

**Submission
No 37**

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

Organisation: Friends of Drouin's Trees

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Submission to the enquiry into Victorian Government Planning and Environment Act

Due date Jan 28th 2022

Background:

Friends of Drouin's Trees is a community group advocating for protection of the natural environment within our town Drouin and the peri urban Baw Baw Shire. The rapid and unprecedented rate of residential growth and development in Drouin and Warragul, with developers aiming for maximum yield under an inadequate PSP (Precinct Structure Plan) was and is putting strain on the under resourced and under staffed Shire.

We were the first Shire to have a PSP 'pushed' on it by the State Government. It was hurried through with no robust environmental or heritage assessment of the proposed PSP areas and no advice or recommendation in ways for the council to properly protect these assets with overlays or planning schemes. Other areas of Victoria have been able to organize these in advance of their PSPs. As a result, the Community, both new and old residents, have no say and are forced to watch as valuable natural environment and heritage is lost for cookie cutter, flat slab housing.

We speak for Drouin, but Warragul and some of the smaller towns are also being affected. This most beautiful area of Victoria, home of the once Great Gippsland Forest is losing much more than it is gaining. People come to live here because of the natural beauty of the region, but the very act of thousands of people coming means loss of the things they are coming for, and puts enormous strain on the Shire and its residents with the limited small-town infrastructure.

UNESCO reiterates a transformational theme proposed by United Nations Development Program that we need to put Nature at the heart of development, particularly when developing peri urban areas such as Baw Baw Shire. Such an approach would eliminate some of the problems mentioned.

"For cities to be liveable and sustainable into the future there is a need to maintain the natural resource base and the ecosystem services in the peri-urban areas surrounding cities."

<https://en.unesco.org/events/peri-urban-landscapes-water-food-and-environmental-security>

Areas being considered:

1. The high cost of housing in the context of the planning system

Low-cost housing is often cheap housing. Bulk builders build to a template with add-ons. The bulk companies have no interest in the town or the community and take profit out of the town. Their aim is maximum house on the site with no space for a tree or even green grass. Just cookie cutter houses with little aesthetic value. Any energy rating is gained through the concrete slab and insulation NOT from appropriate north-south alignment or other environmentally sustainable design principles.

The real issue is NOT about cheap housing for the masses but good design with long-term sustainable outcomes, positive community benefits and environmentally good design which in turn reaps health benefits. This is not just about affordable housing but about environmental quality housing which we cannot afford to not be build. If you build a ghetto, then that is what it will always be... a ghetto.

The cost of housing seems from a developer's point of view, to be tied to retaining walls in order to create flat building pads for the bulk builders. In the space of the last ten years the natural undulating hills of our two main towns have become terraced Sri Lankan tea fields. Rolling hills are now an engineered layer of dark roof tops. The words ugly, unsightly, and over engineered are used by the community. About the only plus is that if you stand on the ground on the top block, you can clear the leaves out of the gutters of the house below!!

The consequences are subterranean houses with NO natural light at all, or houses built at the top of a very steep driveway, multiple cars parked on street reserve, loss of street trees, roads where cars cannot pass one another unless cars park on the nature strip all further exacerbating no shade or canopy cover form trees and escalating the urban heat island effect.

The Victorian government has conducted several inquiries in recent times relevant to this Inquiry, including the Inquiry onto Tackling Climate Change in Victorian Communities. It included amongst its 72 recommendations, Recommendation 46: That the Victorian Government amend the State Planning Policy Framework to include a single Environmentally Sustainable Design policy

Affordable housing and housing for first home buyers should not be just "cheap" housing. All housing should create health and environmental benefits as well as being of benefit to the economy.

This United Nation New Urban Agenda cautions however, that linking environment and development in planning is essential for a sustainable result beyond "urban boundaries" such as Baw Baw Shire and other peri urban and more rural settings.

Environmentally sustainable and resilient. Given cities' demographic trends and their central role in the global economy, in the mitigation and adaptation efforts related to climate change, and in the use of resources and ecosystems, the way they are planned, financed, developed, built, governed and managed has a direct impact on sustainability and resilience well beyond urban boundaries.

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_256.pdf

2. Environmental sustainability and vegetation protection within the planning framework:

Since large scale residential development began in Drouin, we have witnessed loss after loss of:

- a. roadside tree corridors,
- b. road reserve vegetation,
- c. both stand alone and groups of remnant trees on development land
- d. very old planted English trees on development land

Future tree loss is also guaranteed because new developments are built right under old, huge trees. As soon as the first wind blows council will be forced to remove the trees because of safety concerns.

