

**Submission
No 49**

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

Name: Name withheld

Date Received: 27 January 2022

Name
withheld

27.1.22

Submission to the Parliamentary Inquiry into the adequacy of the Planning and Environment Act 1987 and the Victorian Planning framework in relation to planning and heritage protection.

Submission concerns [REDACTED] Ironbark Rd Diamond Creek (5 acres) and [REDACTED] Ironbark Rd Diamond Creek (40 acres).

Due to the discriminatory and unusual treatment of the above lands I request to be heard on this submission by the Inquiry. I reserve all my rights. Justice does not date.

This submission will focus on the following Terms of reference:

- (3) delivering certainty and fairness in planning decisions for communities
- (b) protecting Green Wedges and the urban growth boundary;
- (5) ensuring residential zones are delivering the type of housing that communities want

(3) delivering certainty and fairness in planning decisions for communities

Our major equity issues are known and/or ought to be known by all Government Departments, Instrumentalities, Ministers and the Premier. We have contributed to numerous inquiries and processes for many many years now (see 2009 submission incl witness statement to the Parliamentary Inquiry into the Urban Growth Boundary), we have also tabled numerous petitions to Parliament.

Instead of equitable rectification we have faced continual dismissal of our hard evidence going back to the introduction of New Victorian Planning Provisions and subsequent New format municipal planning schemes in 2000, when there was a consolidation/reduction of zones. The new VPP also removed the 'regional' section from planning policy and this is the very source of our planning. Instead of sitting down with us to mediate fair and reasonable outcomes there is a continuous stubbornness against doing the right thing.

At the heart of our case is the incorrect zone translation in 2000 for our urban land with paid for and established urban reticulated infrastructure, from highest and best use residential, to the most restrictive of all, rural conservation. Lands were supposed to be translated to their promised 'closest best fit'. In our case they were back zoned in error against applicable legislation such as the *Planning and Environment Act 1987*, *Water Act 1989* and other. Our hard evidence examples prove beyond doubt that we have been urban since the 1970's. Zoning is a fundamental part of the planning system and when in cases like ours, there exists a major planning mistake/anomaly/irregularity/error, the entire basis for all zoning can be questioned.

Under section 310 A of the *Water Act 1958* our Family was made *compulsorily liable* for the largest single contribution (of total costs) based on them having the highest urban residential land value to establish urban reticulated water to the entire area of the acreages (head-works and distribution costs). All reticulated infrastructure (water, sewerage, drainage, electricity, telecommunications) was co-ordinated, established and planned. The certainty of future residential development that this provided for is relied upon in the families long term financial planning to this day. This land has been [REDACTED] held with much sacrifice for over 80 yrs. See detail on following page.

For twenty years we have experienced almost unbearable dismissal, bullying and destruction of our character to discredit our claims. We had trust and faith in Government processes, indeed in 2000 when the zones were first translated we were reassured that there would be reviews every three years to correct any mistakes! We have done all we could to rectify the error at every opportunity. Instead we feel as if our evidence and information has assisted in the creation of legislation and polices that further harm us and erode our rights and legal position.

While our distinctive infrastructure delivers the certainty in our case, there has been virtually no 'fairness in planning decisions' for our Family for over twenty years now.

This inquiry must recognise that there are major conflicting and competing interests with land development. Amongst other things, these have a real world impact on individuals trying desperately to gain assistance from the decision makers and elected representatives.

We consider the correction of our planning anomaly/irregularity/mistake/error even more crucial now prior to changes in legislation as part of the Northern Metro Land use framing policy.

We implore this Inquiry to now finally, recognise and respect the past urban infrastructure and interrelated urban planning that applies to subject properties.

This Inquiry can and must deliver justice to our families and ensure equitable rectification of the outstanding rural planning mistakes. Please make recommendations accordingly.

Failure to equitably correct the planning mistake will result in above lands reverting to infrastructure stripped 'rural' bush blocks worse in value and use to that of 80yrs ago.

(b) protecting Green Wedges and the urban growth boundary;

Whilst we understand the intention and benefits of protecting the Green Wedge and the urban growth boundary we do not expect them to come at the expense of previous planning and compulsory liability. How can planning in one instance be dismissed or ignored by new planning? Does this not make a mockery of any planning process?

We accept that the Green Wedge has been established as a benefit to the entire community but we reject the idea that it comes at a cost for landowners within it. For the Green Wedge to exist it must be achieved with honesty and integrity and not by riding rough-shod over the rights and entitlements of landowners within it (as is the case with above lands).

(5) ensuring residential zones are delivering the type of housing that communities want

I suggest both Climate change and the Pandemic have meant significant parts of Plan Melbourne refresh are now either irrelevant or in need of a serious re-write.

The current State policy for high density housing near and around public transport, shops and services is not fit for purpose in an area such as Diamond Creek that is situated on the edge of Bushfire prone areas and is a part of the Green Wedge. Instead of creating a hard urban edge as this policy would do, I suggest instead a mix of housing options and lot sizes on the fringe of current residential areas as a soft urban edge. This low density housing would create a buffer zone between the Activity Centre and the green areas further out that Climate change has now rendered at significant risk of increased and more intense bushfires.

The Covid-19 Pandemic has also altered people's perception on the types of housing they now desire. Working from home, and being confined to home (lockdowns, isolating, sickness) has meant

there is more demand for space, reduced desire for high density housing such as apartments (living in close quarters to many others) and options on housing not currently available e.g. permitting permanent granny flats on rural blocks to allow families to remain together and take care of older generations while still living separately.

