



Planning Evidence Statement

Amendment C190more to the Moreland Planning Scheme

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1. INTRODUCTION

1. I received instructions from Moreland City Council (the Council), to prepare a statement of planning evidence in relation to Amendment C190more ('the amendment') to the Moreland Planning Scheme.
2. The amendment seeks to introduce an additional class of application into the VicSmart provisions to construct a dwelling if there is one dwelling existing on the lot or to construct two dwellings on a lot in certain circumstances by:
 - Amending the Schedule to Clause 59.15 'Local VicSmart Applications'; and
 - Amending the Schedule to Clause 59.16 'Information Requirements and Decision Guidelines for Local VicSmart Applications'.
3. I was not involved in the preparation of the amendment. I was engaged following the referral of submissions to the amendment to a Panel.

My Evidence

4. I have been instructed to review the amendment and consider:
 - Whether the amendment is strategically justified; and
 - Any submissions relevant to my expertise.
5. My evidence will also provide a strategic assessment of the amendment, having regard to Planning Practice Note 46: Strategic Assessment Guidelines¹.
6. My evidence is limited to the elements of the amendment that relate to the proposed changes to the planning scheme.

¹ May 2017. See: https://www.planning.vic.gov.au/__data/assets/pdf_file/0023/12992/46-Strategic-Assessment-Guidelines_May-2017.pdf



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7. This is relevant because some submitters raise issues which relate to the processing of planning permit applications. These issues include whether a planning assessment can be appropriately undertaken within 10 days, whether this time frame allows for a site visit and whether it will allow Council planning officers to fully understand an application of this nature, particularly if they decide to refuse to grant a planning permit. My evidence does not directly address these issues.
8. In essence, these issues relate to the level of resourcing, training and support that Council will have in place to process these applications. While I have been briefed on the Council's proposed practice and processes for these applications, it is ultimately not for me to make an assessment on whether Council can achieve those outcomes.
9. In preparing this statement, I have:
- Reviewed the exhibited amendment, including the proposed Schedules to Clauses 59.15 and 59.16 and the explanatory report and the several background reports prepared by the Council including *Better Outcomes for Two Dwellings* (June 2019)²;
 - Considered relevant aspects of the Moreland Planning Scheme, including the Planning Policy Framework ('the PPF'), the Municipal Strategic Statement (the 'MSS') and local planning policies and relevant background documents;
 - Reviewed *Plan Melbourne 2017-2050: Metropolitan Planning Strategy* (Department of Environment, Land, Water and Planning, 2017) and *Plan Melbourne 2017-2050: Addendum 2019* (Department of Environment, Land, Water and Planning, 2019);

² This and other documents are referenced throughout my report.



- Considered relevant Practice Notes (including PPN10: Writing Schedules³, PPN13: Incorporated and Background Documents), PPN15: Assessing an Application for One of More Dwellings in a Residential Zone and PPN16 Making a Planning Application for One or More Dwellings in a Residential Zone and PPN46: Strategic Assessment Guidelines;
 - Considered relevant Ministerial Directions (including the Ministerial Direction on the Form and Content of Planning Schemes, Ministerial Direction No. 1 – Potentially Contaminated Land, Ministerial Direction No. 9 – Metropolitan Strategy and Ministerial Direction No. 11 – Strategic Assessment of Amendments);
 - Read the sixteen (16) submissions received by the planning authority to the amendment, including the two (2) late submissions; and
 - Read the agendas and minutes to the relevant Council meetings that considered this amendment.
10. My evidence is based on the amendment as it was exhibited.
11. My opinion on the Amendment is in Section 2 of my statement and my conclusion in Section 3 summarises my opinion. I have also prepared a track change version of the amendment, which contains my recommended adjustments at **Appendix C**.

³ Now included in A Practitioner's Guide to Victorian Planning Schemes Version 1.4, April 2020.



2. OPINION

Overview

12. Amendment C190 proposes to make applications for what are commonly described as dual occupancies⁴ in the General Residential and Neighbourhood Residential Zones eligible for the VicSmart assessment pathway where a number of criteria are met⁵.
13. I have framed my assessment and evidence around the following questions:
- What is the strategic context for the City of Moreland and, particularly, its residential areas?
 - Is the amendment strategically justified?
 - Whether applications for two dwellings should be eligible for the VicSmart assessment stream?
 - Is it appropriate to exempt the applications from third party notice and review rights? And
 - Whether the controls have been effectively drafted?
14. These matters are addressed later in my statement.
15. In framing my assessment, I note that the key issues raised in submissions are broadly whether the applications are too complex for the VicSmart assessment stream and/or whether these applications should be exempt from third party notice and review rights.

⁴ Either to construct one additional dwelling if there is one dwelling existing on a lot or to construct two dwellings on a lot.

⁵ As described in the proposed Schedule to Clause 59.15.



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16. Without making my evidence a simplistic or reductionist exercise, it is fair to conclude that these two questions are ultimately what should be determinative for this amendment.

What is the strategic context for housing in Moreland?

17. The City of Moreland is an established urban municipality in Melbourne's inner north and provides convenient access to Melbourne's CBD, major transport routes, the Port of Melbourne as well as Melbourne and Essendon Airports.
18. Moreland is predicted to experience sustained population growth⁶. The Victoria in Future 2019 (VIF2019), forecasts an increase in population from 181,730 in 2018 to 241,540 by 2036. This is an increase of 59,820 people (1.6 per cent per annum)⁷.
19. The number of smaller households (lone person and couples without children) within Moreland is increasing. Between 2006 and 2016, the number of smaller households increased by 4,533. By contrast, the number of couples with children households increased by only 2,637⁸. It is forecasted that lone person households will replace couples with children as the most common type of household in Moreland by 2036⁹.
20. There has been a shift towards medium and high-density housing from all household types. Thirty five per cent of Moreland's population live in medium density housing¹⁰.
21. An increasing number of families are occupying medium density dwellings. In 2006, around one in six families with children lived in medium density dwellings, this increased to one in four in 2016¹¹.

⁶ Population forecasts and growth rates may be affected as a result of the current global pandemic.

⁷ Victoria in Future 2019: Population Projections 2016-2053 - July 2019

⁸ Medium Density Housing Review – 10 October 2018

⁹ A Home in Moreland: the housing we need now and in the future – August 2018

¹⁰ Medium Density Housing Review – 10 October 2018

¹¹ A Home in Moreland: the housing we need now and in the future – August 2018



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22. The shift towards smaller households is expected to continue with the average household size forecast to fall from 2.54 people per household (pph) in 2016 to 2.42 pph in 2036¹².
 23. The City of Moreland contains a greater proportions of medium density housing stock compared with the Melbourne average¹³. Between 2005 and 2016, 70 per cent of all new dwellings were classified as medium density¹⁴.
 24. Moreland City Council determines an average of 400 medium density planning permit applications each year. In 2018, 153 medium density planning applications (40 per cent) were dual occupancy applications¹⁵.
 25. It makes sense that this Council would look towards ways to streamline its approvals processes given the number of applications it receives for this class of development.
 26. The proportion of dual occupancy developments has increased from 33 per cent to 40 per cent between 2017 and 2018. The number of dual occupancy developments increased following the introduction of the mandatory garden area requirement¹⁶.
 27. Processing dual occupancy applications is recognised as utilising significant Council resources¹⁷.
 28. The most commonly approved type of dual occupancy development is the 'side by side' format. Half of all recently dual occupancy developments are side by side. Approximately one third of approved dual occupancy developments in 2018 involved

¹² Medium Density Housing Review – 10 October 2018

¹³ Moreland Planning Scheme Clause 21.01-2

¹⁴ *Better Outcomes for Two Dwellings on a Lot: A review of dual occupancy development in Moreland – June 2019*

¹⁵ *Better Outcomes for Two Dwellings on a Lot: A review of dual occupancy development in Moreland – June 2019*

¹⁶ Medium Density Housing Review – 10 October 2018

¹⁷ *Better Outcomes for Two Dwellings on a Lot: A review of dual occupancy development in Moreland – June 2019*



the existing dwelling being retained and one new dwelling constructed behind or beside the existing dwelling¹⁸.