Despite attending VCAT to argue this, without sufficient, strong overlays and laws, our planners are unable to argue for proper setback between new house lots and significant trees.

In damp, riparian swampy forest (Gippsland Plain bioregion) or sloping undulating land (Strzelecki bioregion) which comprise the forest areas of Drouin, a tree is considered large if it is greater than 0.7m or 0.9m DBH. This equates to 2.19=2.82m girth. Trees are considered very large if they exceed 1.05m DBH (3.3m girth).

The EVC region trees of Drouin (Gippsland Plain and Strzelecki bioregions) are predominantly Mountain Grey Gums, Strzeleckii, Messmate and Peppermint Gums. A eucalyptus tree is deemed 'remnant' if its trunk girth exceeds 3.0m. In the town areas of Drouin 120 gums on public land had trunk girths of greater than 3.0m, twenty-two of these had girths greater than 6.0m. ...By any measure these are giants. There are many giants on private land being removed by developers. Baw Baw Shire has only just formed Local Laws to protect significant trees (researched and written by our group) on public land. But the local law is weak and penalties a token.

There is NO protection for significant trees on private land whether planted or remnant.

The Vegetation Protection Act of Avoid, Minimise and Offset is simply a licence for developers to plant somewhere else for the trees they remove to maximise their yield. It is our experience that developers do not consider trees an asset, but an encumbrance and they can always find an arborist to support their position. Our Shire does not have the luxury of a full-time staff arborist to check on plans or do site visits on development land and, as said previously none of this was done ahead of time when the PSPs were written.

The second ploy of developers is to remove remnant trees BEFORE submitting plans; often on a Saturday or public holiday when there are no compliance staff working. The community are outraged but powerless. The compliance staff have little grounds to prosecute, and the fines are weak.

And how does offsetting in another district account for the loss of trees in Drouin even if the loss was unavoidable? We need the canopy cover, the habitat and values in our town! We need ONSETTING.

Even VCAT rulings are not enough to prevent some of the developers in our town from illegal tree removal and paying the fines which are weak. Our Shire and council are 'Too nice' or perhaps 'weak' and developers know it. The turnover in the planning department is high, mistakes are made and often it would seem because of developers who intimidate young planners and force premature and ill-thought-out decisions always in favour of yield and not nature, trees, heritage or community asset.

Is our very special town and district to suffer the same fate of Pakenham becoming just another cookie cutter, hard surfaced and concrete housing development with no heart and soul, no shade, no aesthetic beauty, no buffers or tree corridors, no wildlife and spaces for informal nature-based recreation other than formal playgrounds?

The Baw Baw Shire Community Vision developed after large community engagement and adopted in October 2021 aspires for *sustainable towns and villages benefiting from our beautiful rural and natural environment*"; delivered by "*balancing natural and built environments that protect nature; contribute to a cleaner, healthier environment; and ensuring liveable, productive and inspiring landscapes*".

As part of the future goals, statements such as these are used in the Vision:

"Consistent and clear protection of nature across our built environments, from tree coverage on our streets, to the natural landscapes and waterways through our towns and villages."

"Robust protection policies and overlays and planning schemes that look after the health of our environment."

But motherhood statements and even the vision of a whole community are NOT enough in the face of absent overlays and policies which can be challenged at VCAT. There is a growing awareness within the community that nature is not finite and we desperately need politicians and parties with a will and courage to protect what remains in the metropolitan areas and the growth areas of Victoria.

Recently The Chain of Ponds Collaboration (also known as Moonee Ponds Creek Catchment Collaboration Group) won an expensive, historic agreement to progressively return the creek into an iconic waterway, providing social and environmental benefits to the community.

The Moonee Ponds Creek catchment is one of Melbourne's most urbanised and modified creek systems. Historically the creek was seen solely as a drain or water conduit, leading to inappropriate development, neglect and degradation. It is a prime example of what happens when development trumps Nature.

A suggestion for a change in wording to reflect a different approach.

DELWP submitted to The Inquiry into Ecosystem Decline in Victoria tabled in December 2021 that "some legislative provisions are overly complex, overlapping, or outdated" and that native vegetation clearing regulations reviewed in 2017 led to changes that aimed to increase protection of native vegetation, enhance operation of the guidelines, and increase transparency, but that despite the changes native vegetation coverage across Victoria continued to decline.

