

**Submission
No 221**

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

Organisation: Kingston Residents Association

Date Received: 8 February 2022

KINGSTON

RESIDENTS ASSOCIATION

EST. 2012

Submission to the Parliamentary Planning and Heritage Inquiry,

I am submitting on behalf of the Kingston Residents Association which, since its formation in 2012, has built a solid record of policies and achievement in support of better protection for residential amenity and streetscapes, environmental sustainability and biodiversity, Green Wedge values but principally representing residents aspirations for their streets, neighbourhoods and communities.

We would like to begin by discussing the following terms of reference, which seem to us critical to most or all of the others:

1. population policy, state and local; (1d)
2. delivering certainty and fairness in planning decisions for communities, (3)
3. environmental sustainability and vegetation protection; (2)
4. protecting Green Wedges and the urban growth boundary (3b);
5. Encourage agriculture and manufacturing industry to drive the economy rather than the present over-reliance on property development. (6 – other)
6. Ensuring residential zones are delivering the type of housing that communities want (5)

1. Population policy, (1d)

In 2002, the Melbourne 2030 policy proposed a population target of four million people by 2030 and incorporated sustainability measures that were supposed to protect the Green Wedges and biodiversity. We are now past five million and those controls have not been effective with nearly 50,000 ha being rezoned out of the Green Wedges by Liberal-National and Labour governments in 2010 and 2012. Since 2012 population pressures have continued to increase.

1.2 As a Councillor, I attended many planning consultations, where neighbours could sit around a table with developers, planners and sometimes councillors to discuss their concerns and sometimes effect compromise to mitigate the impacts of development that replaced a single dwelling with two, six, ten or more dwellings, ahead of a Council decision. I sometimes noted that this was the pointy end of population policy.

1.3 Kingston residents demonstrated their opposition to this increased development when officers developed a new housing strategy in 2019, which – following Planning Minister Richard Wynne's increase in height of the General Residential zone from a discretionary nine metres to a mandatory 11 metres – proposed to increase the height limit from two to three stories of about 25% of our residential areas.

1.4 Kingston planners had previously persuaded Councillors to agree to increased development, including high rise in the major activity centres, as a trade-off for protecting our residential neighbourhoods (some needed no persuading). When they heard about the new housing strategy - initially at a Kingston Residents Association forum, and later from letterboxing of affected areas by members of a new Kingston Save Our Streets group formed in response – many people felt cheated. At a closed Council briefing with the planning consultant, when I suggested residents would not like what she was proposing, she said "Let's see what they think."

Of the 1600 submissions to Council's consultation on the housing strategy, 99.% (all but six) were opposed. In August 2020, Council adopted an amended housing strategy in which most existing two storey areas would have been protected in the Neighbourhood Residential Zone, with a 9m height limit. However this was opposed by Council's planners and planning consultant Ethos Urban and Minister Wynne refused to authorise the planning scheme amendment. Council then felt forced to adopt a compromise in 2022, despite the election of the coordinator of K-SOS to Council in 2021. This is now awaiting a decision on authorisation by Minister Wynne.

1.4 We submit that:

- * State and Local Governments – as well as principally the Commonwealth Government - need to develop population policy that includes a review of the impact of current population growth and develops limits based on the carrying capacity of the land, including water resources and the need to protect biodiversity, the natural environment and the residential amenity of our suburbs.

- * Local neighbourhoods and municipalities should be able to determine how much extra population and development they want, instead of having higher growth targets set for them by State Governments via Victoria In Future "projections";

- * Planning consultations (See point 1.2 above) should be encouraged or mandated in all Councils for any development applications with more than two objectors or where they are requested by one objector. Planners should be required to inform residents at the PC of what zone they are in, what planning protections are available and should facilitate mediated outcomes by asking developers to suggest how they could meet the residents' objections. Councillors should also be encouraged to attend PCs and to respond to residents' concerns and provide information that has not been provided by planners. Kingston Council planners have effectively gagged Councillors at such meetings by limiting their input to the final five minutes of a one hour meeting. If mediation efforts don't work out, planners should be required to offer residents a post PC meeting to advise them how best to make their case to Council or a tribunal or advisory committee. This would restore the balance between the community and the developer, who will have had several meetings with the planners to advise them how best to improve their chances of approval.