29. The Council has undertaken a strategic research exercise to understand dual occupancy developments trends in the City. That report entitled *Better Outcomes for Two Dwellings* report, identified (in summary) that:

- 40 per cent of Moreland's planning applications are for two dwellings on a lot;
- 71 per cent of these applications receive no objections or one objection (46 per cent receive no objections);
- Most commonly, objections related to amenity impact on an immediately adjoining property (overlooking and overshadowing). Ten per cent of application received objections related to car parking. Many of the objections raised issues not specific to the application or non-planning related issues¹⁹;
- Where notice was given in accordance with Section 52 of the *Planning and Environment Act 1987*, a change was only made to 11 per cent of applications²⁰;
- While half of all dual occupancy applications attract objections, only one in ten dual occupancy applications is changed as a result; and
- There were only 9 instances where objectors appealed a Council Notice of Decision to Grant a Permit for two dwellings in 2018 and the Tribunal issued a permit in all circumstances.

30. Medium density development, including dual occupancy development is permitted in all residential zones. Within the City of Moreland, 30 per cent of residentially zoned

¹⁸ *Better Outcomes for Two Dwellings on a Lot: A review of dual occupancy development in Moreland – June 2019*

¹⁹ *Better Outcomes for Two Dwellings on a Lot: A review of dual occupancy development in Moreland – June 2019*

²⁰ This is despite the Urban Planning Branch having an established practice of discussing objections with submitters during and post-public notification.



land is within the General Residential Zone and 62 per cent is within the Neighbourhood Residential Zone²¹.

31. Density controls do not apply to the General Residential Zone or Neighbourhood Residential Zone. The zones' mandatory maximum height controls allow:
 - Development of 9m and 2 storeys in the Neighbourhood Residential Zone²²; and
 - 11m and 3 storeys in the General Residential Zone²³.
32. Between 2015 and 2017, medium density development within the General Residential Zone was comprised of:
 - Single storey development (6 per cent);
 - Double storey development (88 per cent); and
 - Three storey (6 per cent typically located along main roads and around railway stations)²⁴.
33. Dual occupancy development is more common in the northern parts of Moreland, where lots sizes are generally larger.
34. I have considered this context in my evidence.

²¹ *Better Outcomes for Two Dwellings on a Lot: A review of dual occupancy development in Moreland – June 2019*

²² This height in metres can be increased in some circumstances.

²³ This height in metres can be extended in some circumstances.

²⁴ *Better Outcomes for Two Dwellings on a Lot: A review of dual occupancy development in Moreland – June 2019*



Is the amendment strategically justified?

35. I have reviewed the strategic justification for the amendments in accordance with the framework provided by Planning Practice Note 46: Strategic Assessment Guidelines. The salient points of my consideration of these issues are as follows:

Why is the amendment required?

36. Amendment C190more seeks to streamline planning permit applications for some dual occupancy developments by allowing these applications to be processed through the VicSmart assessment stream in some circumstances.
37. This approach is recommended by strategic work undertaken by Moreland City Council as part of the *Moreland Medium Density Housing Review* (October 2018) and the *Better Outcomes for Two Dwellings on a Lot* report. Collectively, these reports identify that a 'more straight forward' process for development which complies with development standards outlined in the planning scheme and which achieves higher levels of sustainable and liveability requirements could be facilitated through the 10 day permit process stream in order to incentivised improved housing outcomes.
38. The research underpinning the amendment evaluates the intervention, having regard to the level of community interest and objection and the limited change to development that is resulting from the involvement of third parties in the process.
39. The amendment proposes to introduce a new class of VicSmart application for two dwellings on a lot within the Neighbourhood Residential and General Residential Zones that meet a range of criteria.



Objectives of Planning in Victoria

40. Section 4(1) of the *Planning and Environment Act 1987* sets out the objectives of planning in Victoria. Relevantly, the amendment implements and advances the following objectives:
- *To provide for the fair, orderly, economic and sustainable use and development of land.*
 - *To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.*
 - *To facilitate development in accordance with the objectives [outlined above].*
 - *To balance the present and future interests of all Victorians.*
41. The amendment seeks to provide another pathway to facilitate two dwellings on a lot within its residential areas, where pre-determined criteria are met.
42. It provides the statutory mechanism to facilitate orderly and sustainable development in a manner that, in my view, balances the present and future interests of Victorians and will secure a pleasant living, working and recreational environment.
43. It is my view that the amendment is generally consistent with the objectives of planning in Victoria.



Environmental, Social and Economic Effects

44. I would envisage that the amendment is likely to have positive social, environmental and economic effects, insofar as it provides an incentivised framework for development that will provide tangible benefits such as:
- Support for increased housing diversity and affordability;
 - Decreased costs and time associated with the planning permit process;
 - Improved environmental performance of buildings; and
 - Increased provision of landscaping within development.
45. I accept that there are some neutral or negative social aspects of this amendment. Reducing opportunities for third parties to be involved in the planning permit process has some costs and benefits. I consider this later in my evidence.

Compliance with Ministerial Directions

46. I have considered the amendment against the requirements of the *Ministerial Direction on the Form and Content of Planning Schemes* (as amended 23 January 2020). I am satisfied that the proposed structure and content of the ordinance meets the requirements of this Direction.
47. The Amendment was exhibited with an explanatory report that met the requirements of *Ministerial Direction No. 11 – Strategic Assessment of Amendments*.
48. The amendment has had regard to *Ministerial Direction No. 9 – Metropolitan Planning Strategy* and has considered the relevant metropolitan planning strategy – Plan Melbourne.
49. In my opinion, the amendment and the proposed provisions comply with all relevant Ministerial Directions.



The Planning Policy Framework

50. The amendment broadly supports and implements a number of relevant objectives in the Planning Policy Framework.
51. In particular, it is consistent with the objectives and strategies of Clause 11 (Settlement), Clause 15 (Built Environment and Heritage) and Clause 16 (Housing).
52. The amendment will introduce an approvals pathway for development that will facilitate increased housing diversity and affordability, as broadly encouraged by Clause 16. Neighbourhood character will remain a relevant consideration in the assessment of permit applications, consistent with Clause 15.01-4S.
53. There has been criticism by one submitter that the amendment will encourage applicants to underdevelop sites due to the pathway for 2 dwellings being easier in some circumstances than for more ambitious developments. Careful review and monitoring of this should be undertaken by the planning authority to determine whether this happens or not.

Local Planning Policy Framework

54. The amendment broadly supports and implements a number of relevant objectives in the Local Planning Policy Framework.
55. Clause 21.01 'Municipal Profile' recognises that housing and population growth are key challenges for the community. It identifies that the key planning issues that face the City include:

Population growth and associated needs for housing, infrastructure, community facilities, employment and services.

Housing supply, choice and affordability. There is a diversity of household sizes with different housing needs, and incomes have not kept pace with rising housing costs. Housing density is increasing, with Moreland having greater proportions of



medium density housing stock compared with the Melbourne average. Housing choices are more diverse in the south of the municipality, with more than half the dwelling stock attributed to medium density housing forms. On the other hand, many suburbs in the north have reduced levels of housing diversity with 70-90% single detached dwellings.

56. Clause 21.02 'Vision' outlines the vision for the municipality and the Municipal Strategic Statement. Relevant strategic directions at Clause 21.02-3 for housing seek to, broadly:

- Provide for a range of housing sizes and types to accommodate diversity;
- Provide for housing affordability; and
- Provide housing designed to be visitable and livable by people with limited mobility.

57. In relation to housing growth and change, the Vision seeks to divide the municipality into areas for significant, incremental and minimal housing growth.

58. The General Residential Zone and Neighbourhood Residential Zones affected by this amendment are in incremental and minimal housing growth areas respectively. Within these areas, there is recognition that consolidation of urban form is an acceptable outcome and this amendment is consistent with this broad strategic direction.

59. Clause 21.03 'Strategic Framework' provides the relevant direction for a range of strategic issues. Clause 21.03-3 'Housing' is relevant to this amendment. The objectives at this clause seek:

To provide housing diversity to meet community needs.

To contribute to housing affordability.

To increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community.



60. Clause 22.01 'Neighbourhood Character' provides relevant policy that is to be considered for applications for two dwellings under this pathway. It provides direction to support development that is consistent with the area's character.

61. Overall, I consider that the amendment is consistent with this local policy context. The amendment seeks to increase housing diversity and incentivise housing to be adaptable and visitable by people with limited mobility.

Use of the Victoria Planning Provisions

62. I discuss the appropriateness of the VicSmart provisions as an implementation tool later in my evidence.

Views of Relevant Agencies

63. The amendment was subject to the ordinary public exhibition process.

64. I am not aware of any submissions made by relevant agencies.

Bushfire Risk

65. The land affected by the amendment is not located within an area that is affected by the Bushfire Management Overlay or identified as being bushfire prone.