There is ample opportunity to allow different lot sizes on larger landholdings. This can accommodate both Green Wedge environmental objectives and the community housing needs/desires.

Property History of [REDACTED] Ironbark Rd (40 acres) and [REDACTED] Ironbark Rd (5 acres) Diamond Creek

We believe the deception/bad luck began when the property was purchased in the 1940's. After researching farms in other areas of Victoria, the land was selected as it was considered to have the potential to be part of Metropolitan Melbourne in the future. Indeed Diamond Creek became a suburb of Melbourne in the 1950's. It was purchased as a working orchard and priced accordingly and yet that same year a pest infestation was discovered and most trees had to be destroyed. A small collection of apple, plum and pear trees could be saved.

Determined to remain sustainable the farm was converted to cattle, goats and intensive poultry. In the late 1940's an innovative multi storey poultry farm was established called 'Harnessing the Hill'. This garnered local and media attention. It was powered by a privately run diesel generator. Attempts to overcome the water shortage meant the construction of approx. 6 dams, two large concrete tanks and many galvanised iron tanks. All of which was dismantled in early 2000 to facilitate planned and promised residential development with reliance on the distinctive urban reticulated infrastructure.

In the late 1960's an 'as of right' planning application for low density housing, was lodged but refused by Council on the basis that it did not allow for future residential subdivision! The Family was advised that the application would be accepted if this was included. We discovered the cost to construct an urban standard road was prohibitive and the decision was made to wait until full residential subdivision was permitted for the entire area.

The lands urban planning was for the expansion of Metropolitan Melbourne and the suburb (not township) of Diamond Creek. Our telecommunications, postal service and the high voltage electricity (privately paid for) were all from Diamond Creek. Due to hydraulic necessity the urban water, sewerage and drainage came from Yarrambat. Being already recognised as residential in the early 1970's and part of Diamond Creek urban planning, in 1975 we were additionally gazetted by the Governor in Council ie. Cabinet (following a full statutory process), as an extension to both the urban district and Water Trust district of the Plenty Yarrambat Waterworks Trust.

Believing we could not yet subdivide the land into residential lots, being self-sufficient in a commercial supply of water and having the highest costs we objected on all allowable grounds. Our objections were over-ruled, the scheme proceeded and we were *made compulsorily liable*. The high cost meant we participated in a Commonwealth Government Loan Scheme (11.5% interest) that was established purely for utility services for residential development. This loan was paid off with much financial hardship.

All properties including [REDACTED] Pioneer Rd Yarrambat family (family purchased in 1989 with infrastructure rights attached) are of the same infrastructure catchment of which they are the

urban extension of. The Pioneer Rd property was purchased specifically to allow combined unique development opportunities (dual road access and dual infrastructure access).

In 2000 the new Victorian Planning Provision was introduced. This included the consolidation/reduction of zones and the New format planning schemes in each local government area. As part of this our lands were back zoned in error to environmental rural, now rural conservation. The most restrictive of all zones, effectively sterilising the land.

At every opportunity since this time we have made the serious mistake known to all Governments, Government departments, Government inquiries and all instrumentalities.

At various times land use applications were made to Nillumbik Council. In 2005/6 we applied to build retirement villages on the land, which at the time was allowable in the then rural/environmental zone. Incredibly our appeal to VCAT (after its refusal by Council) did not proceed past the directions hearing. Instead VCAT refused to hear the case on its merits and repeated Councils judgement that it 'did not meet the rural policy requirements' of the Nillumbik Planning Scheme even though such development was permitted!

To this day we do not understand how exactly Nillumbik's rural policies came into being. Many were not publically exhibited, given Ministerial exemption of normal notice requirements, appeared in error and we question by stealth.

In August 2019 we made an application for a [REDACTED] lot subdivision of the property (with adjoining land [REDACTED] Pioneer Rd Yarrambat 14.5 acres) to exercise our accrued infrastructure rights and associated property rights/entitlements to residential subdivision. This plan included a generous open space component. The continuation of all Victorians accrued rights were reassured on the Floor of Parliament by [REDACTED], on the 15th August 2019 during debate on the Water Catchment and Amendment Bill 2019. Likewise we have been led to believe that the 2021 version of this Bill will not affect these rights.

We now in 2022 strongly object to the Legislation that will implement Plan Melbourne Refresh 2050 proceeding without a further round of public consultation and hearings. These have not yet been afforded for the public at all. Consulting only with Councils, service providers and other government bodies to inform the draft is grossly unfair.

We also object to the translation of the Municipal Strategic Statement to the Municipal Planning Statement. We do not believe it to be policy neutral as advised and in Nillumbik's case the entire process must begin afresh.

I give permission for this submission and the other submissions attached to be made public.

Submissions attached

- [REDACTED] Part One and Two to Northern Metropolitan Land Use planning framework

- [REDACTED] to 30 yr Infrastructure Strategy to Infrastructure Victoria

- Stage Two State Electoral Boundary Re-division [REDACTED]

At this point in time all other attachments as follows are not to be made publically available on the website but available to all Government bodies. We are happy for you to forward these on to Local and State Instrumentalities

B- Equitable Correction Brief with evidence and explanation

C- Redacted legal town planning letters

D- Additional evidence

Hard Evidence A to N of urban status

Map showing the Plenty Growth corridor

1955 Map showing metropolitan Melbourne boundary

Map showing City of Heidelberg

Map showing old electorates incl Greensborough

