



Moreland
City Council

Amendment C190

Part B - Submission by the Planning Authority



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Introduction

1. This submission is made by Moreland City Council (Council) which is the Planning Authority for Amendment C190 (the Amendment) to the Moreland Planning Scheme (Planning Scheme).
2. My name is Karen Bayly. I am a Principal Strategic Planner at Council and I will be presenting Council's submission to the Panel on Amendment C190.
3. I will be assisted throughout the submission by Narelle Jennings, Manager of City Strategy and Design and Unit Manager Urban Planning at Moreland City Council, who has overseen the preparation and management of the Amendment, in her role as my Manager, and by Nia Kolokas, Senior Strategic Planner, to provide a virtual tour of two dwelling on a lot development in Moreland.
4. Expert evidence in relation to Town Planning will be presented by John Glossop of Glossop Town Planning on day one (Tuesday 27 October 2020) of this hearing.

Structure of submission

5. This submission forms Part B of Council's submission to the Panel. Part A was circulated as directed by the Panel by 4.00pm Monday, 19 October 2020 and provides the strategic justification for the Amendment and overview of the Amendment process undertaken.
6. Part B addresses submissions received as a result of the public exhibition of the Amendment and specific matters as directed by the Panel.
7. In accordance with the Panels directions Council's 'Part B' submission will be provided by 4pm on Monday, 26 October 2020 and will address the following matters set out in the Panels directions dated 30 September 2020. These are:
 - a) an overview of the proposed schedules (Council is to 'walk' the Panel through the schedule provisions at the Hearing)
 - b) response to Panel's Directions hearing questions of clarification relating to:
 - i. the need for references to Clause 59.15 and clause 59.16 in Clause 59.16 decision guidelines
 - ii. whether the 'Permit requirement provision' listed in proposed Schedule to 59.15 should be Clause 32.08-6, rather or as well as Clause 32.08-5 as exhibited
 - iii. which prescriptive requirements of Clause 52.06 and Clause 55 will no longer apply
 - iv. which application requirements of Clause 55 will remain applicable and which will no longer apply
 - v. which decision guidelines of Clause 55 will remain applicable and which will no longer apply
 - c) a summary of the permit applications assessed as part of the Better Outcomes for Two Dwellings report including:
 - i. percentage of applications that were advertised
 - ii. percentage of those applications which received objections
 - iii. average number of objections received per application
 - iv. average number of days to assess applications
 - v. a review of VCAT cases for two dwelling developments in Moreland for which permits were refused on neighbourhood character grounds
 - d) provide a percentage of dwellings assessed in the Medium Density Housing Review which would now be eligible for application under Clause 51.06
 - e) an overview of the anticipated 10-day assessment process including:
 - i. time to undertake site inspection
 - ii. time to assess plans

- iii. time to review the Compliance Assessment forms including how Council will manage partially or incorrectly completed Compliance Assessment forms
 - f) its response to submissions and evidence
 - g) its final position on the Amendment.
- 8. It is not Council's intention to run through the strategic justification and the process that was undertaken for the Amendment except where relevant to a key issue. A detailed assessment is contained within Council's Part A submission.

Overview of Amendment

- 9. 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 the Moreland Planning Scheme.
- 10. The amendment as exhibited proposes to:
 - Amend the Schedule to Clause 59.15 Local VicSmart Applications
 - Amend the Schedule to Clause 59.16 Information Requirements and Decision Guidelines for Local VicSmart Applications.
- 11. The amendment would allow applications for the construction of a dwelling if there is one dwelling existing on the lot, or construction of two dwellings on a lot, to be processed through the VicSmart application process. This will allow for two-dwelling on a lot proposals to be subject to a 10-day permit process, to be exempt from notice and third party review, and the Chief Executive Officer is the responsible authority for deciding the application.
- 12. The provision includes requirements that the application must be compliant with Rescode numeric standards of the planning scheme and meet other specified criteria in order to be eligible for this application stream. Two dwelling on a lot proposals which do not meet all requirements will continue to be assessed through the standard planning permit process.
- 13. On 12 June 2019 Council resolved to request authorisation to prepare and exhibit the Amendment from the Minister for Planning and upon receipt of the Minister's authorisation, prepare and exhibit the amendment.
- 14. On 7 April 2020, the Department of Environment, Land, Water and Planning, under delegation from the Minister for Planning authorised Council as planning authority to prepare the amendment subject to conditions.
- 15. The Amendment was exhibited from 28 May 2020 to 17 July 2020 in accordance with section 19 of the Planning and Environment Act 1987.
- 16. A total of 16 submissions have been received. Fourteen submissions were received during the exhibition period and two late submissions were received.
- 17. On 12 August 2020, Council resolved to request that the Minister for Planning appoint a Panel to consider all submissions.
- 18. All submissions, including late submissions, have been referred to the Panel.

Setting the context

- 19. The context we are planning for is well summarised in *Ronge v Moreland CC (Red Dot)* [2017] VCAT 550 (9 May 2017).
- 20. In this case the Tribunal said:
 'WHAT DOES THE FUTURE HOLD FOR MELBOURNE IN THE COMING DECADES?

Melbourne is rapidly changing and the metropolitan area in future will be a very different place from the past or the present. On 31 March 2017, the new metropolitan planning strategy was released and changes made to all Planning Schemes in Victoria. Plan Melbourne 2017-2050 in essence updates and revises Plan Melbourne released in 2014.

Underpinning the whole strategy is the necessity to accommodate a population which is projected to increase from approximately 5 million to 8 million people by 2050. Aside from population growth, listed key challenges are remaining competitive in a changing economy, providing housing that is affordable and accessible, keeping up with the growing transport needs of the city, and mitigating and adapting to climate change.

In summary, the strategies set out in Plan Melbourne 2017-2050 include an intention to constrain the outward spread of the urban area and to focus employment, services and development in national employment and innovation clusters, urban renewal precincts and activity centres linked by public transport.

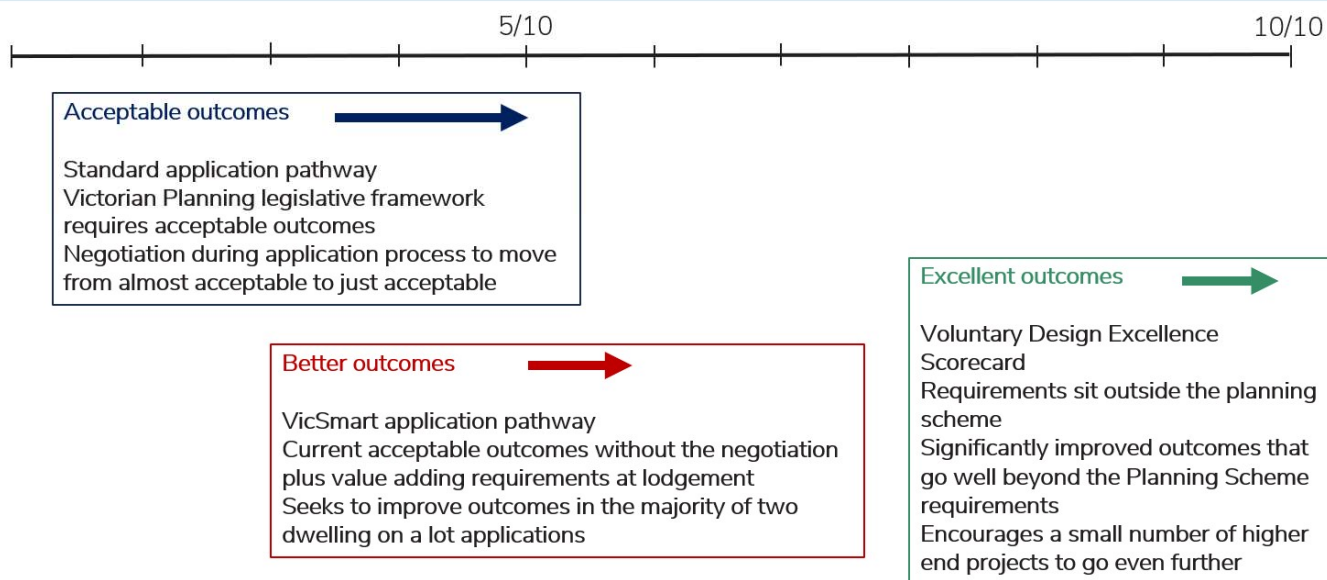
It is anticipated that Melbourne will require an additional 1.6 million homes by 2050 and that the northern region, which includes Moreland, will need to accommodate approximately 175,000 to 180,000 new dwellings in established areas.