2. Delivering certainty and fairness in planning decisions for communities:

2.1 The Local Government Act requires Councillors to make decisions in the best interests of the community, but when it comes to planning this often does not happen, because:

- The economy is overly dependent on property development and hence State Government planning policies and practices are overly influenced by development lobbies like the Property Council and Urban Development Industry Association;
- There is plenty of evidence from recent IBAC hearings of how developer donations have influenced Council decisions, notoriously at Casey Council and potentially government decisions; and of how developers and lobbyists engaged by developers influence Government decisions. She responded that State Government was also dominated by developers.
- While planning schools and disciplines at universities were established with the aim of improving the planning of cities for the best interests of the community, most planning graduates go to work for developers, and maintain friendship links with those who do go to work for Councils. They have dinner together and they often marry each other. At least two recent or current Kingston planners are married to development planners or development planning lawyers. I recall a Council planner being recruited to work for a consultancy responsible for a controversial development application then before Council (and was able to initiate a policy to prevent Kingston Council from working with planners who had made this switch).
- When I first became interested in municipal planning issues as part of a resident group fighting to save a local, ecologically significant, bushland reserve (Chicquita Park) from three storey development, I had coffee with a friend who worked in the Premier's office to tell her I had discovered that Council was developer-dominated, in the hope she could suggest a way State Government could do something about it. But she responded that State Government was also dominated by developers.
- While IBAC did not uncover any corruption at our Council, a Council probity review into developments with which John Woodman or his associates were involved and ombudsman's report did recommend some reforms to make developers' dealings with Councillors and planners more transparent.
- Much of the work of Council planners consists of facilitating development applications. I recall it used to be standard practice for development planners to meet with Council planners prior to the Planning Consultations with residents and to walk into the meeting together and have a cosy, first names relationship with them. Residents rightly felt this signified that the Council planners were supporting the developers. After I and other councillors complained, this was stopped, but the pre-application and probably other meetings have continued.
- My feeling is that the experience of working with John Woodman and his associates - eg on the Waterways development in Kingston's part of the South East Green Wedge and the 44 First Avenue development on the edge of the Edithvale Wetlands - may have impressed Council planners as well as Councillors and encouraged them to feel this was the way things were done and to develop a pro-development mindset.
- I observed from when I was elected to Council in 2003 - on a platform of doing my best to stop the development of Chicquita Park - that the senior planners worked with the pro-development councillors, even when the latter were in a minority. The senior planners supported the pro-development Councillors agenda and the pro-development Councillors supported the senior planners' agenda. This dynamic led to the loss of most of Chicquita Park, with three story buildings on about half of the land, in an area where public open space was already inadequate and clearly against the best interests

of the residents. One of the planners involved in that decision is now the planning general manager and in my experience that cosy relationship with Mayors and majority councillors, though not just pro-development councillors, continued at least until I went off Council in 2020.

- I recall meeting a councillor, who had actively supported each of the three aforementioned developments, in the lift lobby while I was on my way to a Council planning committee meeting. I was surprised to learn that he was not attending planning committee, but was on his way to meet with the Statutory Planning Manager. "I get more done by going to see (first name of the manager)." he said.

2.2 While it is difficult to see how the culture of our Kingston planning scheme can be reformed, given the dependence by councillors, especially new councillors, on the advice of senior Council planners, we are hoping new policies developed as a result of Council's Probity Review and of the Ombudsman's recommendations may help. It is also difficult to assess to what extent other middle ring suburbs share similar problems.

2.3 We submit that a significant part of the challenge to deliver certainty and fairness in planning decisions for communities, is that residents, community groups and even sometimes Councillors are routinely outgunned by the army of highly paid planners and expert witnesses that are engaged by developers as a tax-deductible expense to present to Councils, VCAT and Ministerial Advisory Committees.

