

**Submission
No 206**

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

Organisation: Cardinia Shire Council

Date Received: 4 February 2022



4 February 2022

Parliament of Victoria

Via online submission portal at: [Environment and Planning \(parliament.vic.gov.au\)](https://environmentandplanning.parliament.vic.gov.au)

Dear Sir/Madam,

Re: Inquiry into the protections within the Victorian Planning Framework

This is the Cardinia Shire Council's feedback to *the inquiry into the protections within the Victorian Planning Framework*. This submission has been prepared by Council officers and has not been adopted by Council given the timeframes associated with this consultation, and it's timing over the Christmas/ New Year break, when Council does not sit.

<u>Terms of Reference</u>	
1. the high cost of housing, including but not limited to:	
<ul style="list-style-type: none"> provision of social housing 	<ul style="list-style-type: none"> The provision of social housing is a complex issue, that needs to be addressed through a range of approaches. Council supports and advocates for the delivery of affordable housing, but this is influenced by many factors outside the planning system. One option could be for the State Government to collect a levy on new developments, similar to Public Open Space contribution. This could be used for a range of projects, and or upgrades and refurbishments within the area where the development has occurred. This should be consistent with a Social and Affordable Housing Strategy that has been developed for each Council.
<ul style="list-style-type: none"> access for first home buyers 	<ul style="list-style-type: none"> This is a complex issue that Council considers cannot be resolved through changes to just the planning system and needs to be considered alongside a raft of other considerations.
<ul style="list-style-type: none"> the cost of rental accommodation 	<ul style="list-style-type: none"> This falls outside the considerations of planning.
<ul style="list-style-type: none"> population policy, state and local 	<ul style="list-style-type: none"> Council considers that population policy is a matter for the State and Federal governments, but that Council needs to be

	<p>involved in the delivery of urban development to house, employ and service the population.</p> <ul style="list-style-type: none"> • There needs to be a consistent approach in delivering housing, particularly in areas where new development is well serviced, with good access to public transport. This will then help protect the Urban Growth Boundary (UGB) in its currently location (discussed in further detail under Section 2). • Housing Strategies for each Council are delivered in isolation, with no consideration for the overall delivery of housing and often are not based on housing projections and environmental constraints but political decisions instead. Many of the issues in covered in this Terms of Reference will not be able to be resolved if this continues to be the case.
<ul style="list-style-type: none"> • factors encouraging housing as an investment vehicle 	<ul style="list-style-type: none"> • This is a complex issue that Council considers cannot be resolved through changes to just the planning system and needs to be considered alongside a raft of other considerations.
<ul style="list-style-type: none"> • mandatory affordable housing in new housing developments 	<ul style="list-style-type: none"> • Developers can deliver affordable housing, but this needs to be managed appropriately to ensure that it meets the needs of those who require it and that it is fairly allocated. There also needs to be a clear definition of what affordable housing means.
<p>2. environmental sustainability and vegetation protection: Anita</p>	<p>ESD</p> <ul style="list-style-type: none"> • Council considers that it would be of benefit to link environmental sustainability in the Planning Scheme back to the UN sustainable development goals to provide consistency across all planning schemes. • Stronger requirements for Environmentally Sustainable Development (such as policy in the Planning Scheme) has been left with Councils to implement which takes time and opportunities and efficiencies have been lost. It also means that less resourced Councils generally haven't undertaken this work. • Sustainable Subdivisions Framework (based on ESD) used to guide design in Growth Areas. Many details within this Framework i.e. light colored and reflective roofing materials which reflects, rather than absorbs, sunlight which reduces urban heat island effect in dense developments, would be worthy of inclusion across all subdivisions. <p>Vegetation Protection</p> <ul style="list-style-type: none"> • Council considers that availability of funding and support for the preparation of an Urban Forest Strategy would have significant environmental benefits in supporting tree coverage and the associated benefits that stem from this such as cooler urban environments and increased habitat. • The prioritisation of bushfire risk over all other consideration makes vegetation and habitat protection more complicated and problematic. Whilst Council believes that the State Government's position on the prioritisation of bushfire risk over all other considerations is correct, it is difficult to