Specifically, there is an intention to locate medium and higher density development near services, jobs and public transport to support objectives concerning urban consolidation and housing choice. There is support for new housing in activity centres and other places that offer good access to jobs, services and public transport. There is still an intention to create 20-minute neighbourhoods to enable residents to walk, cycle or catch public transport rather than rely on longer trips and the use of private motor vehicles with benefits in reduced travel costs, traffic congestion and carbon emissions.

Whilst many, if not most, of these strategies are not new, they emphasise that the whole metropolitan area will be subject to change, even outside urban renewal areas and activity centres which are to be the focus for higher density development. ...[Sites cannot be quarantined] simply because they are surrounded by single and double storey dwellings, mostly built in times past when Melbourne was facing different economic, social and environmental circumstances and different community expectations.'

21. Council's Part A submission outlines the Moreland context for applying this state planning policy context.
22. Amendment C190 seeks to incentivise better outcomes for two dwelling on a lot development in Moreland by streamlining applications which meet specified criteria in the VicSmart application stream. It seeks to enable and facilitate one of the numerous types of housing which Moreland's diverse current and future population wants and needs.
23. In the Supreme Court decision of *Knox City Council v Tulcany Pty Ltd* [2004] VSC 375 is authority that for a planning permit application to be approved, it needs to be shown to be 'reasonably acceptable'. This case is authority that to achieve such an approval, the proposal does not need to be shown to be 'optimal', 'ideal' or free of controversy. If the bar was set that high, most planning permit applications in Victoria would be doomed to failure and the planning system would become unworkable.
24. As outlined in council's Part A submission, most two dwelling on a lot applications in Moreland are subject to lengthy processes of negotiation to get an application from a 3.5/10 to an 'acceptable' 5/10. Amendment C190 seeks the current acceptable outcomes without the negotiation by Council and neighbours, plus value adding requirements, at lodgement. It reimagines the process and seeks to improve outcomes in the majority of two dwelling on a lot applications.

Acceptable, better, excellent



Glossop Town Planning Expert Evidence

Part B Direction a) an overview of the proposed schedules (Council is to 'walk' the Panel through the schedule provisions at the Hearing) and b) response to Panel's Directions hearing questions of clarification relating to:

- **whether the 'Permit requirement provision' listed in proposed Schedule to 59.15 should be Clause 32.08-6, rather or as well as Clause 32.08-5 as exhibited**
- **which prescriptive requirements of Clause 52.06 and Clause 55 will no longer apply**
- **which application requirements of Clause 55 will remain applicable and which will no longer apply**
- **which decision guidelines of Clause 55 will remain applicable and which will no longer apply**

25. The expert evidence from Mr Glossop will include a response to these directions from the Panel.

Response to expert evidence

26. All changes to the proposed Schedules to Clause 59.15 and 59.16 suggested by Mr Glossop are supported, with the exception that Council's position is that the requirement that a development 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, should not be applied to corner sites, as it does not achieve the intended outcome.
27. For the Panel's information, from the *Better Outcomes for Two dwellings on a Lot* review case studies, 14% of two dwelling on a lot development in Moreland occurs on corner sites. Half (7%) retains the existing dwelling and for the other half (7%) both dwellings are new. From the *Medium Density Housing Review* case studies, one in five (22%) of three dwelling on a lot development occurs on corner sites. None of these developments retain an existing dwelling.
28. Council will take the Panel to this issue in the Virtual Tour.

Two dwelling on a lot development in Moreland virtual tour

29. Council will give a presentation of two dwelling on a lot development in Moreland to inform the Panel's consideration of the issues.

Better Outcomes for Two Dwellings on a Lot response to Panel Directions

Part B Direction a)

- **the need for references to Clause 59.15 and clause 59.16 in Clause 59.16 decision guidelines**

30. The Ministerial Direction on the Form and Content of Planning Schemes applies to the form and content of all planning schemes prepared under Part 3 of the *Planning and Environment (Planning Schemes) Act 1996* and any amendment to those planning schemes. A planning scheme or planning scheme amendment must be prepared and presented in accordance with the applicable style guide set out in Annexure 1 to this Direction.
31. Every local schedule in every planning scheme must be prepared in accordance with these directions and templates are provided (and now reside in DELWP's amendment authoring software, the ATS).
32. Some content within schedules is inserted by a planning authority. Other content is fixed and non-editable. The reference to Clause 59.15 and Clause 59.16 in Clause 59.16 decision guidelines, is VPP fixed content which appears in every Schedule to Clause 59.16. An extract from the template is provided below.

30/07/2018 **SCHEDULE [NUMBER] TO CLAUSE 59.16 INFORMATION REQUIREMENTS AND DECISION GUIDELINES FOR LOCAL VICSMART APPLICATIONS**

INSERT HEADING FOR LOCAL VICSMART APPLICATIONS

1.0 Information requirements

30/07/2018 Where no requirements are specified insert “None specified.”
or
Insert additional information requirements for a local VicSmart application as follows: “An application must be accompanied by the following information as appropriate:
▪ [insert information requirements].”

2.0 Decision guidelines

30/07/2018 Where no requirements are specified insert “None specified.”
or
Where decisions guidelines are specified insert “In assessing an application the responsible authority must consider as appropriate:
▪ [insert decision guidelines].”
See Clauses 59.15 and 59.16 for relevant provisions.

Part B Direction b) i a summary of the permit applications assessed as part of the Better Outcomes for Two Dwellings report including:

- **percentage of applications that were advertised**
- **percentage of those applications which received objections**
- **average number of objections received per application**
- **average number of days to assess applications**

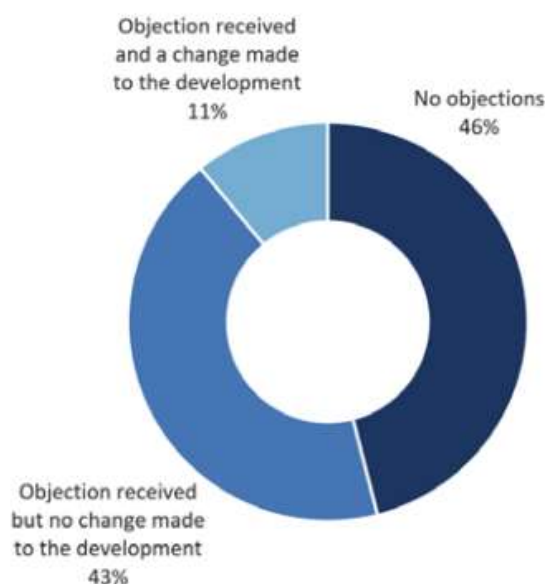
Percentage of applications that were advertised

33. All medium density planning permit applications are advertised at present.

Percentage of those applications which received objections and average number of objections received per application

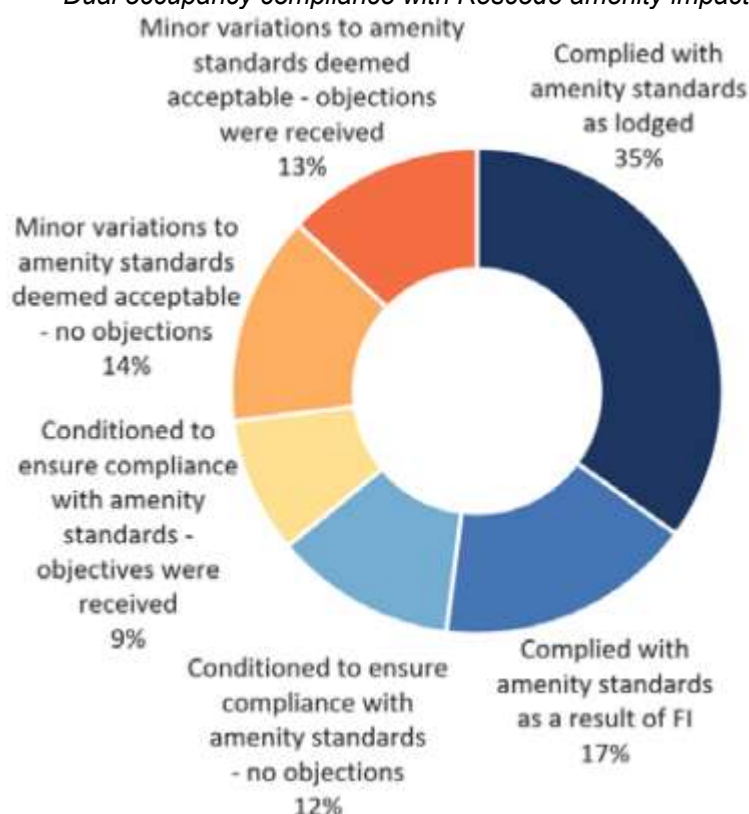
34. As detailed on page 13 of the *Better Outcomes for Two Dwellings* on a Lot review report, 46% of applications received no objections. 54% received objections.
35. Nearly two-thirds (71%) of applications for two dwelling on a lot proposals received no or one objection.
36. The average number of objections received per application is 1.22.
37. As informative as the number of objections received is, it is also important to consider whether objections are resulting in a change to the development. On page 14 of the *Better Outcomes for Two Dwellings* on a Lot review report it is documented that giving notice is resulting in a change being made to the development in only a small proportion (11%) of dual occupancy proposals.