We cite as examples the following recent hearings of major development applications on which KRA committee members have presented submissions in support of residents:

- Planning Panel hearing of the application to rezone Urban Floodway Zoned land at 44 First Avenue for residential development on the edge of the Edithvale Wetlands;
- Heritage Council hearing of application for State Heritage listing for the Pompei boatworks building in Mordialloc, followed by a VCAT appeal against a Council refusal in 2020 and a further Council Ordinary Meeting to approve a four-storey apartment block on the site.
- EES Advisory Committee hearing for the Mordialloc Freeway,
- EES Advisory Committee hearing for the EES for the Level Crossing Removals at Edithvale and Bonbeach (which threatened the viability of the Ramsar-listed Edithvale Wetlands and remnant banksia woodland along the railway line and on the Carrum foreshore);
- VCAT and planning panel hearings for an appeal against Council refusal of a development application at Tarella Road in Chelsea, on the Dents Paddock site of the last remnant foreshore bushland in Chelsea;
- VCAT hearing of an appeal against an application to replace remnant Coast Banksia Woodland with two netball courts at Regents Park in Aspendale,
- Golf Course Redevelopment Strategic Advisory Committee hearing for the development of the former Kingswood Golf Course (decision pending on a recommendation to the Planning Minister), and currently
- Submissions to the upcoming EES Advisory Committee for the appropriation by State Government of core parkland for the Sandbelt Parklands in the Green Wedge at Heatherton for the Suburban Rail Loop (SRL) rail stabling yard and of almost half of the parkland at the Sir William Fry Reserve for land to be sold for high rise development around the proposed Cheltenham SRL station to help defray the cost of the SRL.

Council's support for and purchase of Dents Paddock has made this a win for the community; decisions are still pending on the Kingswood Golf Course Redevelopment and on the SRL parkland grabs, and the other matters were losses for KRA and the Kingston community. Except that when Council approved the four-storey apartment block on the site of the Pompei Boatworks, they included an amendment to incorporate architectural features that will acknowledge the boatbuilding heritage on the site. And Kingston Council is supporting the residents' campaign to have the SRL rail stabling yard relocated to a more suitable site and to reduce the land taken for development on the Sir William Fry Reserve.

2,4 We are concerned about the State Government's ability and tendency to override local and State planning schemes, particularly in relation to the SRL train stabling yard in Heatherton. We want to see better protection of local and State planning schemes and more community consultation by the State Government before they decide to embark on a socially and environmentally destructive infrastructure project.

2.4 We submit that the best interests of the community would be served if the unequal contest between community groups like ours and the developers could be redressed. We submit the following suggestions:

- * Encourage or mandate Planning Consultations for development applications to Council on the Kingston model (see section 1.2 and the final dot point recommendation of S. 1.4 for discussion and recommendation).

- * Similar pre-VCAT community consultations should be arranged in cases where there has been no community consultation so that Councillors and planners can familiarise themselves with residents' concerns before making a decision about what position Council should take at VCAT.

- * State Government should Fund Environmental Justice Australia to provide lawyers to advise and represent community groups fighting development applications of strategic significance for the environment or Green Wedges (as they used to do some years ago, when they were the Environmental Defender's Office (EDO));

- * For VCAT cases: reduce fees for community- based objector groups in line with concessional applicants (health card holders). This measure is necessary because excessive VCAT fees are a major disincentive for third party participation in planning decisions. It is important to provide accessible and affordable justice outside the legal system.

- * for VCAT cases, Advisory Committees and similar planning panels, replace the current system of developers engaging and paying for expert witnesses with a panel of independent expert witnesses to be allocated by VCAT and panels Victoria but paid for by developers/proponents. Expert witnesses are supposed to assist the tribunal whereas their loyalty currently is to the applicant who pays them.

- * Require Government departments, statutory authorities and special purpose committees like Invest Australia to ensure that any projects they propose or support are in keeping with at least State planning policies to protect the environment, Green Wedges and other policies to support the environment and residential amenity such as Urban Forest, Urban Cooling.

- * Require planning policies to be amended to prevent climate change and to minimise the risk of Covid19. For example:

- all windows should be able to open for ventilation

- where possible, multi-unit developments should have separate entrances, if necessary from open balconies instead of enclosed lobbies and corridors for each dwelling;

3. Environmental sustainability and vegetation protection; (2)

3.1. **The Native Vegetation Management Framework**, as set out in Clause 52.17 of the planning scheme needs to be reviewed and strengthened.

