

**Submission
No 98**

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

Name: Name withheld

Date Received: 30 January 2022

Name
withheld

Parliament of Victoria
Legislative Council, Environment and Planning Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

30 January 2022

Dear Sir/Madam

Inquiry to examine the Planning and Environment Act 1987

I wish to make comment on the following term of reference.

(2) Environmental sustainability and vegetation protection

A. Overview

“You cannot save Australian wildlife if they have nowhere to live and nothing to eat”.

I am a statutory planner working full time with a peri-urban Council in Victoria. However, I write this submission in a personal capacity as a resident of the Shire in which I also work.

I am disappointed with the terms of reference for this review. Why was a background or discussion paper not prepared?

I strongly believe that:

- a) there is a nett loss of native vegetation occurring in Victoria.
- b) the Victorian Planning and Environment Act 1987 and associated regulatory framework is not adequately protecting native vegetation in this State.
- c) local incremental vegetation loss has as much impact as large scale vegetation removal projects, yet doesn't receive sufficient attention.

Daily through my work, and privately through observation, I believe that native and non-native vegetation removal across Victoria (permitted and illegal) is widespread and increasing. “No nett loss”¹ would appear to be a target that is not being met.

The regulations are not working to protect Victoria's vegetation on the ground where I work. It is death by a thousand cuts tree by tree or patch at a time.

The four main drivers for vegetation destruction and removal in my view are:

1. Land development.
2. Bushfire.
3. Fear of trees falling on private assets.
4. Community ignorance of the ecological services provided by healthy ecosystems and vegetation.

¹ Clause 12.01 of the VPP

1. Land development: There is currently a land price boom in Victoria. Owners of land, with or without significant native vegetation including understorey vegetation, can increase the value of their land by a factor of 8 –10 if a dwelling permit can be obtained. This is a significant incentive for land owners and real estate agents alike.

On peri-urban rural land close to Melbourne, most commonly in the Farming Zone, there is a huge demand for the approval of dwelling permits on rural lots. Farms often comprises a number of lots (or crown allotments). If each could be sold off with a dwelling permit the maths is very clear.

The Farming Zone does not protect agricultural land from rural residential lifestyle demand or permit applications. Some Shires are stronger and better than others at refusing dwelling applications on land less than 40ha, but the pressure to permit dwellings for rural lifestyle use is increasing. I observe it daily.

Many people who are seeking rural land, that I encounter, have limited knowledge of practical agriculture and less about biodiversity conservation or vegetation protection.

If native or any vegetation gets in the way of a proposed building envelope, driveway or shed then it must go. Often, it does without a permit. People move to rural areas because they “love the bush”. They tell me this, but also need to clear it to live there. Many are keen to learn but often have two jobs off farm and limited cash to take positive action. Most want to do the right thing, but those who don’t do irreparable damage.

At a local level it is the role of Council Enforcement Officers to protect our native vegetation from illegal removal without a permit but usually only after the event. If enforcement officers establish that an offence under the Act has been committed, fines can be imposed but generally there are not enough enforcement officers to do the job required, and the fines for a breach of the Planning Scheme under section 130 are woefully inadequate.

These fines are today regarded by some land owners / developers as the “cost of doing business”. But a fine will not replace the vegetation that has been destroyed, and tube stock planting can never replace 80+ year-old native tree in our lifetime.

When permits are obtained to remove vegetation, offsets are required but generally offsets are purchased and located elsewhere in the Shire or elsewhere in the catchment management authority area. I cover this matter further in this submission.

2. Bushfire is an ever-present risk in rural and regional Victoria. Where native vegetation and understorey vegetation pose a risk to infrastructure, homes and people then it is removed, with or without a permit. This is understandable but the point is that it does happen and the result is that more vegetation is lost. Existing dwellings in high-risk bushfire prone areas should be mandated to be retrofitted to withstand bushfire (roof sprinklers, fire safety bunkers, fire shutters) rather than surrounding vegetation destruction.

For new dwelling developments on land covered by a Bushfire Management Overlay (BMO) the defensible space calculations provided by fire assessors in the Bushfire Management Statements now set the scene. Under Clause 52.12-5 exemptions from requiring a permit for native vegetation removal or offsets (except in Rural Conservation Zone) to create defensible space enables large areas of bushland to be lost if a dwelling is approved by the local Council.