Response to dual occupancy objections



38. Amenity impact was raised as a ground of objection in 54% of applications. That is to say, all applications where objections are received, have amenity impacts as a ground of objection.
39. Neighbourhood character was raised as a ground of objection in 20% of applications. Once those in a Heritage Overlay are omitted (as they're not eligible for the C190 VicSmart process) this proportion comes down to 15%.
40. Car parking was raised as a ground of objection in 22% of applications.
41. The dominant issue raised in objections is the amenity impact on an adjoining property; overlooking, overshadowing and the like. In all cases where an application met the numeric amenity impact standards of Clause 55, a permit was issued, and no changes were made to this aspect of the proposal in response to an objection. This is discussed further below under the Operation of Rescode.
42. The *Better Outcomes for Two Dwelling on a Lot* review also found that where variations to Rescode standards were sought, it was an assessment of the reasonableness of the outcome informed by the specific context which influenced whether or not a variation to a Rescode standard was supported. On pages 14 and 15 of the *Better Outcomes for Two Dwellings on a Lot* review report it is shown that half (52%) of the dual occupancy proposals approved in 2018 fully complied with the amenity impact standards of Rescode, either as lodged, or as a result of matters raised and addressed prior to giving notice of an application.
43. For about a quarter (27%) of dual occupancy applications minor variations to the amenity impact standards of Rescode were supported in the decision. Minor variations were supported where they were assessed against the scheme as being reasonable, based on the specific circumstances of the site, whether or not there were objections. 55% of the applications where minor variations were supported had objections and 45% did not have objections. These variations were genuinely very minor in nature and typically involved a ruler length in difference in some aspect of the building envelope.
44. For the 21% minor variations were not supported where they were assessed against the scheme as being unreasonable, based on the specific circumstances of the site, whether or not there were objections.
45. The remaining 21% of applications were conditioned to ensure full compliance with the standards of Clause 55.04. Such conditions were equally included where there were objections and where no objections were received. 43% the applications where minor variations were not supported had objections and 57% did not have objections.

Dual occupancy compliance with Rescode amenity impact standards 2018



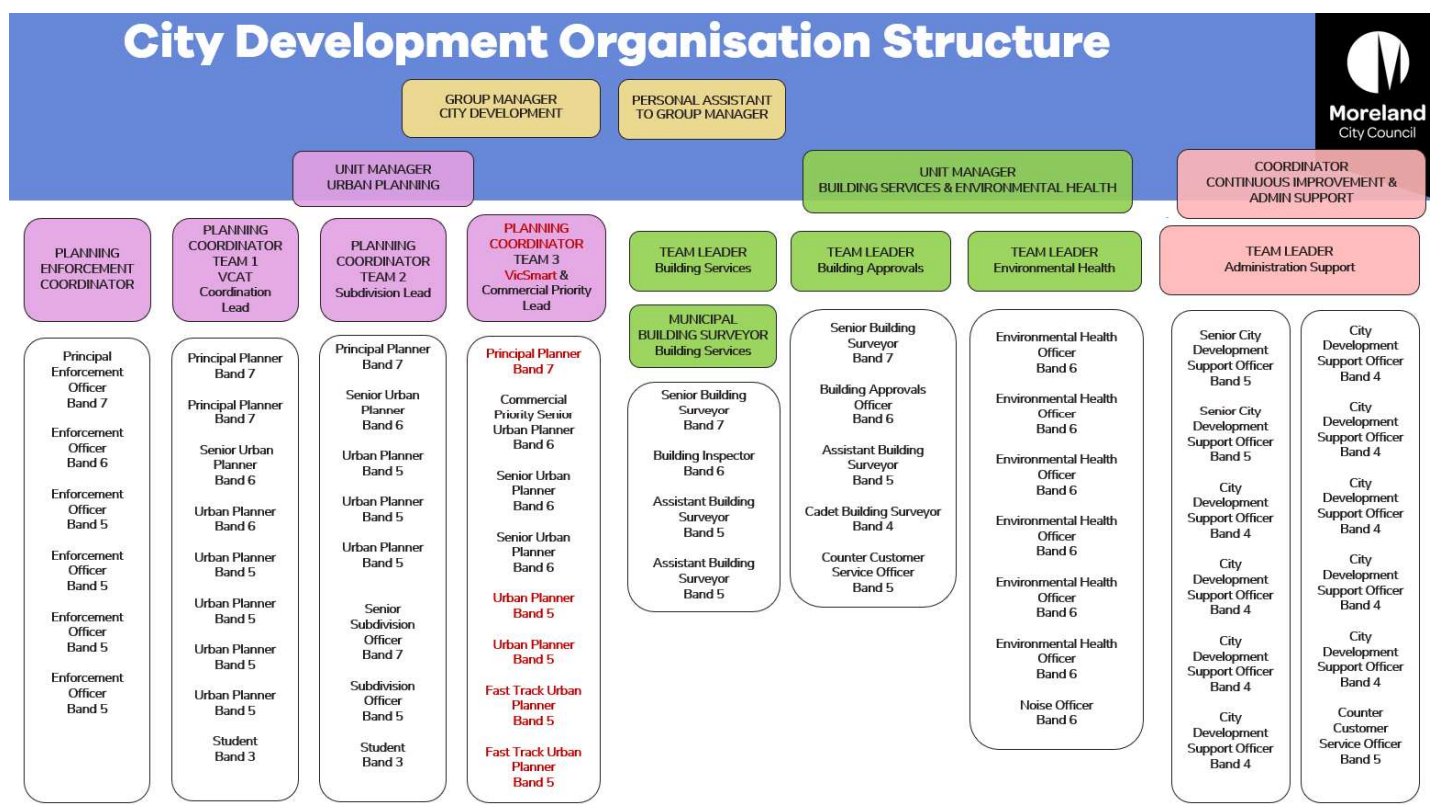
46. This indicates that there is no relationship between receipt of an objection and inclusion of permit conditions related to neighbours' amenity. Like applications where minor variations were supported, the matters dealt with by way of permit conditions related to matters which were minor in nature.
47. In Amendment C190 full compliance with all Rescode numeric standards is required for an application to be eligible to be considered in the VicSmart stream. As illustrated in the Virtual tour and in examples on pages 17-22 of the *Better Outcomes for Two Dwellings on a Lot* report, the variations are genuinely of such a minor nature that it is thought that in the majority of applications full compliance with Rescode for eligibility for the VicSmart stream is highly likely. This prediction is supported in Submission 7.
48. Of the applications approved in 2018, 90% of dual occupancy planning applications were fully compliant with the requirements of the Moreland Planning Scheme at Clause 52.06, relating to the provision of car parking. The other 10% sought a reduction in the number of car parking spaces, typically providing one less car parking space overall than the planning scheme requires. The reduction was supported in all instances.
49. In 73% of instances where car parking was raised as a ground of objection the application complied with the car parking requirements of clause 52.06.
50. Car parking adds value to the sale or rental price of dual occupancy dwellings and a reduction in the number of spaces is primarily being sought on smaller lots where the full number could not be accommodated and/or on sites in locations very close to a train station or tram stop. This is detailed on page 23 of the *Better Outcomes for Two Dwellings on a Lot* report.
51. In applications where a reduction in the number of car parking spaces was sought, full compliance with Clause 52.06 is difficult to achieve. In instances where one or both dwellings have three bedrooms, reducing the number of bedrooms to two would make the application compliant with Clause 52.06, however this is unlikely as the bedroom is of higher value than the car parking space.
52. Car parking is a divided issue within the Moreland community and Amendment C190 takes a business as usual approach. In Amendment C190 compliance with Clause 52.06 numeric standards is required for an application to be eligible to be considered in the VicSmart stream.