66. I consider that bushfire risk has been appropriately managed given the urban setting and that State policy on bushfire can adequately address bushfire risk.

Resourcing and Administrative Costs

67. I have not been presented with any evidence relating to the resource and administrative costs of the amendment by the Council.



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68. I explore the resourcing implications of this amendment later in my evidence in more detail. However, it is fair to observe that applications in this class already trigger planning permits.
69. The resourcing issue that is key to a consideration of this amendment is whether the Council is adequately resourced to process applications within a 10 day timeframe in most circumstances.
70. I accept that there are also 'costs' associated with the presumption that a responsible authority pay an applicant for review's costs in lodging a failure appeal under section 79 of the Act where an application is not determined within the statutory timeframe.
71. This presumption exists unless the Council can reasonably establish any delay in processing was caused by the applicant themselves. Notwithstanding this, I think it is unlikely that the Council will suddenly be exposed to a large volume of these claims, given that this pathway is not exposed to third party notice and review and all the timing risks and uncertainties associated with that.

Summary of Assessment

72. Broadly, it is my view that the amendment is strategically justified.
73. It is consistent with broad policy direction to encourage increased housing diversity, accessibility and affordability, consistent with neighbourhood character. The adoption of the VicSmart assessment pathway represents the best 'tool' available to Council to incentivise improved outcomes.



Should two dwellings be eligible for the VicSmart assessment pathway in some circumstances?

What is VicSmart?

74. The *Practitioner's Guide to Victorian Planning Schemes* (the 'Practitioner's Guide'), describes VicSmart in the following terms:

VicSmart is a streamlined permit application process. VicSmart only affects the assessment procedure and has no effect on any permit requirement. Where a proposed development is assessable against only a VicSmart permit requirement, it must be assessed under the VicSmart process, which is set out at Clause 71.06.²⁵

75. The VicSmart provisions were introduced by Amendment VC114. At the time of its introduction, much of the marketing collateral outlined that VicSmart would be 'a shorter planning permit process for straightforward planning applications'²⁶.
76. Amendment VC114 outlined that only a fairly limited range of applications were eligible for the assessment pathway, such as simple subdivision and boundary realignment applications, removal of one tree within the environmental and landscape overlays, construction of a fence, reducing car parking and minor works in a Heritage Overlay.²⁷ The 'straightforward' nature of the applications was highlighted by another class of applications – for buildings and works in the Mixed Use, industrial, commercial, Capital City and Docklands zones up to a value of \$50,000.²⁸

²⁵ A Practitioner's Guide to Victorian Planning Schemes, p. 39.

²⁶ Planning Advisory Note No. 55 – Amendment VC114 - VicSmart Planning Assessment.

²⁷ Planning Advisory Note No. 55 – Amendment VC114 – VicSmart Planning Assessment. Note: this is not an exhaustive list.

²⁸ Clause 92.03, as of 19 September 2014 (gazettal date of Amendment VC114).



The expansion of VicSmart

77. Over time, however, there have been several amendments²⁹ which have substantially extended the range of applications which can be considered under the VicSmart pathway. These extensions include:

- Amendment VC135, which made the following classes of applications (among others) eligible for the VicSmart assessment stream:
 - Buildings and works up to \$1 million in the industrial zones;
 - Buildings and works up to \$500,000 in commercial and some special purpose zones (including the Activity Centre Zone);
 - Some buildings and works in rural areas (up to \$500,000 in agricultural settings); and
 - Expansion of the car parking reduction trigger to 10 spaces.
- Amendment VC137, which made the following classes of applications eligible for the VicSmart assessment stream:
 - Extension of one dwelling on a lot in the residential zones (excluding the Low density Residential Zone), subject to certain requirements being met;
 - Buildings and works not associated with a dwelling up to \$100,000, subject to certain requirements being met;
 - Expansion of the \$50,000 buildings and works trigger in the Mixed Use Zone to \$100,000; and

²⁹ In addition to the substantial amendments I have listed below, Amendment VC142 also allowed additional classes of buildings and works under the Heritage Overlay to be considered under the VicSmart pathway, such as electric vehicle charging stations and services normal to a building (other than a dwelling).



- Amendment VC186, which made secondary dwellings eligible for the VicSmart pathway, subject to certain requirements being met.

78. Clearly these amendments show that there has been a broadening of the VicSmart assessment pathway over time. In my view, many of these applications are not necessarily 'straightforward' applications. Buildings and works of up to \$500,000 in a commercial or Activity Centre Zone and \$1 million in an industrial zone can be somewhat complex applications.

79. The introduction of secondary dwellings and single dwelling extension classes to the VicSmart pathway also demonstrate that there is an increasing acceptability of the use of VicSmart provisions in residential zones for different classes of application.

What does VicSmart do?

80. Compared with an 'ordinary' application under the planning scheme, the effect of making an application class assessable under the VicSmart stream is that:

- The application fee for a permit is reduced;
- The application is exempt from third party notice and review rights set out at section 52(1)(a), ((b), (c) and (d) and section 82(1) of the Act;³⁰
- The Council's Chief Executive Officer is the responsible authority for considering and determining VicSmart applications, pursuant to the Schedule to Clause 72.01 of the Moreland Planning Scheme. Under the usual permit application stream, this function rests with the Council (that is, the Councillors) and is delegated in many circumstances (but not always) to Council officers;

³⁰ The application is also exempt from the decision requirements of section 64(1), (2), (3) of the Act, which applies where a permit application has received objections.



- The prescribed timeframe for appealing a failure to determine a permit application under section 79 of the Act is reduced from 60 days to 10 days;³¹ and
- The responsible authority is constrained in its decision-making (as explored below).

81. Beyond the matters relating to ‘faster processing times’ and exemption from third party notice and review that I turn to later in my evidence, the most significant change from a ‘standard’ permit application to a VicSmart permit application is the change in requirements for around the matters to be considered.

82. Clause 71.06-2 states that:

Matters to be considered

In deciding a VicSmart application, the responsible authority:

- *Must only consider the decision guidelines specified for the relevant class of application.*
- *Is exempt from considering the following matters:*
 - *The requirements of section 60(1)(b)³², (c)³³, (e)³⁴ and (f)³⁵ and (1A)(b) to (h) and (j) of the Act³⁶.*
 - *The Municipal Planning Strategy and Planning Policy Framework unless the decision guidelines for the relevant class of application specify otherwise.*

³¹ r. 32(1), Planning and Environment Regulations 2015.

³² The objectives of planning in Victoria.

³³ All objections and other submissions which the responsible authority has received and which have not been withdrawn.

³⁴ Any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development.

³⁵ Any significant social effects and economic effects which the responsible authority considers the use or development may have.

³⁶ The matters at section 60(1A) are matters which may be considered if the circumstances appear to so require.



- *The decision guidelines in Clause 65.*
 - *In deciding an application for review in relation to a VicSmart application, the Tribunal is exempt from the matters specified in section 84B(2)(b) to (g) and (i) to (ja) of the Act.*
83. Notably, however, requirements in the zone still apply.³⁷
84. For instance, comparing this with the ordinary application for two dwellings under the current provisions, a proposal through the VicSmart pathway:
- Is exempt from the giving of notice and the associated review rights;
 - The responsible authority can still request further information (within 5 days) under Section 54 of the Act;
 - Must continue to meet the garden area and height requirements of the zone;
 - Must continue to meet the 'requirements of Clause 55', as this is a mandatory requirement in the zone. This means that the application must meet all of the objectives and should meet all of the standards;
 - Can only be assessed against the decision guidelines in the Schedule to Clause 59.16. No other decision guidelines within the planning scheme apply; and
 - Can be considered by the Chief Executive Officer or other officers under delegation.

³⁷ By 'requirements', I mean that a development must still meet the mandatory garden area and height requirements, as well as the requirements of Clause 55. For legibility purposes, Council has opted to refer to them in the Schedule to Clauses 59.15 and 59.16.



Should two dwellings on a lot be eligible for VicSmart?

85. The *Practitioner's Guide* sets out that:

Any provision of a planning scheme can specify classes of application that can be assessed through the VicSmart process. A planning authority can include local VicSmart classes in a planning scheme in addition to the state VicSmart classes that apply to all planning schemes across Victoria.³⁸

86. At face value, there is an acknowledgement within the *Practitioner's Guide* and the VPPs themselves that there are circumstances where two dwellings on a lot (as well as many other proposals) could be considered under the VicSmart assessment pathway.

