

**Submission  
No 199**

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

**Organisation:** 3228Residents Association

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Inquiry into the protections within the VICTORIAN PLANNING FRAMEWORK  
by the Environment and Planning Committee  
Submission on behalf of the 3228 Residents Association Inc.

**Who we are:** the 3228 Residents Association is an incorporated association whose members reside or own property in the 3228 postcode which includes Torquay, Jan Juc, Bellbrae and Bells Beach.

- Our statement of Purpose includes: The 3228 Residents Association will foster meaningful relationships with all levels of government with the intent of advocating for the best outcomes for the 3228 community.

The 3228 postcode is part of the Surf Coast Shire and has recently been the main focus of the Surf Coast Distinctive Areas and Landscape (DAL) process. We are currently (eagerly) awaiting the final Statement of Planning Policy (SPP), the release of which was promised to be September 2021. That was later revised to late 2021 and we are still waiting.

We will address those Terms of Reference which we think are most relevant to our community and its participation in the Planning process and our past experiences.

### Terms of Reference

the Committee is to examine —

- (1) the high cost of housing, including but not limited to —
  - (a) provision of social housing;
  - (b) access for first home buyers;
  - (c) the cost of rental accommodation;
  - (d) population policy, state and local;
  - (e) factors encouraging housing as an investment vehicle;
  - (f) mandatory affordable housing in new housing developments;

**(1) the high cost of housing:** The 3228 postcode has seen massive increases in property prices, particularly in the last 5 years. This is partially due to “cashed up” buyers from Melbourne who are purchasing to live here, or for investment and holiday purposes.

The high cost of housing (in our postcode) has occurred despite large numbers of vacant blocks of land being released in the last 10 years and the densification of older areas by the subdivision of larger blocks into 2 or more.

According to the REIV - <https://www.realestate.com.au/neighbourhoods/torquay-3228-vic> the median price for Torquay as at 6<sup>th</sup> January 2022 was \$1.2 million and for Jan Juc it was \$1.347,500 - <https://www.realestate.com.au/neighbourhoods/jan-juc-3228-vic>

Despite rising prices our population has grown from 13,675 in 2011 to a population estimate (by the ABS) for Torquay - Jan Juc (as of the 30th June 2020) at 21,132. Since the previous year, the population had grown by 4.77%. Population growth in Regional VIC was 1.30%. See - <https://profile.id.com.au/surf-coast/population-estimate?WebID=200>

This predicted population is years in advance of the 2040 timeline from the Torquay/Jan Juc 2040 Sustainable Futures Plan, a local government policy which states that the **sustainable** population (in 2040) as 25,000 – 30,000. – Find the 2040SFP - <https://www.surfcoast.vic.gov.au/Property/Planning-and-Building/Planning/Planning-FAQs/Development-plans-reference-and-incorporated-docs>

It is noticeable that while the number of blocks has increased dramatically, the size of blocks has decreased just as dramatically so the newer estates to the north of Torquay are indistinguishable from the new estates in the suburbs of Melbourne.

These small blocks sizes mean there is little room for meaningful planting of vegetation and very little usable outdoor living space. The overall effect is that our Town Character is being compromised as is the amenity of the residents.

Despite the decrease in the size of blocks and the large numbers being released, we have seen a huge increase in the prices of blocks. **It appears that the developers of the estates are the ones who are most benefitting.**

**(a) Provision of social housing:** we see this as more the responsibility of the state and /or the Federal government. Local governments have limited resources, especially with rate capping in place.

Policy should ensure that social housing is not limited to certain areas and should be distributed throughout new estates to remove the stigma that is often associated with housing for the disadvantaged in our community.

Requiring developers to set aside a percentage of every development for social housing (whether blocks or apartments) would be a sensible way to make sure that social housing is not substandard and provides the same amenity to those in receipt of social housing as other residents (in the area or building).

We can surely do much better than the high rise apartment blocks in inner city Melbourne that are so lacking in amenity for the residents.