This has the effect of making approximately 10% of two dwelling on a lot applications ineligible for consideration in the VicSmart stream.

53. Neighbourhood character, taken in its broadest possible meaning, is raised as a ground of objection in 1 in 5 (20%) of applications. Three quarters of these objectors did not use the words 'neighbourhood character' or similar, in the objection. A neighbourhood character objection is leading to a change to some aspect of the application in only 5% of applications where neighbourhood character is a ground of objection (1% of all two dwelling on a lot applications).
54. The primary neighbourhood character concern raised is two storey development in a predominantly 'single storey area'. VCAT decision making for two dwelling on a lot applications in Moreland is finding that two storey development in the Neighbourhood and General Residential zones is a reasonable development outcome.
55. It is highlighted that a two storey single dwelling on a lot over 300 square metres in area, with the same site coverage and overall massing as Moreland dual occupancies, can be built in the Neighbourhood and General Residential zones without requiring a planning permit.
56. An issue raised in 2% of applications was a two storey garage on the rear boundary, accessed from a laneway. In these instances, the new outbuilding was located adjacent to existing outbuildings or other structures on at least one of the adjoining lots.
57. How a development fits into the street or how it reads from an adjoining property, was raised as a concern in only 2% of two dwelling on a lot applications.
58. In development which meets all numeric requirements of the planning scheme, giving notice to owners and occupiers of adjoining land is not altering the decision. In these applications objectors are having minimal influence under the existing process. Objectors invest time and emotional energy which it isn't adding value or having an influence for two dwelling on a lot development where the application is compliant with the planning scheme.

Average number of days to assess applications

59. For the 100 applications that formed the case study for the amendment, the average number of days to assess the applications was 206 gross days and 58 statutory days.
60. The size of the Urban Planning Unit is reflective of the volume of planning permit applications received. Moreland receives one of the highest numbers of applications in Victoria. Moreland also receives one of, if not the highest number of planning permit applications in the state for more than one dwelling on a lot. Accordingly, it is a well-resourced Unit. The workload associated with medium density applications is compounded by the nature of these applications which bring with them higher further information, assessment, public notice, consultation and VCAT demands in comparison to other planning permit application types.
61. As can be seen from this organisation chart, Moreland City Council's Urban Planning Unit is appropriately resourced relative to planning permit application numbers.



62. Under the umbrella of 'Moreland Makes Decisions' Moreland City Council has for close to two decades worked to continuously improve its processes and internal capacity for efficient and well informed planning decision-making. Those who share this challenge in the local government sector would no doubt agree that the job is never finished. Planning controls and legislation are constantly changing as are the organisational structures and technologies which seek to enhance service delivery to customers.
63. The more Moreland City Council has strived for manageable officer workloads the more it has freed up valuable team capacity for **work on rather than in the system**, delivering greater and greater benefit.
64. A longstanding continuous improvement focus to streamline processes, leverage technology and digitisation of services, has enabled the planning service to maintain high performance and manage increasing workloads without needing to rely solely on increased resources.
65. The 'Moreland Makes Decisions' approach to application management seeks to ensure that clear and consistent town planning advice is provided throughout the application process leading to efficiency and certainty to all participants of the planning process. Through Moreland Makes Decisions, officers in the planning team understand that:
- We are employed to facilitate the planning process and make professional decisions.
 - We will coach applicants and help shape quality developments at the 'Pre-application stage' and 'Further information and Issues' stage.
 - We will use the pre-application stage to encourage well prepared and complete applications, capable of efficient processing to remove the burden of further information requests.
 - We will undertake thorough and complete assessments at further information stage, with a view to providing clear and consistent advice to applicants.
 - We will focus on clear and decisive decision making once an application is complete and the opportunity has been provided (during the further information period) to address issues with the planning merits.

- Within the standard application stream, we will facilitate changes to address any new issues arising through the public consultation process. The applicant will have no more than 14 days to respond to issues raised through objections/consultation meetings. A clear and tight timeframe must be provided to ensure the application is processed efficiently.
- We will ensure that high quality decisions are made at the earliest opportunity.
- We will strive for consistent decision making. This includes using the 'Senior Officers Panel' where required to seek advice early in the application process and by raising any issues of consistency at 'Planners Forum'.
- We will continue to make ourselves available to discuss planning issues at the further information stage and beyond in order to reaffirm our advice. However, after the return of further information the focus will be on deciding the application and not creating additional planning officer and planning support officer workload through amendments to applications that should have been addressed at the pre-application or further information stage.

66. Planning Scheme Amendment C190 seeks to reduce the resource demands associated with approximately 100 applications per annum for two dwellings on a lot by incentivising fully compliant development which can undergo a streamlined 10 day VicSmart approval process.
67. After sustained increases in workload over two decades, a trend of reduced applications has emerged in the past 2 years associated with tighter lending and overseas investment restrictions. This is seen in Figure 3 in Council's Part A submission. A return to higher application loads is not anticipated in the immediate future in recognition of the economic impacts of the Covid19 pandemic and the anticipated recession. At this point however the pandemic has not led to any further drop in application numbers since March 2020 which are holding steady for the year to date in line with 2019 figures.
68. Amendment C190 is not a cost cutting/resource reduction initiative. There is approximately a 50% ratepayer subsidy of planning services. Councils need to balance increasing demands on the ratepayer dollar, be it for increased services, asset renewal of roads, footpaths and drainage infrastructure or new parks and capital works, where the mix of competing demands is weighed up through annual budget cycles and political deliberations. The comment in Submission 5 about 'paying extremely high rates', whilst not a valid planning ground of objection, should be read in this context.
69. In addition to using community resources in ways which are honest and transparent, the provisions proposed by Amendment C190 seek to utilise Moreland City Council's Planning staff resources in way which add the most value to the Moreland community. For fully compliant, low intensity applications, objectors are having minimal influence under the existing process.
70. There would be reduced resourcing demand for the assessment of two dwelling on a lot applications. This would mean that more resources could be redirected to negotiating improved outcomes in more complex, intensive development proposals and reducing permit decision times more broadly.

Part B Direction d) provide a percentage of dwellings assessed in the Medium Density Housing Review which would now be eligible for application under Clause 51.06

71. From the *Better Outcomes for Two Dwellings on a Lot* case study analysis it is estimated that in the order of 70% of two dwelling on a lot applications in Moreland would meet the criteria proposed in the Schedule to Clause 51.06.
72. It is highly likely that most applications would be able to meet all Rescode numeric requirements. At present 48% of applications seek to vary Rescode standards. Often only one Rescode standard is sought to be varied, and in almost all cases the variations are genuinely so minor that they could readily achieve full compliance.

73. Approximately 10% of two dwelling on a lot applications would be ineligible for consideration in the VicSmart stream as they seek a reduction in the number of car parking spaces.
74. Approximately 10% of two dwelling on a lot applications would be ineligible for consideration in the VicSmart stream as they occur on small, and/or narrow lots and all Rescode standards cannot be met, or they are affected by overlays which contain buildings and work planning permit triggers. All such overlays, other than the Special Building Overlay, place an application in the standard application stream. There are not widespread overlays on land in the Neighbourhood and General Residential zones in Moreland. In the case study analysis, 6% of two dwelling on a lot applications were affected by an overlay which would exclude a dual occupancy proposal from consideration in a VicSmart stream. It is flagged that those suburbs which have widest spread Heritage Overlays, attract quite low numbers of dual occupancy applications.
75. It is estimated that up to 5% of two dwelling on a lot applicants will not be able to meet the Livable Housing Design Guidelines, primarily related to a steeply sloping site.
76. Approximately 5% of two dwelling on a lot applications propose to remove a street tree and so would not meet the criteria related to driveways and crossovers. In case study analysis, all applications which proposed a side by side layout with two crossovers from the street frontage were able to meet the driveway and crossover criteria. On atypically narrow lots where alternative access is not available from a laneway, the alternative to meeting the proposed driveways and crossovers criteria is a tandem (one behind the other), rather than side by side layout.
77. To maximise take up, Moreland City Council will support permit applicants in understanding the information requirements through good quality written guidance and in pre-application meetings to support the cultural change required.