87. The *Practitioner's Guide* sets out a range of criteria that planning authorities are encouraged to consider in deciding whether to create a local VicSmart class.³⁹ These criteria provide a useful reference for assessing whether that class of application should be eligible for VicSmart. I have assessed the amendment against these criteria. My analysis is as follows:

- ***That a change of use application is generally not suitable for the VicSmart process.***

The amendment does not seek to make a change of use application for VicSmart.

The use of land for a 'Dwelling' is as-of-right under the General Residential and Neighbourhood Residential Zones.

³⁸ A Practitioner's Guide to Victorian Planning Schemes, p. 40. Emphasis added.

³⁹³⁹ A Practitioner's Guide to Victorian Planning Schemes, p. 40.



- ***The proposed class should be capable of being received, reviewed and determined in 10 business days in almost all cases.***

I have not been provided with any evidence on how long the responsible authority now takes to determine an application that would meet the VicSmart criteria under current practice.

I accept that whether the Council can adequately assess these applications 'in most circumstances' within 10 days is a key question for this Panel to consider.

Ultimately, this Panel (and by extension the Minister for Planning) must be satisfied that this Council can appropriately resource itself and ensure appropriate practices and systems are in place to allow the assessment of these applications within the 10 day timeframe.

The Council has provided me with a diagram⁴⁰ that outlines its proposed assessment processes.

While it seems like a well-thought through process, I make no comment on whether or not this can be satisfied. This is something that the Council should appropriately explain to the Panel in its experience as a responsible authority for these applications.

Often, the presence of a target in itself is sufficient to drive a different approach and outcome. My experience as a town planner representing applicants is that, while the City of Moreland is a well-resourced and generally efficient organisation, I do not routinely see applications of this sort decided in 2 working weeks.

That said, the systemic 'benefits' that the VicSmart process delivers are not trivial or insignificant and provide real opportunities for the Council to deliver a more streamlined approvals process.

⁴⁰ I understand that this diagram will also be provided by the Council in its submissions to the Panel.



- ***The proposed class should only require a small number of discrete issues, with little to no policy balancing to be considered.***

The amendment proposes that only neighbourhood character policy and certain Clause 55 matters are relevant considerations in deciding the application.

In this regard, there is little 'balancing' of policy that is required. It is very close to a 'code-assess' model. It also appears to me that the amendment proceeds on the basis that Clause 21.03-3 considers that a second dwelling in incremental and minimal change areas can be acceptable, subject to neighbourhood character and amenity considerations.

Only a limited assessment of whether the proposal would be satisfactory from a character perspective and whether it meets the requirements of Clause 55 is required for these applications.

This is similar to the way in which the current VicSmart pathway works for single dwellings on a lot, where an application must be assessed against the objectives, standards and decision guidelines of Clause 54.02-1. This exercise requires a consideration of an existing or preferred character, which should be informed by relevant character policy or statements set out in the planning scheme.

Notably, sites within the Heritage Overlay are excluded from this assessment pathway, as are any sites that are subject to more complex built form requirements under a Design and Development Overlay. This is appropriate, as these applications require a balancing of competing policy objectives or a more technical assessment against additional requirements.

In a broader sense, there are some applications in the VicSmart assessment stream that have numerous issues which need to be considered in decision-making and make them less 'straightforward' applications.



For instance, Clause 59.04 'Buildings and works in a zone (except a rural zone)' has 14 decision guidelines, including a requirement to consider 'any relevant urban design and built form policy set out in the scheme'. Clause 59.10 'Car parking' has 18 decision guidelines to be considered.

As VicSmart application classes can be applied for together, this could mean a responsible authority considering an application for a building in a Commercial 1 Zone and a car parking reduction of up to 10 spaces has 32 decision guidelines to be considered, including an assessment of urban design and built form policy.

In some respects, the issues that are to be considered in decision-making by the VicSmart stream in this amendment are considerably simpler and more discrete than some other VicSmart classes which need to be assessed within the same timeframe.

- ***Where an external referral authority is required to give comment under Clause 66, this should be able to be obtained before lodgement without the assistance of the responsible authority.***

There are no external referral authorities specified for applications for two dwellings on a lot under the General Residential and Neighbourhood Residential zones.

Some land within these zones is affected by the Special Building Overlay, which requires referral to Melbourne Water. There is already a VicSmart stream for all buildings and works applications under the Special Building Overlay and the existing referral prior to application mechanisms under this overlay are well established.



- ***Where internal comment is required, it should involve no more than one or two basic matters.***

I have not been provided with any information about the responsible authority's existing internal referral practices for these applications.

Nevertheless, I note that the process flowchart for the proposed class of application includes an opportunity for the discussion of neighbourhood character matters with the responsible authority's urban designer, if required and appropriate. That said, this is a class of development that is well within the 'wheelhouse' of any experienced town planner in an inner urban council.

This is another matter that I consider is ultimately for the Council to inform the Panel that it is adequately resourced to undertake within the relevant timeframe.

- ***The information requirements for the proposed class should be simple to prepare.***

The outcome 'simple to prepare' is a comment that needs to be thought about in context and VicSmart applications should not be limited to only the most basic level of permit.

There is a tendency to think that a VicSmart application can or should be able to be prepared by (say) the proponent him/herself. Some are, but I think that is a false assumption.

There is no expectation (in my mind at least) that VicSmart applications should be limited to only the simplest of application classes. The expansion of VicSmart, particularly in commercial, industrial and special purpose zones highlight this. There are 9 separate requirements for VicSmart applications for buildings and works in the Commercial 1 Zone (see Clause 59.04-1). These include requirements for plans to be drawn to scale and fully dimensioned, showing a



number of matters. I would expect that many of those applications need to be prepared by building designers or architects and, potentially, with specialist input from town planners as well.

To qualify for the VicSmart assessment stream for two dwellings under this amendment, an applicant is required to prepare (including changes recommended later in my evidence):

- Plans drawn to scale and dimensioned, which show matters that are generally consistent with the requirements for plans at Clause 55.01-1 and the zone. In this respect they are typical of requirements for two dwellings on a lot;
- A Sustainable Design Assessment, showing that all new dwellings achieve a minimum BESS score of 50 per cent, including achieving the mandatory minimum score paths for water, energy, storm water and IEQ;
- A Livable Housing assessment, which has been certified by a Livable Housing Australia Design Guideline Assessor, demonstrating that all new dwellings achieve a Silver Level of performance under the LHA Livable Housing Design Guidelines; and
- A Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment.

In my view, the degree of complexity for application requirements should be relative to the type of application requirements that might ordinarily be expected for an application of the same degree of complexity (two dwellings on a lot)⁴¹.

For instance, I note that the application requirements under Clause 59.14 'Extension to One Dwelling on a Lot in a Residential Zone' include the same plan

⁴¹ See also PPN16 Making an Application for a Dwelling in a Residential Zone for a discussion on how to prepare a permit application for a development of this sort.



requirements as the first dot point above. A further written statement, plan or diagram is required to demonstrate how objectives and requirements of Clause 54 and the garden area requirement in the zone are met. I consider that this written statement is comparable to the Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment requirement.

Indeed, all two dwelling applications are required by Clause 55.01-1 to submit plans that meet certain requirements.

Clause 22.08 requires a Sustainable Design Assessment to be submitted for any applications for 2-9 dwellings on a lot.

In the context of an application for two dwellings on a lot, I consider that these requirements are:

- Relatively simple to prepare. They will most likely need to be prepared by a consultant, but I expect this same requirement is true for a range of other VicSmart applications;
- Comparable to the level of complexity expected for comparable VicSmart applications (such as the extension of a single dwelling on a lot and a secondary dwelling).

While the Livable Housing Australia Guidelines are not currently required (formally) for other permit applications within the City of Moreland, these do not appear to be overly complex for building designers and architects to comply with.

I consider that these information requirements are reasonable, and perhaps more importantly, easily understood.

- ***The proposed class should not involve matters that would typically require third party notice.***

I provide my opinion on this aspect of the amendment later in my evidence.



- ***Whether the proposed class would be more suitable for a permit exemption, where possible.***

The planning authority is unable to exempt out applications for two dwellings on a lot under the General Residential or Neighbourhood Residential zone provisions.

88. Overall, it is my opinion that the amendment is generally consistent with the considerations for VicSmart applications outlined in the *Practitioner's Guide*, as I have assessed above.
89. There is one further consideration in the *Practitioner's Guide* which concerns drafting. In relation to identifying the 'class of application' for the VicSmart trigger, the Guide notes:

The class of application must be clearly drafted so a user can easily determine if an application is subject to the VicSmart process.