	<p>improve and enhance vegetation particularly in a coordinator manner through planning controls.</p> <ul style="list-style-type: none">• Rapid untailed approaches by local and State government emergency management/fire authorities are undermining efforts for vegetation protection. There is often a lack of understanding between teams in Council focused on protecting vegetation and teams required to manage bushfire risk.• We would strongly support integration of <i>Flora and Fauna Guarantee (FFG) Act 1988</i> with the <i>Planning and Environment Act (P&E Act) 1987</i>. FFG Act provides strong protections for numerous threatened species but does not currently apply on private land. Native fauna does not recognize cadastral boundaries, they move through connected areas of suitable habitat. The P&E Act has multiple references to biodiversity, but it relies on council interpretation of this value. The FFG Act is already prescriptive and applicable across the state, it would be logical for decision makers to rely on values identified in the FFG Act when determining which impacts are acceptable on private land.• Currently, there is a disconnect between P&E Act and the federal <i>Environmental Protection and Biodiversity Conservation (EPBC) Act 1999</i>. The requirements under the EPBC Act are dealt with after then planning process, and often results in poor outcomes and increased costs to proponents and applicants as they then need to amend their application to address EPBC Act requirements.• Biodiversity sensitive urban design particularly in growth areas is a concept supported by Council. This involves integrating species into development and health benefits of nature/ biodiversity and 'everyday nature'. It also includes aspects such as wildlife sensitive lighting. Planning policy is currently limited in this space. <p><u>Planning application process</u></p> <ul style="list-style-type: none">• Active compliance investigation referenced within statutory timeframe assessment periods for planning applications. Evidence of illegal removal indefinitely stops the 60-day period until resolved; and• Greater ability to seek or uphold, amendments/requests for further information/refusals through the decision framework of the relevant clauses when considering applications if found guilty of illegal vegetation removal. <p><u>Notice of Intention to enter land – Powers of Entry</u></p> <ul style="list-style-type: none">• Currently difficult to investigate vegetation removal, particularly on vacant land. In this instance, two clear days' notice must be provided, along with seven clear business days for postage to the owner's address. Council Officers as a result cannot access the land in less than 13 days to investigate. With size of land parcels, sometimes no evidence can be obtained from roadside.
--	--

	<ul style="list-style-type: none"> • Powers of Entry could be amended for vacant land to allow effective investigation, or in circumstances where NOI cannot be delivered to a person older than 16 years of age at the property.
<p>3. delivering certainty and fairness in planning decisions for communities, including but not limited to:</p>	
<ul style="list-style-type: none"> • mandatory height limits and minimum apartment sizes 	<ul style="list-style-type: none"> • Cardinia Shire are of the opinion that mandatory height controls have been inconsistently applied across Melbourne. • When it comes to mandatory height limits local Council's need to consider and weigh up whether it is best to have community certainty in applying mandatory controls or have greater opportunities when it comes to design outcomes in mandatory controls are not applied. This is a constant debate. • Cardinia believe that minimum apartment sizes should be required. • Minimum height limits and preferred limits have not been supported by Planning Panels Victoria or DELWP even when Council has put in a lot of work to justify the heights.
<ul style="list-style-type: none"> • protecting Green Wedges and the urban growth boundary 	<ul style="list-style-type: none"> • The urban growth boundary should be locked down and the Minister for Planning should not be rezoning single parcels of land to allow for urban development, especially not as a Section 20(4) amendment. • This would reduce constant land speculation and pressure on land immediately outside the UGB • Council receives enquiries at the rate of 1-2 per week about rezoning land outside of or moving the UGB. This has impacts on resourcing and often will result in multiple phone calls, meetings and correspondence being sent, for a request that is not supported by Council or State Government. • In some instances, there is not a blanket approach to zoning, there are several aspects that need to be considered and acknowledged such as the different land forms, demographics and issues that vary between Councils. • It is imperative that appropriate housing is delivered within the existing urban area to ensure that the UGB is not moved to address housing supply issues. • In Council's experience, on the approach to an election, the potential change in government creates uncertainty, speculation and angst in the community, in relation to rezoning of green wedge land.
<ul style="list-style-type: none"> • community concerns about VCAT appeal processes 	<ul style="list-style-type: none"> • In relation to VCAT applications within Cardinia Shire, it is considered that local policy is generally supported by VCAT in decision making • The number of appeals each year that Cardinia Shire deals with is not large, currently between 10 and 15 and so VCAT does not play a large role in the decision-making process. As a