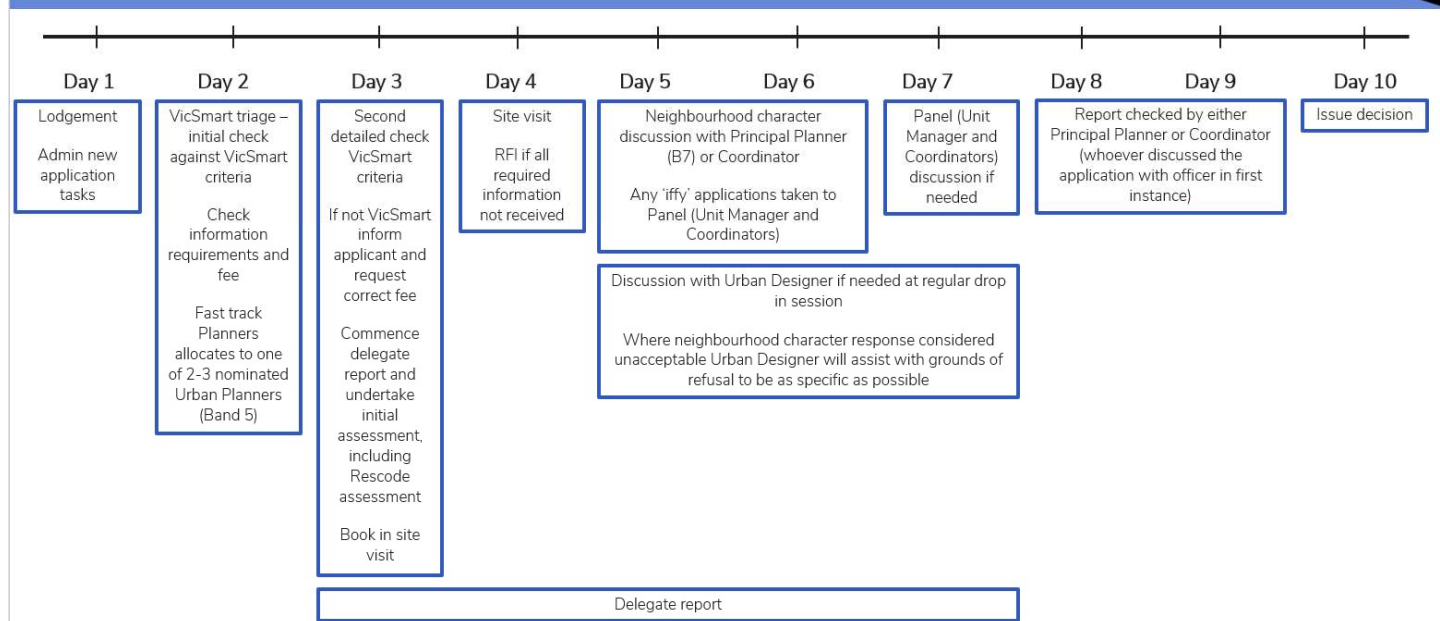
Response to submissions

Workflow process

Part B Direction e) an overview of the anticipated 10-day assessment process including:

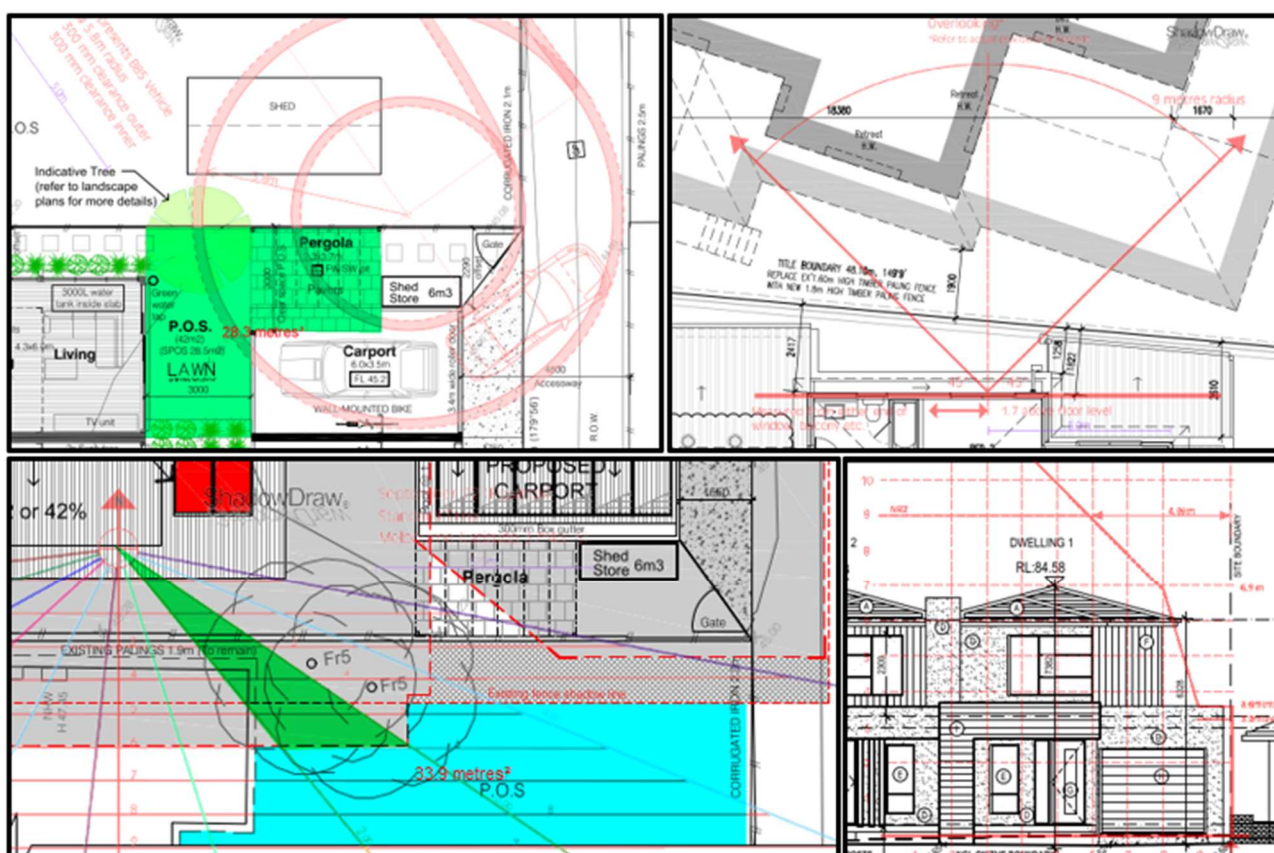
- **time to undertake site inspection**
 - **time to assess plans**
 - **time to review the Compliance Assessment forms including how Council will manage partially or incorrectly completed Compliance Assessment forms**
-
78. In undertaking the *Better Outcomes for Two Dwellings on a Lot* review a key matter for Moreland City Council was to satisfy itself as to whether it was realistic and feasible to process two dwelling on a lot applications in a 10 business day timeframe without any loss in the quality and robustness of the assessment.
 79. These deliberations are shown diagrammatically below.

VicSmart Two Dwelling on a Lot Workflow



80. Within the standard application stream in the order of 1.5-2 days is spent actively assessing an application (excluding time spent reviewing objections, liaising with objectors and arranging/attending consultation meetings), as follows:
- Start delegate report: site context, policy framework, Rescode and plans assessment, 4 hours
 - Site visit: 1 hour
 - Neighbourhood character assessment discussion with Coordinator, Urban Design and/or Panel: 1 hour
 - Finalise delegate report: 4 hours.
81. To take the Panel into further detail, the end to end process is digitised and all systems are integrated. The application is lodged electronically. An online form which populates many data fields in Council's systems, replaces a paper application form. While applications are still accepted over the counter or via mail, these applications are scanned in full by Council's records team so that the Urban Planning Unit can process the application in the same way that applications lodged online are processed. More than 90% of applications are lodged online.
82. A Planning Administration Officer does some preliminary work to ensure that the application is lodged in our system correctly (matching the applicant to the Name and Address Register in Council's customer database and ensuring a correct address has been used). The Administration Officer then starts the 'workflow'.
83. In an electronic workflow, the Administration Officer moves most applications on to the Fast Track Planners to be triaged. Presently, applications for medium density housing and apartment buildings are sent to Planning Coordinators to review and allocate (ie. they are not sent to the Fast Track Planners for triaging because there is no possibility they could be a VicSmart application). This step in the process is a useful way of 'sorting' applications to make for more efficient triaging and allocation.