3.2. Neither the original goal of the framework – Net Gain – nor the amended goal adopted by the Liberal-National government in 2013 – No Net Loss – have been achieved, and the loss of native vegetation is still continuing.

3.3 As a Councillor representing my Council on the Municipal Association of Victoria's Environment Advisory Group, prior to the Covid19 lockdown, we had occasional briefings from DELWP officers on various issues including native vegetation management. At the last of these, probably in 2019, I asked a DELWP representative whether either the Net Gain or No Net Loss goals had yet been achieved and was told the department was still working towards these goals.

3.4 Shortly after the NVMF was launched by then Environment Minister John Thwaites in about 2004, I attended a forum of professional ecologists and members of community environment groups at the Arthur Rylah Institute in Heidelberg and heard experts say that they now had adequate aerial mapping of native vegetation to be able to measure any changes. We are not aware of any follow-up meetings at which any such results or evidence were presented.

3.5 The system of allowing native vegetation to be removed on condition off-sets are provided guarantees the continuing loss of native vegetation in urban municipalities like ours, as any off-sets provided are far afield, in Gippsland in our case.

3.6 It was obvious from first principles that off-sets would not halt the removal of native vegetation: the process starts with two patches of native vegetation and ends with one. The requirement that the removal of native vegetation must first be avoided, secondly minimised and, only if neither was possible, off-set, is not working. Instead, the removal of native vegetation is routinely allowed subject to the provision of off-sets.

3.7 We would like to see better provisions for promoting native flora in new developments, and propose that at least 70% of plantings in new developments should be local native plants.

3.8 We would also like to see Clause 14.02,15 of the planning scheme implemented so that all developments are setback from coastlines and waterways, by at least the 30m buffer or more, to ensure space for nature and green recreation for people.

3.9 We submit that there should be a mandate new dwellings/buildings to be climate-friendly with optimal orientation, roof eaves, verandahs, light colours, insulation, window covers, natural ventilation rather than or as well as air-conditioning, solar panels and green landscaping with canopy trees.

3.10 Occasionally a brave Council like Kingston's 2016 Council, backed by a number of community environment groups and KRA, will save some native vegetation. This Council did this by:

* purchasing a 3,500 sqm block of original foreshore coast banksia woodland known as Dents Paddock. This took a sustained campaign by local residents, environment groups and

KRA four years to fight and win with Council support - a VCAT appeal against a Council refusal of an application for 14 two-story units, followed by a successful application and panel hearing to apply an Environmental Significance Overlay (ESO) followed by a Council refusal of a scaled-down development application before Council resolved to buy the site for \$5m in 2020. Pro-development council candidates in 2020 threatened to sell the land but were fortunately not elected and Council is now preparing to open the new nature reserve.

- * minimising the removal of foreshore native vegetation to complete the missing link in the Round-the-Bay Trail for walking and cycling in 2020. This provoked a strident campaign against the very minor narrowing of Beach Road that enabled this to happen. Council was able to ensure that the vegetation that had to be removed was replaced on the foreshore, as well as providing an off-site off-set as required by DELWP.

3.11 While Kingston's Urban Growth Boundary has not been moved and none of Kingston's Green Wedge land has been rezoned for urban development since the UGB was applied in 2003, there has been a continuing loss of native vegetation and of Green Wedge amenity through a succession of inappropriate developments either for discretionary (Section 2) uses, (eg places of worship) or innominate uses (eg a contractor's depot, a bus depot and a commercial truck parking lot). These uses are contrary to the fundamental purposes of Green Wedges to protect biodiversity, agriculture and rural open landscapes. Most of these local applications were opposed by the Defenders of the South East Green Wedge.

3.12 Minister Wynne even approved an extension for an industrial concrete crusher that was prohibited in the Green Wedge A Zone. (After he had approved a planning scheme amendment in 2015 to rezone Kingston's old tip-sites in the Earth and Energy Resources Special Use Zone to Green Wedge A Zone specifically so that materials recycling would be prohibited). The Minister's change of mind on this followed lobbying by a John Woodman associate and after it was supported by the Invest Victoria committee in the Victorian Treasury . and by the Metropolitan Waste and Resource Recovery group.

