

**Submission  
No 148**

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

**Organisation:** Grassy Plains Network

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# Grassy Plains Network

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## **Greater environmental protection, enforcement and oversight required:**

Submission to the Inquiry into protection in the Victorian planning  
framework

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Prepared by the Grassy Plains Network  
31 January 2021

## Introduction

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The Grassy Plains Network would like to thank the Inquiry for the opportunity to make this submission. The planning framework is critical to the protection of our environment, intended “to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity” (Planning and Environment Act 1987). We sincerely hope that this Inquiry will lead to better protections at a time when strengthening such protections is in the interests of all Victorians.

## Who we are

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The Grassy Plains Network is an independent organisation representing land management professionals, academics, ecologists and community members concerned about the ongoing decline of grassy ecosystems across Melbourne and its surrounds. We advocate for improved grassland protection and management.

Many of our members and supporters are acknowledged experts in the management and restoration of grassy ecosystems. Many have led long-term efforts to preserve grasslands across the Victorian Volcanic Plain. Some have been crucial to the establishment of the native seed industry, others to the development of best-practice monitoring methods for grasslands. We have members and supporters who have been working for decades with community to raise awareness of the importance of grassland conservation. Collectively, we have worked at every level of government, across all of Melbourne’s north and west, and across much of Victoria, in Landcare, CMAs and in dozens of community and environmental organisations.

## Ongoing decline despite protections

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The grasslands of the Victorian Volcanic Plain have been described as Australia’s most endangered ecosystem. Grassland once extended across the Victorian Volcanic Plain all the way from the Yarra River to the South Australian border. Sadly, less than 2% of that original extent remains, and much of what does remain is heavily degraded.

This ecological community is classified as Critically Endangered under the Federal EPBC Act, and as threatened under Victoria’s Fauna and Flora Guarantee Act. Many individual species that make grasslands their home are also on the edge of extinction. Plants such as Spiny Rice-flower (*Pimelea spinescens*), Matted Flax Lily (*Dianella amoena*), and fauna such as the Growling Grass Frog (*Litoria raniformis*), Striped Legless Lizard (*Delma impar*) and the remarkable Plains Wanderer (*Pedionomus torquatus*) are all critically endangered.

Grasslands are also listed as threatened under the Victorian Fauna and Flora Guarantee (FFG) Act. Of Victoria’s 615 grassland flora species, almost ten per cent (60) are listed as threatened on the FFG threatened species list, and of those, 42 do not even have action statements.

Two hundred years of land clearing are leading to extinction. Victoria’s 2018 State of the Environment Report indicated that between 1990 and 2015 native grasslands and herblands have declined by 20% from approximately 2.3 million hectares to 1.8 million hectares.

Victoria’s grasslands are undergoing death by a thousand cuts. Every planning decision that allows for the loss of grassland is contributing to the ongoing decline of these ecosystems. The systems that are in place are insufficient, enforcement is lacking, vision is absent. And despite considerable efforts, there is no sign that this decline is halting. This, in turn, suggests the frameworks that should be providing the necessary protections are not adequate, or fit for purpose.

## Summary of key recommendations

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- The planning framework would be well-served by the inclusion of overarching principles that require duty of environmental care.
- The planning framework needs to emphasise the common good over the rights on individuals.
- Undertake a review of offsetting within the planning system
- Build-in environmental protections and biodiversity planning at all scales
- Ensure planning protections are enforceable
- Review VCAT to make it more publicly accessible and fair
- Ensure environmental values on private land are protected over and above the landholders rights to clear vegetation
- Clearly take the principles of the FFG Act, especially the State's duty of care to the environment, and foreground them throughout the policies and legislation of the planning system
- Enable statewide planning for biodiversity to be implemented across all scales, from the single parcel to the regional scale, despite conflicting with the rights of others
- Consider new types of land use zoning that can facilitate achieving genuine environmental protections

## Comments on the planning framework

### General

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We believe there is generally a greater need for oversight throughout the planning system. The protections that are in place are failing to do the job they are supposed to do. Environmental values are declining across the state. Planning protections are only protections if they are enforced, and in many cases they are not. In many cases there is no systematic review of planning outcomes, for instance the effects of offsetting.

In general, too, we see a lack of top-down environmental vision. The planning framework could contain powerful tools for environmental protection, ensuring good land management, supporting statewide eco-corridors, improving revegetation, minimising sprawl, and promoting community participation. None of these exist, or if they do, are not implemented.

The planning framework would be well-served by the inclusion of overarching principles that require duty of environmental care.

Similarly, the planning framework needs to emphasise the common good over the rights on individuals.