	<p>result, we do not generally get many complaints about VCAT decisions and objectors don't often become parties to VCAT.</p> <ul style="list-style-type: none"> • VCAT procedures and processes are complicated and often hard for the community to understand, the hearing process is very formal, much more formal than the Planning Panels process, and not as accommodating for lay persons. • Accessibility could be improved in order to be open and transparent. For example: VCAT has become less accessible in online hearings given participants have to be ready to attend the hearing from the beginning and cannot leave as it is unlikely the member will them back into the virtual meeting. This does not allow for technical issues, or individuals who simply do not have the time to be present from start to end of the hearing. Previous to online hearings, individuals were able to enter the VCAT hearing room at any time.
<ul style="list-style-type: none"> • protecting third party appeal rights 	<ul style="list-style-type: none"> • Third party appeal rights should vary depending on what kind of application it is, and Council supports the current arrangements. For example, we support maintaining applications where a Precinct Structure Plan (PSP) has been approved as being exempt from third party appeal rights. • The purpose of PSPs is to be able to deliver new development in a timely, and efficient manner. The PSP goes through a public exhibition process as part of the planning scheme amendment process to incorporate it into the relevant planning scheme. Including third party appeal rights would remove efficiencies that are part of the purpose of the PSP process. • Social and affordable housing becomes very hard to deliver when the community becomes involved and should be exempt from third party appeal rights.
<ul style="list-style-type: none"> • the role of Ministerial call-ins 	<ul style="list-style-type: none"> • Cardinia Shire has had concerns in the past with Ministerial call-ins. For example, both Kaufland and Masters have proven to be bad decisions, with a lot of time and resources spent by Councils trying to highlight that this particular project is at odds with the Planning Scheme. • Council believes that Ministerial call-ins are inconsistent, that Council's need to be involved at an early stage and have the opportunity to obtain expert advice and that the costs involved should not be put on Council. Council spent a significant amount of money defending its position to not support a proposed Kaufland site, only to have them pull out of the proposal.
<p>4. protecting heritage in Victoria, including but not limited to:</p>	
<ul style="list-style-type: none"> • the adequacy of current criteria and processes for heritage protection 	<ul style="list-style-type: none"> • Cardinia Shire believe that heritage protection is not adequate. There is a lack of tools within the planning scheme that to support heritage protection. Council has to go through local laws to obtain some protection for heritage.