The class of application should not rely on extensive conditions that need to a detailed assessment of the application to decide the appropriate assessment pathway before the application is lodged.⁴²

90. The proposed Schedule to Clause 59.15 relies on a list of conditions to determine if the application is eligible for the VicSmart assessment pathway.
91. Some of these conditions are similar to those which must be met for pre-qualification to the VicSmart assessment stream for secondary dwellings and/or extensions to single dwellings.
92. The additional requirements beyond meeting ResCode standards, the minimum garden area and height requirements in the zone are:
- Meeting the number of car parking spaces required under Clause 52.06 Table 1;

⁴² A Practitioner's Guide to Victorian Planning Schemes, p. 41.



- Meeting certain requirements for new crossovers (up to 7 requirements);
 - Meeting Silver Level of performance under the Livable Housing Australia, Livable Housing Design Guidelines; and
 - Meeting a minimum BESS score of 50 per cent.
93. While this list may seem extensive, it is noteworthy that the garden area and building height requirements are already required to be met by the zone. In this regard, there is some redundancy in the provisions that could be reduced or removed.
94. The remaining requirements can be considered relatively simply as part of any design process. I am also instructed that Council will ensure its fast track planning officers can quickly triage applications to ensure VicSmart requirements are met.
95. Overall, I consider that, in some circumstances, applications for two dwellings on a lot can be appropriately considered through the VicSmart assessment pathway, subject to the considerations I outline below.

Is it appropriate to exempt these applications from third party notice and review rights?

96. As I outlined earlier in my evidence, the *Practitioner's Guide* discourages the use of the VicSmart assessment pathway for matters which would *'typically require third party notice'*.
97. The involvement of third parties in the planning permit process is a hallmark of the Victorian planning system. Indeed, it is a function of the planning framework created under the *Planning and Environment Act 1987*. Section 4(2)(i) of the Act says that one of the objectives of the planning framework established under the Act is:

To ensure that those affected by proposals for the use, development or protection of land or changes in planning or requirements receive appropriate notice.



98. There are extensive opportunities for the involvement of third parties in most permit applications, particularly in residential settings. The residential zones envisage that notice will be given of almost all applications, if the responsible authority considers that it is necessary.⁴³
99. Notwithstanding this, section 52(4) of the Act allows for a planning scheme to exempt any class or classes of applications from all or any of the requirements relating to notice of an application, unless a restrictive covenant applies.⁴⁴
100. Indeed, there are circumstances where applications are exempt from notice and review rights in the General Residential and Neighbourhood Residential Zones in Moreland. Namely these classes of application include:
- To extend a dwelling on a lot in the following circumstances:
 - Meets the minimum garden area requirement;
 - Does not exceed a height of 5 metres;
 - Is not visible from the street (other than a lane or a public park);
 - Meets the requirements in the following standards of Clause 54:
 - A10 Side and rear setbacks;
 - A11 Walls on boundaries;
 - A13 North-facing windows;
 - A14 Overshadowing open space; and

⁴³ By 'necessary', I mean that the responsible authority considers that there will be material detriment, in line with the test at section 52 of the *Planning and Environment Act 1987*.

⁴⁴ Section 52(4) of the Act says that "A planning scheme may exempt any class or classes of applications from all or any of the requirements of subsection (1) except paragraphs (ca) and (cb). In effect, this means that notice of an application is not required, unless an application would result in a breach of the covenant or if the application seeks to remove or vary the covenant."



- A15 Overlooking.
- To construct or extend a secondary dwelling on the same lot as an existing dwelling in the following circumstances:
 - The requirements for all secondary dwellings, as outlined at Clause 51.06-3⁴⁵;
 - The dwelling is not located on a lot boundary or closer to the street (other than a rear lane) than the existing dwelling;
 - The numerical requirements in the following standards of Clause 55 are met:
 - B8 Site coverage;
 - B9 Permeability and stormwater management;
 - B17 Side and rear setbacks;
 - B19 Daylight to existing windows;
 - B20 North-facing windows;
 - B21 Overshadowing open space;
 - B22 Overlooking;
 - B27 Daylight to new windows;
 - B29 Solar access to open space.

⁴⁵ These requirements are that it is located on the same lot as an existing dwelling, does not exceed a gross floor area of 60 sqm, does not exceed a height of 5 metres and 1 storey, meets the garden area requirement, doesn't further reduce car parking for an existing dwelling and is not on a lot where there is an existing dependent person's unit, secondary dwelling or more than one dwelling.



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101. What I take from this context is that the planning scheme already contemplates circumstances where development in residential areas will be exempt from third party notice and review rights.
102. Self-evidently, there are clear systemic benefits from including permit application classes into the VicSmart stream.
103. It is trite to observe that the international and national economy will be significantly affected by the current global health emergency. That black swan event has catalysed change in all aspects of society and the economy.
104. This amendment is obviously not a COVID related response measure, but it may well assist the local economy to recover sooner. At least, it will encourage applicants to lodge 'compliant' applications in order to secure for themselves the benefits that stem from that pathway. I think that this is exactly the 'right' time and environment for this sort of systemic change to be considered.
105. The Victorian government, through the metropolitan planning strategy 'Plan Melbourne' has foreshadowed systemic improvements to the way planning permits are assessed.
106. Relevantly, Direction 2.4 of Plan Melbourne seeks to:

*Facilitate decision-making processes for housing in the right locations.*⁴⁶

107. Policy 2.4.1 seeks to:

*Support streamlined approval processes in defined locations.*⁴⁷

⁴⁶ Plan Melbourne 2017-2050, p. 57.

⁴⁷ Plan Melbourne 2017-2050, p. 57.



108. It is accompanied by the following description:

A streamlined, codified approval process will be developed and implemented for defined change areas. Under this process, proposals could be required to achieve a set of premium development standards related to dwelling design, open space and residential amenity and demonstrate delivery of good urban design outcomes for the locality.

A codified approval process will speed up decision-making in defined locations and provide local governments, the community and the housing sector with greater certainty. If a proposal does not meet the set standards for codified approval, then a normal approval process would apply.⁴⁸

109. Within the Plan Melbourne Implementation Plan, Action 28 proposes to review the residential development provisions to 'streamline the planning approvals process for developments in locations identified for housing change'.⁴⁹

110. Notably, the Plan Melbourne direction is silent about the involvement of third parties in any streamlined assessment process.

111. While these policy directions in Plan Melbourne seek for a state-wide outcome in the development of this streamlined, codified assessment process, it nevertheless highlights that there are opportunities to streamline assessment pathways more broadly.

112. While Plan Melbourne may not have specifically called for the sort of outcomes proposed by C190, it does provide the philosophical basis for Moreland's approach. Regardless, I do not think that the content of Plan Melbourne should be used as the basis to limit local government innovation in respect of process reform. In fact, quite the contrary. Should the Red Tape Commissioner have felt herself somehow limited by the imagination of Plan Melbourne's authors?

⁴⁸ Plan Melbourne 2017-2050, p. 57.

⁴⁹ Plan Melbourne 2017-2050 Implementation Plan, p. 15.



113. The Red Tape Commissioner's *Planning and Building Approvals Process – Discussion Paper* identified that:

There is a strong case for more risk-based streamlining of applications by providing alternative pathways for the assessment of permit applications.

Some stakeholders argue that a number of the permits they currently apply for are for low-risk work that could go into VicSmart or be exempted altogether. A need has also been identified for a new code assessment pathway for permit applications that are too complex for VicSmart, but are straightforward enough to not require the full 60-day assessment process.⁵⁰

114. The discussion paper went on to identify that:

A home owner wanting to construct an additional dwelling in a backyard to rent out or accommodate relatives is currently treated in the same way as a developer wanting to construct a multi-unit development for resale. A less onerous requirement would be preferable.⁵¹

115. The discussion paper identified that a new, VicSmart Plus pathway could apply for secondary dwellings on existing lots. Notably, the provisions introduced under the pilot program (through Amendment VC186) allow for secondary dwelling applications to be lodged and assessed under the VicSmart pathway, with no notice.

116. The context in Plan Melbourne and the Red Tape Commissioner's discussion paper highlight that there are opportunities for the Minister, DELWP and other stakeholders to streamline applications according to risk. There is an inherent recognition in this risk-based analysis that some applications are to be considered without notice.