### Private land

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Much loss of habitat is occurring on private land. The 2018 State of the Environment Report found that there had been a loss in native vegetation on public and private land between 2008 and 2014, and that the largest contributors to net loss in native vegetation on private and freehold land were entitled uses (e.g. grazing and removal of trees and fallen logs for personal use), unmanaged threats beyond legislative obligations (e.g. environmental weeds) and clearing that was exempt from requiring a permit (e.g. fences and fire protection). This indicates deficiencies in the planning framework.

The 2021 update states that "This trajectory is largely the result of activities and unmanaged threats that are outside the regulatory framework such as the exempted removal of native vegetation from fence lines and roadsides (resulting in loss of extent of native vegetation) together with insufficient

management of threats, such as introduced weeds and pest herbivores or inappropriate fire regimes”. Again, indicating deficiencies in the planning framework’s ability to achieve environmental protections.

In general, there is a conflict and an imbalance between private property rights and environmental protection, the private property rights being favoured. This imbalance needs to be rectified.

Private landholders should have a duty of care to the environmental values on their property. They should be required to manage their land in a way that preserves its biodiversity values.

Grasslands require regular maintenance in order to preserve their biodiversity. Without the removal of old biomass (dead thatch), light and water are prevented from reaching the inter-tussock spaces where much of a grassland’s biodiversity is located. In practice, lack of maintenance equates with destruction of these endangered ecosystems. Similarly, heavily overgrazing a grassland effectively destroys its biodiversity values.

In many cases, grasslands are being significantly damaged by weed invasion. Failure to implement appropriate weed control on private land is common, and while this is a Federal matter, it is a matter for Victorian oversight. Enforcement is lacking. Without enforcement, planning protections are not protections.

Note also that none of these – lack of maintenance, overgrazing, allowing weed invasion – are considered “native vegetation removal”. Definitions need to reflect reality. Behaviours need to maintain environmental values.

There should be financial incentives to manage land for conservation purposes. Farmers receive land tax exemptions for farming, which means that have a disincentive to stop farming and manage land for conservation.

Mechanisms should be put in place to facilitate the covenanting of private land.

## Public land

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It is important to understand that the biodiversity of grasslands on public land have also been declining. The Grassy Plains Network has lost confidence in Parks Victoria’s ability to manage grasslands, due to lack of expertise and resources. We need mechanisms by which such agencies can be called to account.

## The Melbourne Strategic Assessment

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The Melbourne Strategic Assessment has been a flawed process from the outset. The 2020 Victorian Auditor General’s Office report *Protecting critically endangered grasslands* showed how much of an environmental disaster this process was, as continues to be. Greater oversight is needed. The gross failure to date of the MSA can be attributed, in large, to the prioritising of land development (i.e. the expansion of the urban growth boundary) over the protection of environmental values. We note that the State’s planning authorities – the VPA and DELWP – are primarily responsible for this. Which raises that old question: who will guard us from the guardians?

## Transparency and oversight

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The MSA’s manifest failure of governance and planning, as well as the decline in biodiversity across public grasslands generally, highlights the need for greater public oversight of those responsible for the protection of our environment. We would this may be best undertaken by giving expanded authority, powers and resources to the Office of the Conservation Regulator, as well as to the Victorian Auditor General’s Office. We also need improved mechanisms by which failures of oversight can be brought to attention of these offices.

Freedom of information is also important in this context, and actions should be taken to ensure the public good is strengthened by improved access to the internal workings of government.

## Zoning

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A new planning zone should be created, the Conservation Zone. Land so zoned should need to be managed in such a way as to prevent decline in conservation values.

Many problems have arisen from DELWP handing over the responsibility for implementing Environmental Significance Overlays to local councils. Conservation needs to be ensured at the State level, and devolving responsibility to local government has weakened a powerful tool for conservation.

## Offsets

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Offsets are in effect a mechanism to facilitate development. There are numerous flaws in the current offsetting scheme.

Offsets are intended to preserve land in perpetuity (to be secured). In practice, land is managed for 10 years and then left to look after itself. This is hardly a guarantee of security. And this is especially the case for grasslands which, as noted above, require regular management (i.e. in perpetuity) to remove biomass.

Offsetting is supposed to follow the three steps of avoid, minimise and offset. In practice, avoidance is rare, minimising minimised, and offsetting promoted. DELWP staff openly talk about offsetting as a “dark art”. There is considerable room for interpretation of the guidelines. Exemptions are granted. DELWP administers the planning regulations but local authorities enforce it. Compliance is highly variable, and often local authorities are under-resourced.