No doubt developers will pass on the cost of any requirement as a tax deduction.

**(b) Access for first home buyers:** As far as Torquay /Jan Juc are concerned the entry price for first home buyers has long since exceeded their ability to purchase in this area and we don't think increased supply will alleviate that problem.

First home buyers are now looking to other areas in the shire (Winchelsea) or the Geelong growth area of Warralily a few kilometres to the north where entry prices are much more affordable.

**It seems that as financial incentives are provided to first home buyers via grants, the cost of housing increases accordingly, which only benefits the developers.**

**(c)The cost of rental accommodation:**

In the past, many holiday / investment properties were rented permanently or during the school year, providing reasonably priced rental accommodation for students ( Deakin University is quite close) and lower paid workers. It now appears that many property owners are choosing to rent their properties through online rental platforms such as Airbnb instead of making them available for long term rental.

Unlike other coastal towns on the Great Ocean Road, whose economies mostly rely on hospitality and tourist enterprises, workers (in Torquay) in those ( lower paying) jobs can find more reasonable accommodation in the newer estates south of Geelong which is only a few minutes to the north.

**We don't see any solution to rising rental costs in our towns.**

**(d) Population policy, state and local:**

Locally, State government planning policy has, we believe, detrimentally impacted our town's amenity and the environment of our local area.

As an example, we question the wisdom of the **State** policy which designated Torquay/Jan Juc as a growth node (some years back) as well as other coastal towns whose environment and town character has now been forever compromised.

This policy has encouraged the rapid growth of Torquay/Jan Juc, particularly over the last 10-12 years. It has also has been used by developers to justify the increasing densification of new subdivisions which is already threatening our Town Character.

The State government appears to have had a rethink on directing unabated population growth to areas of environmental significance as evidenced by the Distinctive Areas and Landscape Legislation. We are hopeful that the final Statement of Planning Policy (SPP) for the Surf Coast will help to slow population growth, preserve what is left of our Town Character and protect vulnerable coastal and hinterland biodiversity.

The first paragraph of the draft SPP articulates our concerns and perhaps shows a recognition of past mistakes in policy – “The Surf Coast declared area is among Victoria's most-preferred places to live, work, visit and play. Consequently, its unique values and distinctive attributes — its Aboriginal cultural and historic heritage, biodiversity, superb

landscapes, natural resources, productive land, strategic infrastructure and built form — need **protection against overuse, overdevelopment and climate change impacts.**”

As a coastal town that has long been a popular tourist destination, as well as the increased impact of a rapidly increasing permanent population, the residents and the environment must also contend with ever increasing numbers of tourists, especially day trippers from Geelong and the western suburbs of Melbourne.

As a group we (and others) have asked the Surf Coast Shire and State government representatives for an impact study on how our local environment, Town Character and amenity has been (and will continue to be ) impacted by the rapid growth in residents and visitors. As yet, no such study has been undertaken.

How can we ascertain what population is environmentally and socially sustainable without such a study?

Local and State governments in the past appear to have been more interested in the economic advantages of increased population with little consideration for the current residents or the environment.

We are hopeful that the new council is now more focused on the environment and the well being of the residents and that state government policy is also shifting focus.

(e) **Factors encouraging housing as an investment vehicle:** Policy such as first home owners grant, reduction of Capital Gains Tax (to 50%) and other tax incentives no doubt does encourage housing as an investment vehicle.

While increasing the supply of rental properties, it adversely impacts on affordable housing and the ability of first homer buyers to compete in the market.

An anticipated increase in interest rates may see some money diverted from housing investment in the future.

(f) **Mandatory affordable housing in new housing developments:** see comments above.

**(2) Environmental sustainability and vegetation protection:** As the rapid expansion of our towns continues so has the loss of vegetation and habitat that makes our coastal town unique.

Land banking by developers ( because of State government policy, as already mentioned), now sees farmland and the vegetation surrounding our towns, being transformed into urban wastelands with little vegetation replacing what has been removed. This has resulted in wildlife corridors and habitat disappearing.