Significantly, the Avoid and Minimise wording and approach was not changed by the Inquiry. Both have retained the same clumsy, upside-down, out-dated proviso that they "Must provide appropriate evidence to show that no options exist to avoid native vegetation removal that will not undermine the objectives of the proposed use or development."

This awkward wording provides a loophole for people intent on removing trees and vegetation that is in the way of making a profit. It does not reflect "a nature-positive economic model to help protect, restore and sustainably manage nature for people, planet and prosperity." It reflects the opposite. This wording and approach must change if the government is serious about reversing the trend of ecosystem decline. The objectives of any proposed use or development need to carefully demonstrate that Nature is at the heart of the proposal and not the other way around. An example might be "All care has been taken to demonstrate and design a development proposal to maximise care of environmental assets."

Or the wording could be reversed to become “that no options exist to avoid native vegetation removal that will not undermine the objectives of environmental and biodiversity protection and care” which is equally clumsy. However, it would highlight the fact that the environment/native vegetation is not subservient to “development” and it would be part of an improved process of putting “Nature at the heart of development”.

3. Delivering certainty and fairness in planning decisions for communities

There is no certainty or fairness in planning decisions when the community is removed from decision making and excluded from being able to be informed. The PSPs of Drouin and Warragul mean that neighbours and community are NOT allowed to have a say. The decisions and outcomes are left entirely with the planners of the Shire. In Drouin and Warragul multiple mistakes have occurred. Here are few examples:

- a. Linear trail and waterway marked clearly to be protected and implemented in the PSP area was allowed to be built over and Melbourne Water gave permission. Pity-help the people who live in these houses which will be inundated with water every year. Bad luck for the invertebrates and wildlife reliant on the waterway. And bad luck for the connecting corridor which the community could have used!
- b. Permission given for house lots to be built 10m from significant tree corridor where the trees are 35 m high. Pity-help the residents who will live so close to these trees and ultimately bad luck for the tree corridor and the wildlife because all the trees will one day be removed for safety reasons!
- c. Loss of 27 Strzelecki Gums (endangered and vulnerable) along length of road destined to be an access road only. DEWLP signed off on this. How many vulnerable trees need to be lost before DEWELP is concerned?



BEFORE



AFTER



- d. Placement of connecting road shown on the PSP meant loss of a heritage avenue of trees, which in turn meant loss of high-quality remnant eucalypts on the gateway road for large road upgrade and roundabout. Had the connecting road been moved 50m further north no significant trees would have been lost at all. Despite community deputation and meetings with the developer and the Shire the community lost a heritage site, heritage planted tree avenue and roadside remnant corridor.

And the greatest frustration for the community is that all the players blame someone else.

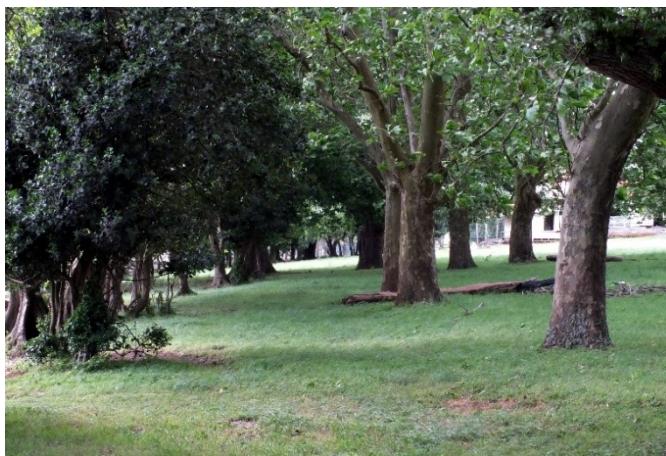
- a. There is no cooperation between developers and the Shire.; each blame the other
- b. Rural Roads Victoria do what they want and do not listen to the shire nor the community. This organization is very inflexible, and it would seem not interested in natural environment (multiple examples).
- c. Warragul and Drouin are divided with two different catchment and water management authorities both with different rules. One says 30m either side of a creek should be preserved the other 20m or make it up. A recent VCAT hearing which we appeared at highlighted that Melbourne Water (Drouin area) are interested in water flow but NOT natural environment and biodiversity values.
- d. Similarly, DEWLP seem to have become weak in their responses to developers. These referral authorities sit in a state of authority above the Shire and what they say really matters in terms of developments. If they are weak then the developers get away with what achieves the best yield and profit for themselves. And the natural environment loses out yet again, which means that the community loses.
- e. VCAT does not seem to be about the community being heard. It has become like a court of law with skilful lawyers and experts being paid to win because profit is at stake. Our experience is that witnesses for developers ‘bend’ their testimony in favour of what is wanted by the developer. Community groups do not have the financial resources to pay for expert witnesses.