<ul style="list-style-type: none"> possible federal involvement in heritage protection 	<ul style="list-style-type: none"> Cardinia Shire requires clarification as whether this is this for local or State heritage?
<ul style="list-style-type: none"> separating heritage protection from the planning administration 	<ul style="list-style-type: none"> Cardinia Shire would welcome heritage protection being separated from the Planning and Environment Act to ensure heritage is adequately protected as the P&E Act currently does not adequately provide mechanisms to protect heritage.
<ul style="list-style-type: none"> establishing a heritage tribunal to hear heritage appeals 	<ul style="list-style-type: none"> Cardinia Shire are supportive of establishing a heritage tribunal to hear heritage appeals; however, require clarification on whether this would take the place of VCAT in certain cases. It is Council's opinion that people hearing heritage cases need to be specialists in this field.
<ul style="list-style-type: none"> the appointment of independent local and state heritage advisers 	<ul style="list-style-type: none"> Cardinia Shire Council are very supportive of the appointment of independent local and State heritage advisors. Although Council's have a responsibility under the act to protect heritage, some local Council's cannot always afford to do so. The State Government used to provide funding to local Councils for heritage advisors and this is something Council would welcome and believe would be beneficial to the protection of heritage within the Shire.
<ul style="list-style-type: none"> the role of Councils in heritage protection 	<ul style="list-style-type: none"> In the case of obtaining interim controls for a site believed to be of heritage significance, the heritage site must be under direct threat meaning that it is basically about to be demolished. Given this and the amount of work required to obtain interim controls it is usually too late, and sites are at risk of being lost. In order to be able to adequately protect heritage Council's need to be appropriately resourced. Having a dedicated internal resource would ensure heritage was appropriately monitored and managed.
<ul style="list-style-type: none"> penalties for illegal demolitions and tree removals 	<ul style="list-style-type: none"> Currently, there is limited action that Council can undertake in relation to demolition by neglect of heritage buildings and vegetation although it is noted that recent changes to the <i>Planning and Environment Act</i> in 2021 allow for a mechanism to deal with this under Section 6B. Council has sort further information from DELWP to understand what this mechanism will be. Penalties for illegal demolition and tree removal need to be increased as they are currently not a deterrent, and often the site value increase is greater than the penalty for the removal. In Council's experience, when dealing with illegal vegetation removal through the Magistrates Court, it appears that Magistrate's often lack the understanding of the implications of vegetation on the wider environment or appreciate the varying types of vegetation that can occur. Vegetation is valued based on a computer model developed through DEWLP. It is Council's opinion that it this model doesn't take in to account the habitat value that they provide. It also often doesn't reflect the situation on the ground.

	<p>Habitat value is an important factor that needs to be considered.</p> <ul style="list-style-type: none"> Lack of protection for specific species that have specific habitat requirement is an ongoing concern for Council. For example, Southern Brown Bandicoot and Growling Grass Frogs are often found in non-indigenous species, and in some cases even in weeds. Growling Grass Frogs are also often found in manmade dams. These types of environments are not protected through the planning scheme. It is noted that in some cases these are protected through the EPBC and FFG Act, but as previously discussed, these Acts do not integrate well with the P&E Act. Currently the fines for illegal removal of vegetation carry a penalty of 5 penalty units for individuals, and 10 for companies. It is considered that this is insufficient financial penalty for company and individuals, and it is suggested that the total penalty limit from be raised with the Authorised Officer having an ability to affect a sliding a scale of severity/importance. This could occur through a matrix-risk based approach. Four level sliding scale for penalty units reconciliation (examples of what might qualify for each level) <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="text-align: left;">Level of impact</th> <th style="text-align: center;">Individual (unit price)</th> <th style="text-align: center;">Company</th> </tr> </thead> <tbody> <tr> <td>1 (one or few small trees)</td> <td style="text-align: center;">5 - \$909.00</td> <td style="text-align: center;">10 - \$1818.00</td> </tr> <tr> <td>2 (one large tree / 3-4 small trees)</td> <td style="text-align: center;">10 - \$1818.00</td> <td style="text-align: center;">20 - \$3636.00</td> </tr> <tr> <td>3 (2 large trees / 5-6 small trees)</td> <td style="text-align: center;">15 - \$2727.00</td> <td style="text-align: center;">30 - \$5454.00</td> </tr> <tr> <td>4 (3+ large trees / 6+ small trees)</td> <td style="text-align: center;">20 - \$3636.00</td> <td style="text-align: center;">40 - \$7272.00</td> </tr> </tbody> </table> <p>Decision framework - Individual example</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th></th> <th style="text-align: center;">First time</th> <th style="text-align: center;">Second time</th> <th style="text-align: center;">Third time</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">Warning /5 units</td> <td style="text-align: center;">5/10 units</td> <td style="text-align: center;">15</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5/10 units</td> <td style="text-align: center;">15</td> <td style="text-align: center;">20</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">10/15 units</td> <td style="text-align: center;">20</td> <td style="text-align: center;">20/Prosecution</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">15/20 units</td> <td style="text-align: center;">20/Prosecution</td> <td style="text-align: center;">Prosecution</td> </tr> </tbody> </table> <p>Decision framework for penalties should also consider factors such as:</p> <ul style="list-style-type: none"> Prior knowledge of regulations Prior infringements (cumulative consideration into sliding scale) Prior evidence of illegal clearing that wasn't actioned Prior advice from Council (verbal or written) Level of benefit obtained 	Level of impact	Individual (unit price)	Company	1 (one or few small trees)	5 - \$909.00	10 - \$1818.00	2 (one large tree / 3-4 small trees)	10 - \$1818.00	20 - \$3636.00	3 (2 large trees / 5-6 small trees)	15 - \$2727.00	30 - \$5454.00	4 (3+ large trees / 6+ small trees)	20 - \$3636.00	40 - \$7272.00		First time	Second time	Third time	1	Warning /5 units	5/10 units	15	2	5/10 units	15	20	3	10/15 units	20	20/Prosecution	4	15/20 units	20/Prosecution	Prosecution
Level of impact	Individual (unit price)	Company																																		
1 (one or few small trees)	5 - \$909.00	10 - \$1818.00																																		
2 (one large tree / 3-4 small trees)	10 - \$1818.00	20 - \$3636.00																																		
3 (2 large trees / 5-6 small trees)	15 - \$2727.00	30 - \$5454.00																																		
4 (3+ large trees / 6+ small trees)	20 - \$3636.00	40 - \$7272.00																																		
	First time	Second time	Third time																																	
1	Warning /5 units	5/10 units	15																																	
2	5/10 units	15	20																																	
3	10/15 units	20	20/Prosecution																																	
4	15/20 units	20/Prosecution	Prosecution																																	