Development in the Spring Creek valley to the west of Torquay has long been a contentious issue. Many residents and other community groups have worked tirelessly to restrict this area from urban development. Ninety five percent of the 3,169 submissions to the Advisory Committee on the draft SPP, last year were against development in the valley.

While local government policy has recognised the need to protect this area, Planning Ministers have, in the past, intervened in favour of developers against the community's wishes. The final decision about the valley will form part of the SPP that is yet to be released.

During the Committee Hearing we heard evidence from a government appointed expert about the damage to the Karaaf wetlands to the east of Torquay from the runoff from the new housing developments.

It is disturbing that no real impact study had been undertaken prior to this and that monitoring of the runoff and mechanisms meant to protect the wetlands from degradation had not been properly carried out.

Our coastal environment is already under threat from climate change and the runoff from Spring Creek, Deep Creek and Thompson Creek into the ocean is increased as the population increases. This runoff alters the habitat for those species living in the creeks and its environs.

While policies such as the Marine and Coastal Policy released last year - <https://www.marineandcoasts.vic.gov.au/coastal-management/marine-and-coastal-policy> will improve the planning decisions coastal towns and their environment.

### **(3) delivering certainty and fairness in planning decisions for communities, including but not limited to —**

**(a) Mandatory height limits and minimum apartment sizes:** While this issue is probably intended more for Melbourne and its suburbs, as part of our group's work we have been pushing for mandatory height limits in Torquay/ Jan Juc as we see this as fundamental to the low rise character of our towns.

Since the introduction of the new Planning zones under the previous government we have urged the Surf Coast Shire on several occasions to replace the General Residential with the Neighbourhood Character zone. This would go some way in protecting heights in our town. At present we are reliant on Overlays which don't mandate specific heights.

We are hopeful that the SPP will require a change in zones in our towns which will introduce mandatory height limits.

This will bring certainty to the community and developers alike and will hopefully prevent those Planning Applications which rely on the ambiguity in the Surf Coast Planning Scheme.

**(b) protecting Green Wedges and the urban growth boundary:** The Green Wedges were created for a reason. The increase in Victoria's and in particular, Melbourne's, population makes the retention of the Green Wedges essential for the health and well being of our population and the environment.

Unless better infrastructure such as public transport, schools etc is provided at the time of new housing expansion then urban growth boundaries much be implemented. This can only

happen with State government intervention and the requirement for developers to provide the necessary infrastructure at time of release – not years later as seems to happen.

**(c) Community concerns about VCAT appeal processes:** Our concerns about VCAT can also be applied to Panel and Advisory Committee Hearings.

Since our incorporation in 2012 we have appeared at many Panel Hearings ( mainly to do with development in Spring Creek but also in relation to altering an SUZ to accommodate a previously disallowed use to the benefit of a developer.

Our observations re VCAT are similar to those of Panel and Advisory Committee Hearings in that they are stacked against individuals and community groups who wish to oppose Planning Applications or Zone changes.

We have been involved in a VCAT case as recently as September last year and are awaiting a decision. The only way our group could be involved was because we were a party to the proceedings initiated by the Surf Coast Shire. If we had to initiate the case we would not be able to afford the lodgement fee or other costs.

By far the biggest obstacle in getting an equitable outcome for individuals or community groups such as ours is the enormous cost of legal representation and expert witnesses who invariably represent developers. This runs into thousands of dollars even for the cheapest end of the scale.

The more financial gin the more developers are willing to spend to get the desired outcome. Even our local government cannot compete on a level playing field.

Prior to the current government being elected, promises were made to make VCAT more equitable and accessible – we can see no evidence that this has occurred which is disappointing.

Our observations of from the many Panel and VCAT hearings we have been involved in is that the personnel who make up the members of these panels are a mix of professionals who all seem to know each other and are more likely than not members of the VPELA (Victorian Planning & Environmental Law Association) or the UDIA (Urban Development Institute of Australia). These groups seem to share a close relationship - often sharing events and awards. While all decisions should be impartial it is hard to believe that the close relationships that exist between members, expert witnesses and legal representatives do not result in bias, even if it is unintended.

