMENTS

File1: [61f72c9c47047-VCAT Procedural Fairness.doc](#)

File2: [61f72c9c4737c-Tree Canopy Management.doc](#)

File3:

Signature:

William Marshall

Protections for Neighbourhoods – VCAT Procedural Fairness

The stated purpose of VCAT is to provide fair, efficient, and affordable justice for the Victorian community. Unfortunately, in practice community members participating in Planning disputes are at a distinct disadvantage in VCAT hearings:

- Developers rarely appear for themselves. They appoint legal representatives and planners with planning expertise, a niche area of law. In most instances, community members do not have the resources to engage professional representation.
- Although the Tribunal is not bound by the formal rules of evidence or any practices or procedures applicable to courts of record, the Planning List has developed a complex and opaque set of practices and rules. Many of these are procedural and evidentiary conventions which practitioners get to know because they regularly appear before the Tribunal. Community members, without comparable planning expertise and experience of VCAT proceedings, struggle to navigate these rules successfully.
- The process allows a lot of leeway for experienced legal representatives to employ intimidating tactics against community members appearing for themselves.
- Appeals to a VCAT decision is only permitted on grounds of law, and most of the decisions are based on an interpretation of the relevant Planning Scheme based on the facts of the case. It effectively means that there is no appeal for objectors regarding the decision. This means that the Members are very powerful. In this context, objectors, already unsure about the rules as to what is acceptable and what not, do not wish to offend the members and limit their protests during proceedings.

The issues listed above means that, without costly professional representation, it is highly unlikely, if not impossible for community members to successfully oppose a planning application at VCAT. This discourages community members to get involved with planning disputes at VCAT level. Consequently, in terms of the Planning List, VCAT fails to provide fair, efficient, and affordable justice for the Victorian community.

Tree canopy management

We need state-wide tree provisions to preserve and manage the urban tree canopy.

Urban tree canopy management is an effective tool to manage the impact of climate change, specifically the risks associated with increasing urban temperatures.

Currently, tree management across Victorian councils is inconsistent. Some Victorian Councils already have progressive canopy management provisions in place, while others have weak or non-existent protections. It seems as if the inconsistency corresponds to the financial position, capacities and climate change policies of different councils. The inconsistent approach enables developers to pursue developments with less amenity and weak climate change responsiveness in those municipalities with weaker local planning provisions.

All urban communities in Victoria deserve cooler cities and suburbs. Heat-resilience should not depend on the resources and attitudes of your local council.

Changing the provisions of the Victorian Planning Framework to mandate tree preservation and management across the state will ensure that the health and wellbeing of all the residents of Victoria are equally protected across the State.

This can be achieved by amending the State Planning Framework to include provisions that mandate responsive tree canopy and vegetation protection, including tree-retention, across the state. The recent amendments of the Moreland Planning Scheme provide good examples of appropriate provisions.