If vegetation protection is a State-wide objective, then action needs to be taken in relation to bushfire protection that does not lead to wholesale vegetation destruction.

3. Fear of trees falling on private assets gained a sharper focus in 2021 after severe storms battered the State, particularly across the Central District of Victoria. The winds felled many thousands of mature native trees and there was large scale destruction of private assets. There is no easy answer to the justifiable fear held by rural residents that trees are dangerous.

Tragic as this was rural and regional Planning Departments have had difficulty holding the line on permit requirements for vegetation removal such as requiring (costly) arborist reports verifying that a tree is unsafe. Frustrated residents often take their own initiative and vegetation and trees just disappear.

Policy needs to address dangerous trees. Incentives should be given to land owners to replace dangerous trees with compensatory offset plantings of biodiversity rich plantings further away from dwellings. These also must be maintained.

4. Community Education is needed. Native vegetation provides irreplaceable ecological services in Victoria: for endangered biodiversity; to reduce urban heating; for clean water supplies; and a host of climate services.

Sadly, there is general ignorance across the community, particularly in the peri-urban regions of Victoria, of the many benefits native vegetation provides and its importance to environmental sustainability. Programs such as Gardens for Wildlife need to be supported and community education programs initiated whereby native plants replace or augment exotic garden planting to support local wildlife including insects and especially native bees.

While the conversations are most commonly about “tree protection” there is also a general ignorance of the importance of all the critical understory species – the shrubs, ground cover plants, grasses, wetland species and soil biota that are vital to native wildlife and sustainable biodiversity. The lizards, skinks, butterflies, insects, bees, frogs, turtles, bush rats, small birds, snakes and small mammals, to name a few, all have a vital role to play to keep the whole ecosystem working and sustainable.

I often witness “clean up syndrome” in rural areas. This is where the understorey is tidied up (cleared, burned, bulldozed and/or raked) with only the trees remaining within a neat grassed area able to be mowed. The landowners think they have done a great

clean up job. This occurs when they and the general community have little understanding of how biodiversity work. Australian bush is messy. Education is desperately needed so people learn to appreciate that understory is essential to a healthy system.

B. Planning & Environment Act

Planning Policy Framework (VPP) and Local Planning Policy Framework (LPP)

The policies, objectives, strategies, guidelines and incorporated documents in Planning Schemes say all the right things in principle, but in practice at a local level the policies are not in play. For example:

- VPP Clause 12.01-2S Native vegetation management

*Objective To ensure that there is **no net loss** to biodiversity as a result of the removal, destruction or lopping of native vegetation.*

Comment: At a local level, for example, township lots in small rural towns with a Bushfire Management Overlay can be cleared of native vegetation to build a dwelling without a permit under Clause 52.12-5 exemption provisions to create defensible space. Incrementally the vegetation is lost, one tree or patch of vegetation at a time.

Some lots should not be developed at all due to their intact native vegetation but this is political dynamite for local Councillors and the vegetation is inevitably lost. Experience with VCAT has been that trees have little weight over a subdivision or other development.

- VPP Clause 13.02-1S:

Areas of biodiversity conservation value

Ensure settlement growth and development approvals can implement bushfire protection measures without unacceptable biodiversity impacts by discouraging settlement growth and development in bushfire affected areas that are important areas of biodiversity.

Comment: At a local level owners of land want to get a permit, develop the land, sell it and make money. *Discouraging settlement growth and development in bushfire affected area important for biodiversity* is nice in theory but nigh impossible in practice. Planners may recommend refusal but this can be, and often is, overturned by Councillors and/or VCAT.

C. Zones

With the exception of the Rural Conservation Zone in our Shire vegetation protection relies on the overlays and particular provisions.

D. Overlays and particular provisions

I am not going to cover all the overlays that mention the protection of native vegetation but will make comments on the following:

- Clause 44.06 Bushfire Management Overlay (BMO) and related Clause 52.12 and 53.02

Following the 2009 Black Saturday Bushfires Planning Schemes were changed to enable applications for new dwellings in the BMO to be assessed provided a Bushfire Management Statement (BMS) was provided with the application completed by a suitably qualified fire

assessor in accordance with the standards. The BMS must include a calculated defendable space zone around the new dwelling site.