3.13 Kingston is now facing several serious threats of inappropriate development in the Green Wedge:

- * from State Government, which plans to take 36 ha of core parkland that has been designated for the Sandbelt Parklands (Chain of Parks) for at least 30years for a rail stabling yard for the Suburban Rail Loop, with a Public Acquisition Overlay to benefit Parks Victoria despite several other sites having been found to be suitable. KRA will join hundreds of distraught residents and Green Wedge groups in opposing this application at an EES Advisory Committee Hearing.
- * from a private application for a commercial Water-based theme Park which is largely indoor, and therefore contrary to the prohibition in the Green Wedge Zone and Clause 51.02 (Metropolitan Green Wedge Land).
- * from a mulch dump that Kingston Council plans to relocate from one of its larger parks to a site next to a successful market garden and to a school for autistic students, where it will threaten the viability of an agricultural use and the health and amenity of the schoolchildren.

3.14 We were delighted when Minister Wynne and the State Labour Government promised to improve the protection of the Green Wedges shortly before the 2018 election (attached) but are concerned that so much time has been spent on consultation for the Planning for Melbourne's Green Wedges and Agricultural Land project which is supposed to implement the Minister's election pledge. With the election now only months away the policy has not yet

been released and nothing has been done to protect the Green Wedges from any number of inappropriate development applications including those listed above in Kingston.

3.15 Another Government-sponsored threat to Kingston residents' amenity comes from the newly appointed Golf Course Redevelopment Strategic Advisory Committee, established apparently to over-rule Council's refusal of an application for 800-plus developments of up to three storeys on the former Kingswood Golf Course. This application received nearly 8000 objections to Council, and many submissions including from KRA to the recent Advisory Committee hearing, with a decision pending.

3.16 A further threat to the natural environment and passive recreation activities engaged in by most (an estimated 90% of) park users are from influential sporting clubs seeking to appropriate passive parklands for new sportsfields, particularly synthetic turf sportsfields that need to be fence off to exclude the wider community.

3.17 We submit that it would assist the Parliament and this committee to invite environmental experts in DELWP or at Arthur Rylah Institute to present and report on the aerial mapping evidence of trends related to the Net Gain or Net Loss of native vegetation.

4. We submit that to achieve the reforms we are recommending in response to the Inquiry's terms of reference, **it will be necessary to encourage agriculture and manufacturing industry to drive the economy rather than the present over-reliance on property development.** (6 – other);

4.1. This is another measure of environmental sustainability to which our attention has been drawn by the Covid crisis. Many of us were shocked to find our manufacturing capacity had run down to the point where we were unable to manufacture basic supplies of masks, test kits and vaccinations. Hopefully we can learn the lesson of needing to be more self-sufficient in terms of our manufacturing industry.

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

The Kingston Housing Strategy consultation outlined in point 1.3 above indicates clearly that many Kingston residents are not receiving the degree of protection they want from the existing residential zones and that less will be if/when the newly adopted housing strategy is adopted.

We consider the residential zones should deliver the type of housing that communities want, but we do not consider this will happen unless Councils are completed to undertake far more honest and open consultation than Kingston Council was prepared to undertake for this strategy. Many – perhaps most – of the residents who submitted to the Council consultation relied on community groups including KRA, K-SOS and the Dingley village Community Association to tell them about the extent of extra development planned in the various drafts of the Kingston Housing Strategy.

We submit that

- Councils need to undertake a cross-sectional survey based on honest information and a statement of pros and cons for different options to accurately represent residents and to ensure that Councillors know what their constituents need and want.

- The State Planning Minister needs to allow Councils to make such decisions based on the views and best interests of the citizens without forcing more unwanted development and population growth on them via concealed growth targets released by Victoria in Future and without blocking democratic Council decisions.

6. We respond to your other terms of reference more briefly in italics below:

(1) the high cost of housing, including but not limited to —

(a) provision of social housing; *We agree that social housing should be more equitably provided and that Melbourne's homeless people should continue in the housing that has been provided because the threat of Covid meant they would have been a threat to the rest of us, at least until more appropriate interim housing can be found for or by them.*

(b) access for first home buyers;

(c) the cost of rental accommodation *also should be subsidised for people on social security payments and for supporting parents whose Parenting Payment (Single) is cut off when their youngest child is eight years old.*

(d) population policy, state and local; *(fundamental – see discussion above)*

(e) factors encouraging housing as an investment vehicle; *(such as negative gearing needs to be addressed as it makes a, b, c and d unaffordable.)*

(f) mandatory affordable housing in new housing developments;

We agree, but not at the expense of the integrity of the planning scheme. Communities should not have their planning protections over-ridden by a developer who can persuade Council to approve an extra storey or two beyond the height limit on their multi-storey development in return for providing one or two affordable units.)