The method of calculating habitat hectares also needs review.

And the fundamental principle, that land will be protected by being an offset, ignores the fact that that land should be protected anyway, without needing to be an offset. If land is supporting high-quality native vegetation, it should be protected, with very few exceptions at all.

There is no policy regarding the impacts of climate change on the notion of security with respect to offsets. We are aware of one case where a proposed grassland on-site offset was allowed despite the fact it was likely to become wetland within a century.

If planning was undertaken well, with environmental considerations truly well-considered, much offsetting could be avoided.

## Urban boundary, green wedges and large-scale biodiversity planning

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Changes to the Urban Growth Boundary drive environmental loss by driving up the price of land.

Green wedges are being constantly eroded.

There is a consistent failure by the VPA to incorporate landscape-scale environmental planning into its precinct planning approach. The precinct is too small a unit for environmental planning at across Melbourne. The VPA delegates to DELWP; DELWP fails to provide considered oversight (e.g. consideration of eco-corridors at city scale); poor planning ensues.

At a smaller scale, environmental matters are often considered too late in the planning process. For instance, bus routes and major traffic routes get decided and locked-in before traffic impacts on environmental values are considered.

At a still finer scale. Fauna crossings across busy roads for minimise fauna–vehicle conflicts are not part of anyone’s policy. VPA considers such matters a Council matter when really such matters should be State, given their importance.

There is a general eagerness to put environmental protection into the too hard basket, to be handed-off and managed by others. Grey areas of responsibility create a context in which this behaviour thrives. Any environmental protections that are in place are only as good as the organisation’s collective will to implement those protections – and that will is substantially lacking.

Urban development is a key driver of grassland loss. This is driven by the ease of offsetting, and lack of adequate management by public authorities. Biodiversity planning should be requisite and across scales for all urban development.

## Fauna and Flora Guarantee Act

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The amended FFG Act requires ministers and public authorities to give proper consideration to the objectives of the Act, which notably include a “Guarantee” on the persistence of Victoria’s flora and fauna in the wild and an objective “to protect, conserve, restore and enhance biodiversity”. There are also requirements for ministers and public authorities to give proper consideration to biodiversity impacts, and to any instrument made under the Act including the Biodiversity Strategy, action statements, critical habitat determinations and management plans.

The Minister is able to make guidelines with regards to how public authorities properly consider the objectives and instruments of the Act, and the Minister has the power to request information about action taken in a sort of ‘name and shame’ model. This is a significant new compliance power and there needs to be clear avenues for concerned individuals and organizations to request that the Minister exercise this power, to ensure that it does not become yet another unused tool.

There is currently a lack of recognition and integration between government policies generally and the newly revised FFG Act (e.g. mandatory duty of care). There is also a lack of clarity over interpretation of new FFG Act. The planning framework needs to embed these considerations and recognitions at the highest level.

## Climate change

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Our environmental systems are our best means of maintaining resilience in the face of climate change. The planning system needs to urgently respond to this impending crisis by protecting these environmental systems. We have to recognise wetlands, for example, as important buffers, and create the means by which we can plan for their retreat as the coastline retreats, else we will lose these vital coastal ecosystems.

The planning systems needs to recognise our natural systems as being dynamic and changing and be able to respond accordingly.

## VCAT and local planning matters

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The inability of unincorporated organisations to appear before VCAT limits the effectiveness of community organisations to represent their community.

VCAT hearings place impossible financial burdens on small organisations. Access to professional planning advice is necessary given the complexity of the planning scheme, and having legal representation offers significant advantages, but the costs of both are often prohibitive. We suggest a system whereby the State provides independent planning advice and legal representation.

The requirement to notify parties affected by planning applications should be widened, with greater emphasis on the applications ecological or cultural context.

## Roadsides

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Within the urban growth boundary, over a third of our public green space occurs within the road easement. The legislation covering the road easement is complex, with many stakeholders, and does nothing to improve the environmental values of this significant urban land type.

In the case of grasslands, rural roadsides are one of the last bastions of this critically endangered ecosystem, and roadsides across the state form critical biolinks. These are inadequately protected, often over-mown, sprayed with herbicides and graded into oblivion. Overly risk adverse matters of safety are considered above biodiversity matters. We need enforceable provision of fauna crossings. Road management agencies need to be brought up to speed on monitoring, management and protection of biodiversity while still meeting the needs of road users. Currently, cars and trucks rule with little provision for anything else.

## In conclusion

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We again thank the Inquiry for this opportunity to submit this response. We look forward to the recommendations and wish the Inquiry the best for this important work.