117. On one level, this proposal seeks to consider the opportunity to streamline applications at a local level. Council is limited in its ability to achieve this in that it can only use the tools available within the VPPs.

⁵⁰ Planning and Building Approvals Process Review – Discussion Paper, p. 68.

⁵¹ Planning and Building Approvals Process Review – Discussion Paper, p. 68.



118. Council's strategic justification for this amendment is informed by the *Better Outcomes for Two Dwellings* report, which identifies (in summary) that:

- 40 per cent of Moreland's planning applications are for two dwellings on a lot;
- 71 per cent of these applications receive no objections or one objection (46 per cent receive no objections);
- Only 11 per cent of objections are resulting in a change being made to the development; and
- There were only 9 instances where objectors appealed a Council Notice of Decision to grant a permit for two dwellings in 2018 and the Tribunal issued a permit in all circumstances.

119. I do not accept (as a principle) that a planning scheme change can only occur where no-one is 'worse off'. Town planners do not subscribe to the Pareto improvement⁵² paradigm where social change is possible only if at least one person is made better off and nobody is made worse off. In practice, such an outcome is impossible and if that were the test, there would be no change.

120. Rather, planners typically (even if unknowingly) subscribe to the Kaldor-Hicks principle⁵³ which says that a decision or policy will be more efficient for the society if the gain in welfare by the beneficiaries is greater than the loss in welfare for those adversely affected.

⁵² The Pareto test is that an initiative is only warranted if there are no losers in the process. The Pareto test is not sanctioned in regulatory impact assessment because it places an unworkable onus of proof on the economic merits of regulatory change.

⁵³ Kaldor Hicks states that a decision or policy will be more efficient for the society if the gain in welfare by the beneficiaries is greater than the loss in welfare for those adversely affected. In other words, the regulatory initiative would be warranted if the beneficiaries could, if required, compensate those adversely



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121. In other words, a regulatory initiative would be warranted if the beneficiaries could, if required, compensate those adversely affected and still be better off. This is where the term net community benefit comes from.
122. The *Better Outcomes for Two Dwellings* report considered that there was little to no benefit gained from third party notice in a subset of these applications (those that meet ResCode standards), which the Council considers to be 'low risk' (essentially, this is a form of cost-benefit analysis).
123. Notwithstanding the findings of the report, I accept that there are benefits of third party involvement in the planning permit process, that are not captured by a purely statistical analysis, as is outlined above.
124. For instance, while the vast majority of applications receive none or only one objection, there can still be value in objections, which may alert the planner to particular conditions on adjoining properties, such as the location of significant trees, habitable room windows, decking etc.
125. Additionally, while Council may still grant a permit, the involvement of third parties may lead to improvements in the application prior to its approval, through amendments to plans or conditions on the permit, requiring a change to the built form.
126. To some extent, Council can overcome the shortcomings of turning off the notice provisions by ensuring it adopts a practice of conducting a site inspection for every application, but this does not negate the issue entirely.
127. On balance, I consider that there are some circumstances where it would be appropriate to exempt applications from third party notice (by virtue of them being eligible for the VicSmart assessment pathway).
128. I am concerned that the provisions, as drafted, would exclude applications that could result in significant bulk and height in rear yards from notice.



129. In my view, rear yards can be particularly sensitive locations and it would be unreasonable to allow applications to be exempt from notice and review simply because they fit within the Standard B17 envelope or meet Standard B18.
130. In my opinion, the pathway should include further criteria that would reduce the impact of development at this interface. Such criteria could include requiring development to be lower in height towards the rear of the site and setback off boundaries beyond the Standard B17 envelope.
131. I accept that, and my experience is, the introduction of the garden area requirement is having a substantial impact on development in these areas, which is meaning that development is more likely to be less intense than the Standard B17 envelope in some circumstances.
132. However, I recommend that additional criteria be included which would require a lower scale of built form within rear yards and reduce the extent of walls on boundary permissible under Standard B18. I recommend that the pathway criteria be modified as follows:
- Deleting the requirement that meeting Standard B18 means that an application can qualify for the VicSmart pathway and replacing it with a requirement that a wall cannot be on any one boundary for a length of more than 10 metres; and
 - Introducing a new requirement that development must be single storey (or 5 metres in height) within 5 metres of the rear boundary and must be no more than two storeys (or 9 metres) within 10 metres of the rear boundary.
133. I consider that these requirements provide for a lower scale and more appropriate built form where notice is 'turned off' by the pathway.
134. These changes are reflected in the track changes version of the controls I recommend at **Appendix C**.



Have the provisions been effectively drafted?

135. Having considered that the Council is unable to exempt out these applications from requiring a permit (as suggested by some submitters and the *Practitioner's Guide*) under the current zoning and that the broad rezoning of the land to a Special Use Zone is impractical, it is clear that the VicSmart provisions represent the best available mechanism within the VPPs for the Council to pursue this incentivisation.
136. My analysis now turns to the provisions in detail and whether they have been effectively drafted.
137. I have reviewed the provisions having regard to the *Ministerial Direction on the Form and Content of Planning Schemes* and the rules outlined in the *Practitioner's Guide*.
138. In broad terms, I think that the amendment has met the requirements of the Ministerial Direction and has been effectively drafted.
139. I have made some recommendations for improvement to these provisions (in addition to my recommendation above), which I outline below.

Schedule to Clause 59.15

140. The Schedule to Clause 59.15 proposes that the class of applications eligible for the VicSmart assessment pathway is to:

Construct a dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot if the development...

141. Section 37 of the *Interpretation of Legislation Act 1984* outlines that 'words in the singular include the plural' and 'words in the plural include the singular'.
142. Having regard to this section of the *Interpretation of Legislation Act 1984*, the first part of the class of application 'construct a dwelling if there is one dwelling existing on the



lot' could be read to include 'dwellings' and therefore multiple new dwellings if a dwelling already exists on the property.

143. For clarity, I recommend that the language be amended to avoid a possible interpretation of the plural applying. The trigger should be amended to say:

To construct one additional dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot if the development...

144. Under the 'Permit requirement provision' of the exhibited Schedule to Clause 59.15, there is a reference to Clause 32.08-5. This appears to be an error, as the permit requirement to construct two dwellings on a lot is at Clause 32.08-6 in the General Residential Zone.
145. I also understand it is Council's intention to exclude existing dwellings from needing to meet some requirements, namely concerning ResCode setbacks, sustainability and accessibility measures to the extent that there is non-compliance with these provisions currently.
146. I consider that exempting existing dwellings from needing to meet these requirements is sensible but must be drafted to ensure that these requirements do not increase the extent of non-compliance with these provisions beyond existing conditions.
147. I have made recommendations to address these matters, which are outlined in the track changes version of controls outlined at **Appendix C** to my statement.

Schedule to Clause 59.16

148. The Schedule to Clause 59.16 sets out the information requirements and decision guidelines.

149. The information requirements as exhibited are for:

- A Sustainable Design Assessment;

p.40



- A Livable Housing assessment; and
- A Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Checklist.

150. Clause 71.06-2 says:

Information requirements

A VicSmart application must be accompanied by the information requirements specified for the relevant class of application. The information requirements of the relevant zone, overlay or particular provision, other than those specified for VicSmart applications, unless the information requirements for the relevant class of application specify otherwise.

If in the opinion of the responsible authority an information requirement is not relevant to the evaluation of a VicSmart application, the responsible authority may waive or reduce the information requirement.

151. In my view, this means that, as exhibited, the application would be exempt from the requirements under the zone and Clause 55.01-1 to provide scaled and dimensioned plans, including a neighbourhood and site description and design response.

152. These requirements should apply to these applications, as should requirements to prepare shadow diagrams and elevations.

153. I have also included an application requirement for a copy of title and any registered restrictive covenant. This is consistent with the guidance in the *Practitioner's Guide*, which says that:

The information requirements must always include "A copy of title for the subject land and a copy of any registered restrictive covenant."⁵⁴

154. I have made recommended changes in **Appendix C** to reflect this.

⁵⁴ A Practitioner's Guide to Victorian Planning Schemes, p. 43.



155. Similarly, I think there is a need for the decision guidelines to be amended. This is particularly the case because a VicSmart application ‘turns off’ decision guidelines in other clauses in the planning scheme.

156. I recommend that the following decision guidelines be introduced to clarify the matters that are subject to decision-making:

- The objectives, standards and decision guidelines of Clause 55⁵⁵;
- The design standards of Clause 52.06-9⁵⁶; and
- An amended decision guideline in relation to neighbourhood character policy, objectives or statements, given then objectives of Clause 55 are to be called up as a decision guideline in this schedule.