84. Once an application is allocated to a Planner, the first thing the Planner does is to generate a delegate report. Moreland has a number of different report templates tailored to different application types. This report pre-populates around half of the information contained in a finished report. It might be best described as more akin to 'delete things that don't apply' and fill in the blanks, than 'here's a blank piece of paper'. Starting to complete a delegate report at the start of the process helps a planner:
- Confirm planning permit triggers/information requirements and need for further information;
 - Confirm the key state and local policies;
 - Undertake a preliminary assessment of the application to determine if any issues need to be raised regarding the merits of the application; and
 - Any key matters to confirm at the site visit.
85. At this point the Planner also undertakes a desktop look at the site context, informed by the neighbourhood and site description and design response submitted by the applicant. They also read through the documentation submitted by the applicant.
86. Where relevant, part of determining if there are any issues with the merits of the application involves undertaking a Rescode and plans assessment. The delegate report contains a template in which this is done. The Planner does this by placing the plans into the Trapeze software. Any measurements or metrics not shown on the plans can be accurately measured. Trapeze contains electronic templates for things like vehicle turning circles and 'ShadowDraw'. The Planner is checking the plans against Rescode objectives and standards and discussing any areas of non-compliance within the relevant section of the report. Below are examples of a vehicle turning template, overlooking measurement, overshadowing measurement and side setback measurement overlaid on plans in Trapeze. A template will also be established to easily check that the area required for planting established by Amendment C189 is provided.



87. At this point the Planner inspects the site and on return to the office updates the report to reflect what they have learnt from the site visit. They may also have a discussion with their Coordinator, Principal Planner and/or Urban Designer at this point.

88. In many applications a request for further information is required. The Planner has identified the information they are missing which is required to complete the assessment, and identified issues arising out of the Rescode assessment and consideration of Neighbourhood Character.
89. Written or verbal advice is sought as relevant from other experts within Council in relation to specific matters (as discussed starting at paragraph 154 in Council's Part A submission).
90. In a standard application process, at the end of the notice period, objections are reviewed and summarised in the report and a plan for consultation with objectors is developed.
91. Once any consultation with objectors has been completed, the final step is for the report and recommendation to be completed and checked by a senior officer. Applications with objections (in most instances), refusal recommendations and any other 'sensitive' applications are discussed at a meeting of the Unit Manager and all Coordinators prior to a decision being made and issued.
92. Most Band 5 Planners in most middle ring municipalities spend almost all of their time assessing Clause 55 applications. They know Clause 55 and other relevant parts of the scheme inside out. They are experienced Planners, who undertake ongoing professional development, and there are strong risk management checks and balances in place. This is the case for the Urban Planning team at Moreland.
93. The time required to undertake the allocation, preliminary assessment and final assessment tasks is unchanged by the process proposed by Amendment C190.
94. For the standard application process, most of the time is spent negotiating a complete, compliant application and acceptable design outcome and administrative processes associated with requesting further information, giving notice and consulting with objectors, and the applicant amending the application, necessitating reassessment. It is a stop start process which is time inefficient.
95. If an objector appeal is lodged, it can take up to 12 months to get a decision within the standard application process.
96. Under the proposed process complete planning permit applications for fully compliant two dwelling on a lot proposals, with guaranteed better outcomes, could, in most cases, be determined within two weeks.
97. There is a resource benefit through reduced need to negotiate proposals into planning scheme compliance and in respect to community consultation and VCAT hearings, as applications would be required to meet and improve upon the planning scheme requirements at lodgment.

Time to review the Compliance Assessment forms including how Council will manage partially or incorrectly completed Compliance Assessment forms

98. In 2011 Moreland City Council established a specialised fast track planning permit application stream to deliver shorter timeframes for minor applications with simple systems and templates developed to ensure delivery against a guaranteed 14 calendar day timeframe. This was established prior to the introduction of VicSmart in 2014.
99. It is the very long-standing practice that all planning permit applications (with the exception of Clause 55 and apartment developments) are triaged by the two 'Fast Track' Urban Planners. These qualified Town Planners (not administrative/front counter officers) undertake an assessment as to which applications meet VicSmart criteria or are for minor works which do not cause material detriment and are able to be assessed without giving notice under a fast track process. It is these Fast Track Urban Planners who will undertake the first check that the Compliance Assessment form is correct and complete before allocating it to a Band 5 Urban Planner for further review.
100. A second check will be undertaken by the Urban Planner who is allocated the application. This check forms part of the Rescode and plans assessment which is already undertaken for all applications. As described earlier, at this point the delegate report will be generated (a new template will be created for two dwelling on a lot VicSmart applications) to allow a more detailed preliminary assessment of the application.

101. In order to get through the VicSmart process door the applicant is required to meet all criteria listed in Table 1 of the Schedule to Clause 59.15. All requirements are mandatory for entry into this application stream. The purpose of the Compliance Assessment template is for the applicant to clearly demonstrate to themselves and Council that all of these mandatory requirements have been met.
102. The process for incomplete or incorrect applications or any part of is stipulated in section 54 of the *Planning and Environment Act 1987* with explanatory material in section 3.3.2 of *Using Victoria's Planning System*.
103. Under the process envisaged, if the Compliance Assessment is incorrect, officers will contact the applicant by phone by day 2 or 3 to give them an opportunity to submit a correct assessment. If the correct information is not received within 48 hours the application will be processed within the standard application stream as the mandatory criteria which are required to have been met at lodgment for entry into the VicSmart stream, have not been met. In this instance the applicant has effectively lodged a standard application.
104. If the Compliance Assessment is incomplete the Urban Planner assessing the plans will determine whether or not the mandatory requirements for entry into the VicSmart stream have been met. If the form is incomplete and the development is compliant, it will be dealt with in exactly the same way as an incomplete application form; a complete form will be requested through an RFI letter by day 5, in accordance with s54 PEA. A minor improvement to the Compliance Assessment template would be a direction that the form must be complete and correct to reduce this possibility.
105. This is a similar approach to how VicSmart applications are currently handled. Officers use some discretion about when to use a formal section 54 request for further information (ie. Melbourne Water's approval is missing from a SBO application), and when a phone call giving the applicant an opportunity to respond is a better approach (ie. when a minor part of a roofline is visible from a heritage streetscape in an application for a rear extension).
106. Frontloading the process and putting the control in the applicant's hands to lodge a complete and correct VicSmart application is also important to achieving a decision in 10 days. This will be achieved by:
 - Requiring applicants to submit a pre-certified Sustainable Design Assessment and Livable Housing Australia assessment with an application. This is the same process that is already in place across Victoria for VicSmart applications under a Special Building Overlay, which requires an application to be accompanied by written advice from Melbourne Water, rather than a referral occurring after the application is lodged.
 - Applicants demonstrating that their application meets the criteria for VicSmart through the compliance assessment template.
 - Continuing to provide a free pre-application service and written guidance, including a guide on how to fill in the compliance assessment template and FAQs.
 - Holding education/information sessions for Moreland's regular applicants when the provisions are first introduced.
107. It is noted that two dwelling on a lot applications in Moreland are not and should not be prepared by an unqualified person. Most applications are prepared and submitted by design and drafting companies, with Planning consultant or Architect applicants being less common.
108. The neighbourhood and site description and design response to explain how the proposed design derives from and responds to neighbourhood character, including any neighbourhood character features identified in a local planning policy, will continue to be required as is currently required by Clause 55.02-1 Standard B1.
109. As all requirements to be eligible for this VicSmart application class are mandatory, neighbourhood character becomes the primary consideration in the assessment of an application.
110. Submissions 9 and 10 discuss how they believe the workflow proposed by Amendment C190 would work. This commentary includes:

- Deciding whether it's a VicSmart application will be done by front counter staff
- This application class will be assessed by the most junior planning staff also known as 'VicSmart Planners'
- Applications will be determined under a VicSmart process without notice, in error, exposing Council to risk
- Sites will not be inspected
- That there will be a proliferation of failure appeals with associated costs
- Neighbourhood character won't be properly considered or questions about how neighbourhood character will be addressed when it is common for Council to refuse applications on the basis of neighbourhood character
- That VicSmart 10 day decision = 10 day approval or a 10-day refusal will create conflict with applicants.