So called “expert witnesses” always provide evidence which will support the case for whoever is paying them. We note that while this evidence may not be erroneous often details that may not be supportive is not mentioned. It is then left to our group members to question the expert witness and be subjected to the demeaning comments of the legal representation (Barristers) who consider us as time wasters or not qualified to speak.

For the recent Advisory Committee Hearing for the DAL process the community knew that to have a real voice we needed a Barrister to represent our views. Crowd funding was the

only way we were able to secure a mid range Barrister at the cost of over \$130,000 (with discount). We believe the ability to engage a Barrister made a huge difference to our case.

**(d) Protecting third party appeal rights:** As a group we have always opposed any dissolution of the rights of any party to object a Planning Application. The only parties who benefit from the removal of third party rights are developers.

**(e) The role of Ministerial call-ins:** The powers of the Minister for Planning have, in our experience, been misused in the past.

Our community has been subject to a town boundary shift and a rezoning by separate Ministers from both parties that have been despite council and community wishes being opposed to the decisions and little or no consultation.

In both cases we have copies of letters from developers urging action by the Minister. The easy access to the Minister by developers and their representatives in the past has no doubt influenced decision making, as have political donations.

The most recent revelations of the Casey Council and John Woodman highlight the influence that can be exerted, without proper oversight.

For the Minister to use his “call in” powers justly, the decision he makes must benefit the community effected and generally adhere to local planning provisions. If the local LPPs and the VPPs are doing what they are supposed to and if VCAT and Panel Hearings were conducted on a more equitable basis then the necessity for ‘call ins” would most likely be eliminated.

#### **(4) Protecting heritage in Victoria, including but not limited to —**

- (a) the adequacy of current criteria and processes for heritage protection**
- (b) possible federal involvement in heritage protection;**
- (c) separating heritage protection from the planning administration;**
- (d) establishing a heritage tribunal to hear heritage appeals;**
- (e) the appointment of independent local and state heritage advisers;**
- (f) the role of Councils in heritage protection;**
- (g) penalties for illegal demolitions and tree removals;**

Our group has not involved itself in the protection of historical buildings in our towns as we defer to the local Historical groups to liase with local government on this issue.

Generally speaking though the preservation of our Heritage, whether in the cities or towns is important for future generations and is what makes us distinct from other cities and towns in other parts of Australia and the world.

However, Heritage is not just about buildings and we have made representation about the preservation of our Surfing Culture which we see as part of our more recent heritage. The protection of the Bells Beach Surfing Reserve from commercial development has been a focus of local community groups for many years.

Proper Heritage protection requires adequate funding at the local government level and adequate legislative provisions, including severe penalties for blatant destruction or neglect of heritage buildings and sites.

We would encourage the separation of Heritage protection from Planning administration and the establishment of a heritage tribunal to hear heritage appeals.

Appointing independent advisors at state and local levels to assist in the decision making process would provide more equitable outcomes.

**(5) Ensuring residential zones are delivering the type of housing that communities want:**

As already discussed, the application of the correct zonings is crucial to ensuring that amenity and the character of suburbs and towns are maintained.

The application of clearly understood zoning requirements gives certainty to the community, to local government officers and to developers.

Unambiguous wording that is easily understood would most likely also result in less contested cases at VCAT hearings.

However, the most important aspect of delivering the type of housing that communities want is for genuine consultation to take place and for the results to be enacted in a timely manner.

We also believe that a separate Planning Scheme for Coastal and Regional areas should be considered. The current VPP, “one size fits all” approach doesn’t address the unique situation of many towns out side Melbourne and the major regional cities.

Thank you for the opportunity to make this submission on behalf of the Committee and members of the 3228 Residents Association Inc.

Please direct any further correspondence to:

The Secretary

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