An exemption under Clause 52.12-5 applies to vegetation removal to create the defendable space from planning permit requirements.

This exemption was regarded, even by fire assessors, as mandated and permitted. To Council planners it applied only if a permit was issued for a dwelling, and not before.

By way of example, in a small rural town on land in the Township Zone (section 1 use) the recommendation of refusal of a dwelling on vegetation grounds would unlikely be supported by Councillors or VCAT. A dwelling is as of right in the TZ and it is only the overlays such as the BMO that direct how the land is developed. If the fire assessor provides a BMS and correct Bushfire Attack Level (BAL) rating and the defendable space is calculated then it is compliant with the requirements of the BMO and related clauses.

I have witnessed wholesale native vegetation destruction occur lot by lot under the defendable space exemptions. This destruction can and often does include everything – trees, shrubs, native grasses, groundcovers as well as significant soil disturbance.

Such local incremental vegetation loss does not command the attention of the Department of Environment, Land, Water and Planning's (DELWP) Native Vegetation removal regulations as the BMO overrides vegetation protection.

One might dare to ask why dwellings should be approved in high-risk bushfire areas at all?

- Clause 52.17 Native vegetation

The *Guidelines for the-removal, destruction or lopping of native vegetation, December 2017* are complex. They generally apply to large scale developments and vegetation impacts. My experience with the Guidelines is that small scale development at a local level slip through on the Basic Assessment Pathway. Vegetation removal will only require an offset if outside the defendable space approved under bushfire provisions. In my Council we rarely see large scale "vegetation" projects. However, daily we deal with incremental vegetation loss, tree by tree or patch one lot at a time. The impact however can be significant and permanent.

Exemption under clause 52.17-7:

Site area - Native vegetation that is to be removed, destroyed or lopped on land, together with all contiguous land in one ownership, which has an area of less than 0.4 hectares.

This exemption does not apply to native vegetation on a roadside or rail reservation

At a local level, unless a Council has specific tree protections incorporated into their planning scheme, for say heritage, significant trees or significant patches of vegetation, this exemption for native vegetation removal on lots less than 4000sqm allows the destruction of native vegetation without a permit, unless another overlay protects them. This situation is common in towns.

This exemption should be either abolished, or reduced to no more than 1000sqm.

In the Township Zone (TZ) a dwelling is a Section 1 use, permit not required. Usually in the TZ lots are less than 4000sqm and with a right to use land for dwelling there is an associated right to clear all vegetation on a lot less than 4000sqm (0.4ha).

While the protection of vegetation for large subdivisions and developments may be better managed and enforced, it is these small lots where incremental loss occurs most disastrously tree by tree, or patch, at a time.

The *avoid, minimise, offset* mantra inevitably allows vegetation removal to be offset. Many offset sites are like cemetery plots, where you buy a grave and the job is done.

However, if an offset site has vegetation that already exists, the purchased offset just protects what is already there and “no net loss” is not achieved, because the trees being offset are lost. Offset sites must involve new plantings and revegetation.

E. What are the penalties for illegal vegetation removal?

Under Section 126 of the Planning and Environment Act 1987 any person who uses or develops land in contravention of or fails to comply with a planning scheme, or a permit, or an agreement under section 173 is guilty of an offence.

Under Section 130 of the Planning and Environment Act 1987 where an infringement notice has been issued for contravening a scheme, permit or section 173 agreement the fine is five penalty units in the case of a natural person, and 10 penalty units in the case of a body corporate.

The value of one penalty unit is \$181.74 for the 2021-22 financial year.

For the removal of native trees, for example, by a natural person an infringement notice may include a fine of 5 x \$181.74 or \$908.70.

This is less than it would cost to hire a tree faller with a chainsaw to do the work in one day.

DELWP’s Compliance and Enforcement strategy December 2017 in noted. It covers a range of possible actions to achieve compliance in accordance with Native Vegetation removal regulations. These may come into play with largescale destruction activities, but it is not stopping the death by a thousand cuts being experienced at the local level where DELWP is largely invisible.