111. This commentary does not appreciate the checks and balances already in place at Moreland City Council or the deep thought that Moreland's Urban Planning Unit has given to implementation of a workflow for two dwelling on a lot applications within a streamlined process.
112. Two dwelling on a lot VicSmart applications are different to a VicSmart application to remove one tree, or construct a front fence, and the way they are and will continue to be processed requires an understanding of Moreland City Council's structure and processes.
113. Two dwelling on a lot applications are almost always assessed by Band 5 Urban Planners. This will continue to be the case.
114. Moreland City Council has three teams of urban planners. The teams are not geographic, and applications are allocated across the three teams. Each Coordinator has a specialist area of responsibility, one of which is the priority application streams of VicSmart and Commercial Priority applications. It is envisaged that VicSmart applications for two dwellings on a lot will be assessed by the Band 5 Urban Planners within this team so that the VicSmart Coordinator has a clear line of sight on compliance with statutory processes and timeframes for these applications.
115. Deciding whether it is a VicSmart application will involve two checks; one by the triaging Fast Track Planner and a second by the Band 5 Urban Planner assessing the application. There is another 'checks and balances' step at the decision-making end of the process where all delegate reports are read, with reference to the plans, by an experienced Band 7 Planner or Coordinator.
116. Statutory process errors can and do occur. Moreland City Council has rigorous risk management processes in place to limit these errors.
117. The applications will be assessed by the same Planners who currently assess two dwelling on a lot applications, not by staff with less experience. It is however highlighted that Fast Track Planners are qualified Town Planners with up to 1-2 years of post-graduate experience. As these Planners gain experience, they are allocated work with increasing complexity. At Moreland City Council, Planners don't see a Clause 55 application for the first time on the day they are promoted from being a 'Fast Track Planner' to an 'Urban Planner' and the implied characterisation in Submission 10 of VicSmart Planners being incapable of assessing an application for two dwellings on a lot is far from the reality of the many highly intelligent, very competent, qualified Fast Track Planners Moreland has attracted.
118. The speculation that sites will not be inspected does not align with Moreland City Council's procedures or practices. In the case study analysis within the *Better Outcomes for Two Dwellings on a Lot* review it was clearly evident that all sites for two dwellings on a lot

applications are inspected. Currently, Moreland City Council's Fast Track Planners inspect about half of VicSmart applications. Examples of VicSmart applications where sites are not inspected are Special Building Overlay applications (In this instance the single consideration is the views of Melbourne Water and Council's role is administrative only) and minor works/demolition in a Heritage Overlay at the rear where the works are not visible from the street.

119. All VicSmart applications for two dwellings on a lot will be inspected, without exception.
120. In respect to failure appeals, Moreland City Council considers the risks are and will be appropriately managed and what Submitter 10 describes as 'an insidious provision' ought not be a barrier to continuous improvement.
121. DELWP's Planning Permit Activity in Victoria 2017/18 annual report indicates that Moreland City Council determines 81% of VicSmart applications within 10 days compared with the metropolitan average of 77%. Further interrogation of Moreland City Council's VicSmart processing time data indicates that of the 19% of VicSmart applications that are not determined within 10 days, half of them are determined within 20 days.
122. When a failure appeal is lodged, the Council is no longer the responsible authority. Applicants lodge failure appeals when they think they will get a decision from VCAT in a shorter timeframe than waiting for Council to make a decision. This most commonly occurs where an applicant considers that Council is likely to refuse an application and they are effectively bringing forward a date for a VCAT hearing.
123. In real terms the risk of a failure appeal in a VicSmart application is low as it would be extremely rare that an applicant would get to VCAT in a shorter timeframe than waiting for Council to make a decision. There have been no failure appeals lodged against VicSmart applications in Moreland since the introduction of VicSmart into the VPPs.
124. Neighbourhood character will continue to be considered in exactly the same way as it is at present; with sites being inspected, all neighbourhood character policies, objectives and statements in the scheme being considered and appropriate direction and guidance from experienced staff.
125. If an applicant wishes to minimise the likelihood of a 10 day refusal on neighbourhood character grounds, they will be supported through both verbal and written advice about how Council will exercise discretion in relation to neighbourhood character within the free pre-application service, just as is the case at present.
126. The experience of Moreland City Council Planners who have worked in overseas jurisdictions which streamline two dwelling on a lot applications, is that it is cheaper and faster for an applicant to address the grounds of refusal and lodge a new application, than it is to appeal the refusal. It is highlighted that the statutory fee for a VicSmart application is approximately one third of the fee for a two dwelling on a lot application in the standard application stream. For this reason, as depicted diagrammatically above, where the neighbourhood character response is considered unacceptable, an Urban Designer will assist in drafting the grounds of refusal and the grounds will be as specific as possible.
127. All applications are triaged through the two Fast Track Urban Planners. The Fast Track Urban Planners are generally in their first 1-2 years of experience post-graduation. They process current VicSmart classes of applications and other applications which are for minor works but are not VicSmart applications. As they become more experienced and are awaiting an opportunity for advancement, they are allocated two dwelling on a lot applications (amongst other application types) which Coordinators consider straight forward.
128. Medium density applications, including applications for two dwellings on a lot, are assessed by Urban Planners across the three teams. Both Fast Track Urban Planners and Urban Planners are at the same banding, with Urban Planners generally having 2+ years post graduate experience.
129. The intention is to continue to allocate VicSmart two dwelling on a lot applications to Urban Planners. The proposal is to allocate them within the team with the VicSmart Lead responsibility provided by the Planning Coordinator so that there is a particular focus on monitoring the performance of the process and decision timeframes.

130. Two dwelling on a lot applications are and will continue to be:
- Triaged through the Fast Track Planners and not screened as to whether they meet VicSmart requirements by Counter Customer Service Officers or administrative staff.
 - Assessed by staff with appropriate experience with management oversight.

Triage/check whether it is a VicSmart application

131. Submission 10 states that the VicSmart process requires careful triaging of applications when they reach Council to ensure these applications are dealt with in a timely manner and that it is important to be able to identify VicSmart applications quickly and reliably.
132. At Moreland City Council all applications are triaged by Planning officers to determine a number of things, including whether an application is a VicSmart class of application. This will not change within the workflow to implement assessment of two dwelling on a lot applications in a VicSmart process. For VicSmart two dwelling on a lot applications two checks will occur; one in the current Planner triage process and a second by the Planner assessing the application. The suggestion in submissions that this judgement is made by clerical staff and that applications will be determined under a VicSmart process in error, exposing Council to risk, has no basis in fact. It is not the case now and will not be the case in the implementation of the provisions proposed by Amendment C190.

Site inspections

133. At Moreland City Council site inspections are conducted in the assessment of all medium density planning permit applications. This will not change within the workflow to implement assessment of two dwelling on a lot applications in a VicSmart process. The anecdotal assertion by an academic submitter that some students who undertake work placements at some Councils and assess some types of applications without visiting the site, misrepresents Moreland's practices.

Who assesses two dwelling on a lot applications?

134. At Moreland City Council two dwelling on a lot applications are assessed by experienced Urban Planners and at times, Senior Urban Planners (Local Government Award Band 5 and Band 6 Planners). This will not change within the workflow to implement assessment of two dwelling on a lot applications in a VicSmart process.
135. Submission 10 discusses working constructively with applicants to avoid conflict and so that applications are not refused.
136. Moreland City Council currently strongly recommends that planning permit applicants attend a pre-application meeting with Council before submitting their application. There is a very well-considered, structured pre-application process outlined on Council's website.
<https://www.moreland.vic.gov.au/planning-building/planning-permits/planning-process/pre-application-planning-meeting/>
137. This process is shown diagrammatically here:

Optional pre-application process

Purpose

To work with applicants to reduce need for RFI and potential for refusal
Supporting applicants to lodge fully compliant, better quality proposals

Applicant books a pre-application meeting online

No fee for two dwelling on a lot pre-application meetings

Allocated to an **Urban Planner**

Contact made with applicant to arrange a pre-application meeting time

Applicant uploads digital files providing the following information:

- A neighbourhood and site description plan showing existing buildings on site and location of buildings on at least four adjoining properties (including adjoining habitable room windows within 9 metres and private open space on neighbouring sites)
- Completed Moreland VicSmart Dual Occupancy Zone and Rescode Compliance Assessment
- Floor plans showing, building footprints, setbacks and property boundaries
- Elevation plans
- Shadow diagrams
- Photos of the site and surrounding area

Urban Planner provides advice in the meeting on:

- Information requirements including:
 - Certified Sustainable Design Assessment
 - Certified Livable Housing Assessment
- Preliminary advice on whether criteria for VicSmart process have been met
- Preliminary advice on neighbourhood character with reference to the Good Design Advice Sheets
- Relevant checklists and resources provided

Urban Planner meets with Panel (Unit Manager and Coordinators) and Urban Design if needed to discuss neighbourhood character advice