157. Subject to the changes I make in **Appendix C**, I support the amendment.

158. My conclusions and recommendations are set out at Section 3 of this Statement.

⁵⁵ This is a reproduction of a similar decision guideline that exists within the General Residential and Neighbourhood Residential zones.

⁵⁶ Operationally, this requirement applies irrespective of whether a permit is triggered under Clause 52.06. For clarity, I recommend it be included within the schedule.



3. CONCLUSION

159. The Victoria Planning Provisions as well as the Victoria Planning System enable planning authorities to develop streamlined assessment pathways. In my experience, however, there are many 'non-planning' reasons why few (if any) councils have taken advantage of these opportunities.

160. C190more is the only amendment I have seen where a council is intent on applying the VicSmart provisions locally in a pro-active way. While this control might not be appropriate in every planning scheme in Victoria, I have no doubt that most council and consultant planners in Victoria will follow its progress with interest.

161. It is always difficult to be the first; to be the pioneer or the trailblazer. However, someone always has to be first and Moreland has deliberately (but not rashly) chosen to put itself in that position. Having read the Council's approach to the development of this amendment, I consider it to be an approach worth exploring.

162. My conclusions are summarised below:

- The amendment is strategically justified.
- There are circumstances where it is appropriate to use the VicSmart provisions for two dwellings on a lot.
- The use of the VicSmart provisions is supported by practice guidance, including the *Practitioner's Guide for Victorian Planning Schemes*.
- The controls are generally drafted efficiently and make correct use of the Victoria Planning Provisions. There is a need for some minor amendments to the controls to better reflect how these provisions will work in practice. These changes are outlined at **Appendix C** of my statement.



163. Save for these observations, I consider that the Amendment should be supported, subject to the considerations I have outlined above.

164. I have made all inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

John Glossop MPIA
Director
Glossop Town Planning Pty Ltd
October 2020



4. REQUIREMENTS UNDER PPV'S GUIDE TO EXPERT EVIDENCE

165. This statement is prepared by John Glossop, Glossop Town Planning Pty Ltd, Level 5/111 Cecil Street, South Melbourne. I am a Director of the firm. The firm has been in business since 1997.
166. I have a Bachelor of Arts (Urban Studies) Hons. I have been engaged in the following positions and roles in my career as a planner including:
- Former planner with the Shire of Newham and Woodend (prior to its amalgamation with the Macedon Ranges Shire).
 - Strategic and Social Planning Manager, Shire of Melton until 1997.
 - Sessional member, Planning Panels Victoria between 1997-2012.
 - Member of the ResCode Advisory Committee 2000.
167. I have sat as a Chairman or member on a number of planning scheme amendments, dealing with a broad range of issues from high-rise housing in Williamstown, the redevelopment of Pentridge Prison and the application of flooding overlays in the Mornington Peninsula Shire.
168. I was a sessional lecturer and tutor in strategic, statutory planning and urban studies at Victoria University of Technology (1996-99) and lecturer in statutory planning Latrobe University Bendigo (2000- 02). I am currently a sessional lecturer in Statutory Planning and Environment at the Royal Melbourne Institute of Technology University.
169. I have considerable experience in statutory and strategic planning and new format planning schemes.
170. My expertise to make this statement is based on a combination of my experience working in metropolitan Melbourne and regional Victoria, an understanding of the site and my experience as a planner in both the private and public sectors. I have been instructed by Moreland City Council to provide an opinion on the planning merits of Amendment C190more to the Moreland Planning Scheme.
171. My office was engaged by the Department of Environment, Land, Water and Planning's Smart Planning Team to prepare a secondary dwelling assessment code



and draft a version of VC186, which introduced Clause 51.06 into the Moreland Planning Scheme.

172. I have relied on the documents referred to in the introduction section of my statement. There were no tests undertaken in the preparation of this statement.



APPENDIX A: POLICY CONTEXT

The Moreland Planning Scheme

Planning Policy Framework

173. Within the Planning Policy Framework (the “PPF”), the following policies are considered particularly relevant to this matter:

- Clause 11 ‘Settlement’.
- Clause 15 ‘Built Environment and Heritage’.
- Clause 16 ‘Housing’.

174. I have considered each of these clauses in the preparation of my evidence. My assessment of the relevant parts of these clauses is provided at Section 2 of this statement.

Local Planning Policy Framework

175. The following clauses within the Local Planning Policy Framework (the “LPPF”) are particularly relevant to this matter:

- Clause 21.01 ‘Municipal Profile’.
- Clause 21.02 ‘Vision’.
- Clause 21.03 ‘Strategic Framework’.
- Clause 22.01 ‘Neighbourhood Character’.
- Clause 22.09 ‘Environmentally Sustainable Development’.



176. I have considered each of these clauses in the preparation of my evidence. My assessment of the relevant parts of these clauses is provided at Section 2 of this statement.

Plan Melbourne

177. Plan Melbourne 2017-2050: Metropolitan Planning Strategy is a reference document within the PPF and was adopted by the State Government in March 2017 to guide land use and development within Metropolitan Melbourne towards the year 2050.

178. The City of Moreland is located within the Northern region, where an additional 340,000 - 355,000 dwellings are identified being required to meet population growth to 2051.

179. Relevant directions under Plan Melbourne include:

- Direction 2.1 – Manage the supply of new housing in the right locations to meet population growth and create a sustainable city:
 - Policy 2.1.2 – Facilitate an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods close to existing services, jobs and public transport.
 - Policy 2.1.3 – Plan for and define expected housing needs across Melbourne’s regions.
- Direction 2.4 - *Facilitate decision-making processes for housing in the right locations*
 - Policy 2.4.1 - *Support streamlined approval processes in defined locations.*
 - Policy 2.4.1 is accompanied by the following description:



A streamlined, codified approval process will be developed and implemented for defined change areas. Under this process, proposals could be required to achieve a set of premium development standards related to dwelling design, open space and residential amenity and demonstrate delivery of good urban design outcomes for the locality.

A codified approval process will speed up decision-making in defined locations and provide local governments, the community and the housing sector with greater certainty. If a proposal does not meet the set standards for codified approval, then a normal approval process would apply

- Direction 2.5 – Provide greater choice and diversity of housing:
 - Policy 2.5.1 – Facilitate housing that offers choice and meets changing household needs.

180. Within the Plan Melbourne Implementation Plan, Action 28 proposes to *review residential development provisions in the Victoria Planning Provisions to increase the supply of housing in established areas and streamline the planning approvals process for developments in locations identified for housing change. This includes:*

- Reviewing the VicSmart provisions
- Establishing measures to develop a codified process for the approval of medium-density housing in identified locations

181. Action 28 is identified as a medium term action to be completed by the end of 2021.

182. I have considered these directions in the preparation of my evidence.

183. I also note that the Victoria in Future 2019 (VIF2019) forecasts envisage an additional 59,820 residents will form part of the City of Moreland's population by 2036 which represents an annual increase of 1.6 per cent.



APPENDIX B: THE AMENDMENT

184. Amendment C190more to the Moreland Planning Scheme applies to land within the General Residential Zone and Neighbourhood Residential Zone.

185. The exhibited explanatory report for the amendment records:

The amendment introduces an additional class of application into the VicSmart provisions to construct a dwelling if there is one dwelling existing on the lot or to construct two dwellings on a lot.

Specifically, the Amendment proposes to make the following changes to the Moreland Planning Scheme:

1. Amends the Schedule to Clause 59.15 Local VicSmart Applications

2. Amends the Schedule to Clause 59.16 Information Requirements and Decision Guidelines for Local VicSmart Applications.

186. The provision includes requirements that the application must be compliant with Rescode standards of the planning scheme and meet other specified criteria. Two dwelling on a lot proposals which do not meet the provision's requirements will not be eligible for the VicSmart process. The specified criteria are:

- Maximum building height;

The standard maximum building height requirements of the zone must be met. Within the Neighbourhood Residential Zone, the building height must not exceed 9 metres; and must contain no more than 2 storeys at any point. Within the General Residential Zone, the building height must not exceed 11 metres; and must contain no more than 3 storeys at any point. Minimum garden area;



The standard mandatory minimum garden area requirement of the zone must be met.

- Landscaping;

The landscaping requirements within the Neighbourhood and General Residential Zones must be met. These requirements relate to canopy tree planting.