	<ul style="list-style-type: none"> Quality of vegetation (established through on-ground investigation and Native Vegetation Information Management (NVIM) tool)
<p>5. ensuring residential zones are delivering the type of housing that communities want</p>	<ul style="list-style-type: none"> In Council’s experience, communities don’t understand the raft of considerations that Council must undertake in strategic planning and permit assessments. If we are to address housing affordability, ensuring residential zones are delivering the type of housing that communities want will not allow this to be adequately addressed. There are enough residential zones. However, a practice note that describes which zone is used for what types of development to help the community understand what will be delivered within each zone would be helpful. It is also important that Council’s remain consistent, transparent and fair in the application of zones to ensure that they are applied in a suitable manner.
<p>6. any other matter the Committee considers relevant</p>	<ul style="list-style-type: none"> Council has several matters that it would also like to bring to the attention of the Committee for consideration: <ul style="list-style-type: none"> Recently Council has noticed an ever-increasing number of State Government consultations. These are undertaken by various departments in DELWP. Whilst noting that it is vital that Council is consulted on changes to planning legislation, policy and other matters, and would like to be able to provide a response to these Council notes the following concerns: <ul style="list-style-type: none"> The timeframes allocated are generally 4 to 8 weeks (although as short as 2 weeks has been noted in the past). This does not give Council officers time to review the documentation, prepare a submission, and present to Senior Leadership and Councillors for consideration. Extensions of time when requested are only ever minimal, if granted at all. There is no coordination of the public exhibition of different projects, and so sometimes Council has to respond to several at once, within a short timeframe. This has significant impacts on resources as Council has our own workplan to respond to, with Council priorities to be met and other amendments and projects with timeframes and deadlines to be met. Often, after Council has put considerable time and effort in responding to a consultation, nothing further is done by State Government in response, and so it feels like a huge waste of Council time and resources. Quality urban design outcomes for all types of development are important to ensure that places are liveable, vibrant and enjoyable. Some concerns regarding this include: <ul style="list-style-type: none"> Quality of design – a poor design outcome is often justified as ‘affordable’.

	<ul style="list-style-type: none">• Often this results in ‘cookie cutter’ designs as this is the cheapest easiest option when in the long run maintenance cost is much higher.• Limited emphasis on common property/ public realm in new developments and therefore they often have poor landscaping, materials, and finishes. There is also often no focus on pedestrian environment, only vehicle access.• State Urban design guidelines only really impact on larger development and means that smaller developments often have poorer design outcomes.
--	--

Should you have any questions or queries in relation to the above, please contact [REDACTED]
(Coordinator Planning Strategy & Urban Design) [REDACTED]

Yours faithfully

[REDACTED]

Luke Connell
Manager Planning & Design