The fines for non-compliant vegetation removal need to be significantly increased.

F. Who and what is protecting Victoria’s environment?

DELWP has been removed from commenting on small scale vegetation removal applications lodged with Local Government. The Native Vegetation Information Management (NVIM) system (NVIM) is an online tool to access native vegetation information. It provides maps, and charts to create reports for assessing vegetation removal. Removal that does not fall into the intermediate or detailed assessment pathways is deemed a Basic Assessment Pathway.

The *Guidelines for the removal, destruction or lopping of native vegetation* are complicated and lay people and planners alike have difficulty in understanding the scoring let alone having confidence in the mapped layers.

Where vegetation removal is in the Basic Assessment Pathway there are limited grounds to demand its protection against land developer rights to construct dwellings and other developments.

The State has left Responsible Authorities to sweat the small stuff.

G. Time

If a tree stops a highway, then so it should. Too often the politicians buckle under development pressure, lobbying by developers and opportunism.

Once a large old tree is felled it cannot be replaced in our lifetimes. How do you replace 80+ year-old tree with tube stock? How does wildlife survive while they wait for plants to grow, to flower, to provide nectar or seed, ground litter and habitat?

We must stop the destruction in the first place. Until trees have a high value placed on them and their destruction incurs large fines, nothing will change.

We are losing our biodiversity at an alarming rate. It is well documented. Yet our regulatory framework is not adequate to stop wanton destruction of our precious natural systems. More must be done now.

H. Why protect remaining biodiversity and vegetation in Victoria?

Climate change will require communities to urgently and immediately address urban heating. Infrastructure providers must adapt to climate change to manage energy, water, transport and services.

Climate change is forcing farmers and horticulturists to reassess their production assumptions and locations. In tandem are the risks posed by extreme weather events from excessive rainfall to drought.

We are advised that extreme weather events will get worse and global temperatures will continue to rise. Recent media reports have highlighted increasing temperatures being reported in urban areas especially poorer working-class areas. No leafy suburbs for these people, just wall to wall black roofs and little to no space to plant a canopy tree.

It needs to change.

Yet nature has the solutions. We must protect it, enhance it and harness it's power to benefit us all.

I. Solutions:

1. Fines for illegal vegetation removal at the local level (small scale removal without a permit) should be increased by a factor of at least 10. Large fines will quickly filter through the community and illegal vegetation removal will slow dramatically.
2. Councils needs more enforcement and other supports from DELWP particularly at a local level. DELWP's documents indicate that they are collaborators with local government on these matters. However, from experience they are not present at a local level.
3. Bushfire defendable space exemptions should be reviewed as they are leading to significant vegetation removal. Some lots should not be built on and compensation should be considered for some areas. No amount of defendable space will protect some rural towns if they are under attack from a serious bushfire.
4. "Greenie" insults need to be addressed. Open hostility is experienced by residents who "dob-in" the destruction of vegetation by their neighbours. From experience most people do not want a fight with their neighbours and they say nothing to avoid damaging neighbour disputes.

Those who care about trees and native vegetation and report non-compliance can be savagely attacked by developers and local lot owners alike. DELWP's *Compliance and enforcement strategy* speaks highly of its role in community education about the value of native vegetation but they are rarely visible in practice. The State Government must act to highlight the value of native vegetation and that its destruction is illegal and carries fines. They should support a "vegetation watch" program similar to "neighbourhood watch" and back it in.

5. Arborists. This mob need overhauling with higher standards. Their reports are paid for by the client and they say what the client wants them to say. Their reports and their credibility amongst planners is low. They should be speaking for the vegetation not the developers.
6. It is common in urban areas and new housing estates for all trees to be removed to create a brown field site. Trees get in the way of slabs, servicing and infrastructure. Best start with a blank canvas. Regulations need to ensure the retention of existing vegetation. Subdivisions should be built around it.
7. Offset sites must be include new plantings and revegetation. Securing existing vegetated sites ensures a net loss of vegetation.

J. Attachments:

1. DELWP's Compliance and Enforcement strategy, Native Regulation removal regulations December 2017.
2. DELWP's Guidelines for the-removal, destruction or lopping of native vegetation, December 2017.