- Site layout and building massing;

All numerical standards relating to street setback, site coverage, permeability and width of accessways and car spaces must be met. These requirements ensure that development respects character of the neighbourhood and makes efficient use of the site.

- Amenity impacts;

All numerical standards relating to side and rear setbacks, walls on boundaries, daylight to existing windows, solar access to existing north-facing habitable room windows, overshadowing of open space and overlooking must be met. These requirements ensure that the impacts of development on adjoining land owners are not unreasonable

- Onsite amenity and facilities;

All numerical standards relating to internal views, daylight to new windows, private open space, solar access to open space, storage and front fences must be met. These requirements ensure that high quality living environments are created for those who will live in the dwellings

- Car parking;

Numerical standards relating to the number of car parking spaces must be met. In addition, requirements have been included to reduce the dominance of crossovers



and car parking from the street. These requirements are consistent with Council's case study analysis and relevant VCAT decisions and are particularly applicable to side by side dual occupancies. These requirements ensure the retention of street trees, adequate space for front garden landscaping and retention of on street car parking spaces.

- Livable (accessible) housing;

All new dwellings must achieve Silver Level of performance under the Livable Housing Australia, Livable Housing Design Guidelines. This requirement is consistent with objectives to increase the supply of housing that is visitable and adaptable to sectors of the community with altered mobility. The specification of Silver standard performance gives greater clarity of accessibility requirements to deliver outcomes that improve upon those currently being delivered by the planning scheme provisions.

- Environmental sustainability;

All new dwellings must achieve a minimum Built Environment Sustainability Scorecard (BESS) score of 50%, including achieving the mandatory minimum score paths for water, energy, storm water and indoor environmental quality. This requirement will ensure that the outcomes will be of high quality and that the requirements of the Environmentally Sustainable Development local policy will be met in every application.



APPENDIX C – TRACK CHANGES CONTROLS

MORELAND PLANNING SCHEME

SCHEDULE TO CLAUSE 59.15 LOCAL VICSMART APPLICATIONS

1.0

Table 1 Classes of VicSmart application under zone provisions

Name of zone or class of zone	Class of application	Permit requirement provision	Information requirements and decision guidelines
Neighbourhood Residential Zone and General Residential Zone	<p>Construct a one additional dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot if the development:</p> <ul style="list-style-type: none"> ▪ Meets the maximum building height requirement of the zone. ▪ Meets the minimum garden area requirement of the zone. ▪ Meets the B13 Landscaping standard numerical requirements of the schedule to the zone. ▪ Meets the numerical requirements in the following standards of Clause 55 <ul style="list-style-type: none"> - B6 Street setback standard - B8 Site coverage standard - B9 Permeability standard - B14 Access standard - B17 side and rear setbacks standard — B18 Walls on boundaries standard - B19 Daylight to existing windows standard - B20 North-facing windows standard - B21 Overshadowing open space standard - B22 Overlooking standard - B23 Internal views standard - B27 Daylight to new windows standard - B28 Private open space standard - B29 Solar access to open space standard - — B32 Front fences standard. <p><u>The requirement to meet the numerical requirements of Standards B6, B17, B19, B20 and B21 do not apply to an existing dwelling, provided the development does not result in any further non-compliance.</u></p> <ul style="list-style-type: none"> ▪ <u>Does not contain any walls on or within 200mm of a side or rear boundary that:</u> 	32.09-6 or 32.08- 5 -6	Schedule 1 to Clause 59.16

MORELAND PLANNING SCHEME

Name of zone or class of zone	Class of application	Permit requirement provision	Information requirements and decision guidelines
	<ul style="list-style-type: none"> - Exceed 10 metres in length; and/or - Exceed 3.6 metres in height, with an average height of 3.2 metres. <p>The length requirement does not apply where the wall abuts a rear laneway.</p> <ul style="list-style-type: none"> ▪ Does not exceed a building height of 9 metres within 10 metres of the rear boundary and 5 metres within 5 metres of the rear boundary. ▪ Meets the number of car parking spaces required by Clause 52.06 Table 1. ▪ Meets the following requirements for new crossovers and garages: <ul style="list-style-type: none"> - No street trees are removed - Minimum clearance of 3m must be provided between the trunk of any street tree and any part of a vehicle crossing, inclusive of the radial or splay - Crossovers maximum 3 metres in width - If more than one vehicle crossover is proposed, the crossovers must be a minimum of 8 metres apart, measured at the front boundary - If both dwellings front the street, the garages must be a minimum of 8 metres apart - Any garage which faces the street must be no more than 4.5 metres wide - Any garage which faces the street must be setback from the street a minimum of 500mm more than the dwelling. ▪ Meets Silver Level of performance under the Livable Housing Australia, Livable Housing Design Guidelines. This requirement does not apply to an existing dwelling. ▪ Meets a minimum BESS score of 50%, including achieving the mandatory minimum score paths for water, energy, storm water and IEQ. This requirement does not apply to an existing dwelling. 		

MORELAND PLANNING SCHEME

Name of zone or class of zone	Class of application	Permit requirement provision	Information requirements and decision guidelines
	<p>If a schedule to the zone specifies a requirement of a standard different from a requirement set out in the Clause 55 standard, the requirement in the schedule to the zone applies and must be met.</p> <p>For the purposes of this class of VicSmart application, the requirements specified above are mandatory.</p>		

2.0

30/07/2018

Table 2 Classes of VicSmart application under overlay provisions

Name of overlay or class of overlay	Class of application	Permit requirement provision	Information requirements and decision guidelines
	None specified		

3.0

30/07/2018

Table 3 Classes of VicSmart application under particular provisions

Name of particular provision	Class of application	Permit requirement provision	Information requirements and decision guidelines
	None specified		

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Proposed C190more

SCHEDULE TO CLAUSE 59.16 INFORMATION REQUIREMENTS AND DECISION GUIDELINES FOR LOCAL VICSMART APPLICATIONS

Construct a dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot.

1.0

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Proposed C190more

Information requirements

An application must be accompanied by the following information as appropriate:

- A copy of title for the subject land and a copy of any registered restrictive covenant.
- Neighbourhood and site description which may use a site plan, photographs or other techniques and must accurately describe:
 - In relation to the neighbourhood:
 - The pattern of development of the neighbourhood.
 - The built form, scale and character of surrounding development including front fencing.
 - Architectural and roof styles.
 - Any other notable features or characteristics of the neighbourhood.
 - In relation to the site:
 - Site shape, size, orientation and easements.
 - Levels of the site and the difference in levels between the site and surrounding properties.
 - The location of existing buildings on the site and on surrounding properties, including the location and height of walls built to the boundary of the site.
 - –The use of surrounding buildings.
 - The location of secluded private open space and habitable room windows of surrounding properties which have an outlook to the site within 9 metres.
 - Solar access to the site and to surrounding properties.
 - Location of significant trees existing on the site and any significant trees removed from the site 12 months prior to the application being made, where known.
 - Any contaminated soils and filled areas, where known.
 - Views to and from the site.
 - Street frontage features such as poles, street trees and kerb crossovers.
 - The location of local shops, public transport services and public open spaces within walking distance.
 - Any other notable features or characteristics of the site.

A design response plan that derives from the neighbourhood and site description and:

- Meets the objectives of Clause 55.
- Responds to the neighbourhood character policy at Clause 22.01.

Elevation drawings to scale showing the height, colour and materials of the dwellings.

Shadow diagrams that demonstrate compliance with the requirements of Standard B22.

- A Sustainable Design Assessment (SDA) which has been certified by Moreland City Council that all new dwellings achieve a minimum BESS score of 50%, including achieving the mandatory minimum score paths for water, energy, storm water and IEQ.
- A Livable Housing assessment which has been certified by a Livable Housing Australia Design Guideline Assessor, demonstrating that all new dwellings achieve Silver Level of performance under the LHA Livable Housing Design Guidelines.
- A Moreland VicSmart Dual Occupancy Zone and Rescode Compliance Assessment.

2.0

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Proposed C190more

Decision guidelines

In assessing an application the responsible authority must consider as appropriate:

- The objectives, standards and decision guidelines of Clause 55.
- The design standards of Clause 52.06-9.
- Any relevant neighbourhood character objective, policy or statement set out in the Planning Policy Framework or the purpose of the zone. -
- ~~Any relevant neighbourhood character objective, policy or statement set out in this scheme.~~
 - The neighbourhood and site description.
 - The design response.

See Clauses 59.15 and 59.16 for relevant provisions.