The United Nations Development Program has a philosophy of ‘Putting Nature at the Heart of Sustainable Development. “We must design “the future we want” through an all-of-society approach focused on regenerative and nature-positive economic models that help protect, restore and sustainably manage nature for people, planet and prosperity”.

<https://sgp.undp.org/resources-155/our-stories/634-nature-for-life-putting-nature-at-the-heart-of-sustainable-development-and-green-recovery.html>

Taking such an approach would provide an underlying transformational philosophy and plan of action for the future development of our state and Shire. Baw Baw Shire would retain its natural assets that provide benefits both within the Shire and to the State of Victoria instead of their being relegated to history

4. Protecting heritage in Victoria.



In 2011 Baw Baw Shire undertook a limited heritage study of the shire. In Drouin there are a total of 30 buildings, houses or trees which were heritage listed. In Warragul there are 100. This imbalance is always the inequity in our Shire!!! The number of heritage-listed places is NOT reflective of the number of important heritage sites but rather a reflection of the amount of money available for the study., and the paucity of the consultation with the community. As the PSPs for the two towns were introduced in 2014 NO heritage studies were conducted in the PSP future development land areas. Consequently, several houses and treed areas of significance were never identified.

In 2018 the Drouin community raised the awareness of this with one developer and the shire, over one of these sites and the shire responded with applying for an interim overlay. Unfortunately, just before the overlay came in to affect the developer removed the avenue of heritage trees (:(see above). The council proceeded to a permanent overlay but with the most important trees removed and the house now left to deteriorate further, a Victorian Planning Panel ruling advised the shire to abandon the permanent overlay. The consequences being the removal of the gateway of trees as mentioned before. (As a comment developers employ the ‘experts’ with many wins to their credit and lawyers who are articulate and ruthless. Baw Baw Shire is not wealthy and the experts employed cannot compete with the expert experts! It is not about who has right on their side but who pays the most.)

One other house in Drouin was then identified as worthy of heritage retention and a consultant employed to write a report. Whilst the council supported this the neighbouring planner for another developer objected on the basis of the process and the house NOT having been identified before the PSP came into being! Fortunately, this Planning Panel recommended that the house proceed to heritage overlay and the Council also agreed.

But this process of one heritage application at a time, is a slow and expensive way for our Shire to now proceed in playing catch up for the places not identified ahead of the PSP forced on it by the State government. Likewise, there are places in Warragul that have been and will be lost without community action.

Another way in which developers in Baw Baw achieve their ends is to let houses and buildings run down. Demolition by neglect! One group of heritage listed houses was lost under this and the land continues to be an empty block and still for sale.

Baw Baw Shire is 25 years behind other shires and councils and without financial support will continue to lose the heritage places which tell the stories of the towns which give meaning to those coming to live in our towns. The stories of towns are the stories of its people and help people find meaning in these times of uncertainty and disconnection.

The questions remain even when a house does get heritage listed, what is appropriate in terms of curtilage particularly under PSP rules where blocks sizes are so small? How much is enough buffer and how does council then protect the curtilage when the land is destined for high density dwellings? How can developers be given incentive to preserve history and culture?

In terms of tree removals Baw Baw shire has no tree controls for planted trees. Its Significant Tree Register only lists significant trees on public land NOT private or development land. Many councillors are supportive of development and see heritage trees as impediments. It was a hard-fought battle to get the Significant Tree Register for trees on public land let alone private land. But this means that as residential houses are subdivided in current residential areas, and the PSP cuts up the development land the loss of heritage nonindigenous trees is high and council has NO rules, NO overlays and NO controls to prevent their loss. All of which add loss to not only the environment but also the loss of a town's story.

50 years after the publication of the club of Rome "Limits to Growth", a crucial international environmental meeting Stockholm +50 is being arranged this year with the theme "A healthy planet - for the prosperity of all - our responsibility, our opportunity. It's time for bold choices. It's time for urgent action. It's time for a better future on a healthy planet" It is to be hoped that this inquiry will assist in making these hopes a reality.

Written on behalf of Friends of Drouin's trees by Judy Farmer (Coordinator) and Joan McColl (member) Jan 2022