True housing affordability is a key tenet of the planning framework. We support a diverse mix of affordable housing options to suit a variety of families and individuals and is not limited to residents receiving welfare.

(2) environmental sustainability and vegetation protection; *(as discussed above).*

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

(a) *We agree with mandatory height limits and minimum apartment sizes, provided the height limits are what the existing residents (not potential future residents) need and want to protect their residential amenity;*

(b) protecting Green Wedges and the urban growth boundary *(We agree – see above)*

(c) community concerns about VCAT appeal processes; *We share community concerns – see our suggestion at point 2.4, fourth dot point*

(d) protecting third party appeal rights; *We strongly support the right of third parties to be notified of all development applications and to have the right to object and to appeal. Councillors also must have the right to be notified of*

(e) the role of Ministerial call-ins; *in principle we support Ministerial call-ins in preference to appealing Council decisions to VCAT, as the expensive VCAT fees (\$800 to lodge an appeal, plus a similar attendance cost) put this option beyond the resources of a community group like ours whereas submitters can submit and present to a ministerial Advisory committee for a relatively low cost, about the same as it costs to present at VCAT in support of a Council decision. However this can be a risky course unless we are confident that the Minister will act consistently with the planning scheme. The present Minister seems inclined to support big developers, even when the application is for a prohibited use as it was for the Alex Fraser concrete crusher extension.*

(4) protecting heritage in Victoria, including but not limited to —

(a) the adequacy of current criteria and processes for heritage protection; *We support better provisions to make State and Council heritage protection more robust; As we are currently losing our heritage hand over fist, the current criteria and processes for heritage protection seem vastly inadequate; the fundamental problem is that without at least a local heritage listing, there is nothing to stop any developer from demolishing a building that they own. This means the community has very little chance of saving a heritage property that is not already listed. It also means communities are left with ugly moonscapes for years while the developer goes through the process of planning approval.*

(b) possible federal involvement in heritage protection; *We see no point in seeking federal heritage protection as federal protection of the environment appears to be limited to rubber-stamping the outcome of State EES processes.*

(c) separating heritage protection from the planning administration; *We were not aware they are separate. When KRA members were working with Save the Edgy to protect the Mentone hotel, we were able to get a State Heritage Overlay with the support of the then State Government. When our members were working to protect the Pompei Boatworks building we were unable to get State heritage listing although we had strong endorsement from a heritage consultant. The State Heritage Council instead recommended Council consider a local listing, but the officers and most Councillors failed to support this option and the building was promptly demolished. The 8000-plus members of the very well-organised Save the Edgy group were critical to the success of their campaign.*

(d) establishing a heritage tribunal to hear heritage appeals; *this might be helpful but we cannot see how it would differ from the Heritage Council that currently hears applications for State listing.*

(e) the appointment of independent local and state heritage advisers; *This sounds like a good idea. Another good idea would be to require all Councils to designate a member of their planning staff as the Council Heritage Planner. This would mean that at least one Council planner might have some interest and knowledge of heritage.*

(f) the role of Councils in heritage protection; *depends on the level of heritage awareness and concern on the part of the Councillors and Council planners.*

(g) penalties for illegal demolitions and tree removals; *We agree with penalties for illegal demolitions and tree removals. But would like to go further.*

We submit that no developer should be able to demolish a building, without the prior approval of a planning permit for a new development on the site within construction to begin within three months. This would give the community time to investigate heritage protection and would also protect the community from ugly moonscapes.

I am lodging this submission on behalf of the Kingston Residents Association, and have drawn on my own and other members' experience to that end. I would be happy to present to the inquiry, if there is that opportunity.

Yours sincerely,

Rosemary West

[Redacted signature]

On behalf of the Kingston Residents Association

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