The advice in the pre-application meeting is followed up in writing within 5 working days after the meeting – checked by Coordinator

Up to two follow up meetings offered

138. This includes a booking process with the following digital information uploaded for Council's Planners to consider prior to the meeting:
 - A neighbourhood and site description plan showing existing buildings on site and location of buildings on at least four adjoining properties (including habitable room windows and private open space areas). A checklist and an example are provided on Council's website so that applicants know what is required. Planning Practice Note 43: Understanding Neighbourhood Character also provides guidance.
 - Concept floor plans showing building footprints, setbacks and property boundaries
 - Concept elevation plans, and
 - Photographs of the site and surrounding area.
139. Council provides written advice within 5 working days of an initial pre-application meeting and up to two follow up meetings are offered.
140. It is within the control of those applicants who wish to work constructively with Council to use this service. For two dwelling on a lot applications this service is free.
141. In Moreland the overwhelming majority of two dwelling on a lot applications are not lodged by once-off land owner applicants who are unfamiliar with the planning system and the planning scheme. They are lodged by professionals representing an owner or developer, most commonly by local architectural and drafting companies who are repeat applicants.
142. The working relationship between a permit applicant and the decision-maker is not solely the responsibility of the responsible authority. The process change proposed by Amendment C190 is an optional application pathway which looks to new ways of doing things to improve the quality of applications, give greater certainty and achieve better outcomes. It frontloads the process to empower applicants.
143. Submitter 10 argues that it is a challenge to refuse two dwelling on a lot applications within a 10 business day timeframe. The workflow clearly provides several days for a Planner to determine if there are any neighbourhood character issues, which is the primary reason for refusal of this application type.

144. Concurrent with the planning scheme amendment process, Council is developing resources for applicants and staff including a VicSmart checklist for this new class and a new standard delegate report template. Applicants will be supported in this cultural shift.

Streamlining medium density housing

145. Submission 10 discusses the state context for streamlining medium density housing.
146. The State government has authorised Moreland City Council to prepare and exhibit this Amendment. The state government context for streamlining medium density housing was detailed in Council's Part A submission.
147. Amendment C190 is not an academic exercise. It is an evidence based change to the Moreland Planning Scheme which uses available VPP tools to achieve the objectives of the Moreland Council Plan and Planning Scheme.
148. Expert evidence led by Council concludes adoption of the VicSmart assessment pathway represents the best tool available to Council to incentivise improved outcomes. Submitter 15 shares this view.

VicSmart

149. Submission 6 states that the Amendment will reduce green cover and increase overshadowing.
150. No open space, landscaping or overshadowing requirements are altered by Amendment C190 therefore the standard requirements would apply.
151. Submission 10 discusses the history of VicSmart and highlights that prior to the amendment of the *Planning and Environment Act* and the Victoria Planning Provisions, that DELWP gave consideration to a code assess application pathway. This process was not pursued by DELWP and is not relevant to the proposed changes as part of this Amendment.
152. On 19 September 2014 Amendment VC114 amended the Victoria Planning Provisions to introduce VicSmart, an assessment process for specified planning permit applications into the Victoria Planning Provisions and all planning schemes.
153. VicSmart has continued to evolve in the six years since its introduction and the state government has added to the statewide VicSmart classes three times and made one modification to VicSmart.
154. The Victoria Planning Provisions enable a planning authority to introduce local VicSmart classes.
155. Clause 59.15 Local VicSmart Applications states:
'The schedule to this clause may specify classes of application that are VicSmart applications to which Clause 71.06 applies.'
156. Clause 71.06-1 states:
'Any provision of this planning scheme may specify:
Classes of application that are VicSmart applications to which Clause 71.06 applies.'
157. There are no Ministerial Directions or Advisory Notes which constrain local VicSmart classes. The guidance in *The Practitioner's Guide to Victorian Planning Schemes* is discussed in Council's Part A submission.
158. Authorisation to prepare and exhibit Amendment C190 was sought on 17 June 2019 and authorisation was received on 7 April 2020; a period of almost 10 months.
159. Implicit in the Minister's Authorisation of C190 is that Amendment C190 is an acceptable use of the VPPs and that VicSmart is an appropriate tool to streamline approval processes for two dwelling on a lot development. The use of VicSmart in Amendment VC186 for secondary dwellings is further evidence that VicSmart is an appropriate tool to streamline applications which propose more than one dwelling on a lot.

160. Submission 10 expresses an argument that if two dwelling on a lot applications are to be assessed within a streamlined process that a new code is required. It is understood that this submitter considers that some Rescode standards are too permissive.
161. Until the mid-1990's dual occupancy development in Victoria was exempt from a planning permit if it met the *Dual Occupancy Guidelines* which are attached to Submission 10. The submitter uses this as an example of the type of code they consider is required to assess two dwelling on a lot development which requires a planning permit and assessed within a streamlined process.
162. To inform the Panel's consideration of Submission 10 a comparison has been undertaken between these historic *Dual Occupancy Guidelines* and Rescode below.
163. It is emphasised that in the process proposed by Amendment C190 a planning permit is required and all Rescode numeric requirements are mandatory. If any numeric requirement is not met the standard process and third party notice and review rights apply. Proposals which complied with the 90's *Dual Occupancy Guidelines* did not require a planning permit and there was no consideration of neighbourhood character. This is an important distinction to make in the comparison.

Comparison between Rescode and 90's Dual Occupancy Guideline requirements

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|--|---|---|
| Neighbourhood character Neighbourhood character considerations called up by 11 Rescode standards in addition to the PPF and zone objectives. | No requirement | Less restrictive |
| Building Height Standard B7 Neighbourhood Residential Zone The building height must not exceed 9 metres; and the building must contain no more than 2 storeys at any point. General Residential Zone The building height must not exceed 11 metres; and the building must contain no more than 3 storeys at any point. Relevant Neighbourhood character policy guidance regarding building height. Design development to provide an appropriate transition in building height where an increase above the prevailing building height is proposed. Design development in rear yards to respect an existing character of open rear yards and garden outlooks. Where the prevailing height of surrounding buildings in incremental change areas is not | Any new building is not more than 2 storeys If the development is two separate houses the one at the rear is to be one storey. | More restrictive |

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|--|---|---|
| <p>three or more storeys, designing three storey developments to have a:</p> <ul style="list-style-type: none"> • Visually recessive third storey. • Building height of no more than two storeys at the interface with adjoining properties and the public realm. <p>Designing development in rear yards to be single storey unless either:</p> <ul style="list-style-type: none"> • The prevailing context is not one of open rear yards and garden outlooks. • The building envelope respects the existing character of open rear yards and garden outlooks through provision of: <ul style="list-style-type: none"> ○ Generous side and rear setbacks. ○ Private open space at ground floor that provides space for screen tree planting around the development. ○ Sensitive design of the upper levels with adequate articulation, setbacks and materials to minimise visual bulk impacts as seen from neighbouring rear secluded open spaces. | | |
| Floor area No requirement | The floor area of one of the dwellings shall be less than 100 square metres excluding parking areas | More restrictive |
| Landscaping requirement Standard B13 At least one canopy tree located within the front setback that meets the following requirements: <ul style="list-style-type: none"> • Located in a permeable area within the site of at least 10m² and 4.5m wide • Reach a height of 6m-8m at maturity • Achieve a canopy width of at least 5m at maturity. <p>At least one canopy tree located elsewhere on the site that meets the following requirements:</p> <ul style="list-style-type: none"> • Located in a permeable area within the site of at least 4.5m x 4.5m • Reach a height of 6m-8m at maturity • Achieve a canopy width of at least 5m at maturity. | No requirement | Less restrictive |

| | | | | |
|---|--|---|---|---|
| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | | | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
| Street setback Standard B6 Walls of buildings must be set back from streets at least the distance specified in Table B1. Table B1 Street setback | | | A wall of a new building is to be set back from the frontage at least as far as the building on the adjacent land. | Same or similar |
| Develop ment context | Min setback from front street (metres) | Min setback from a side street (metres) | | |
| There is an existing building on both the abutting allotments facing the same street, and the site is not on a corner. | The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser. | Not applicable | | |
| There is an existing building on one abutting allotment facing the same street and no existing building on the other abutting allotment facing the same | The same distance as the setback of the front wall of the existing building on the abutting Allotment facing the front street or 9 metres, whichever is the lesser. | Not applicable | | |

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | | | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|---|---|---|--|--|---|
| street, and the site is not on a corner. | | | | | |
| There is no existing building on either of the abutting allotments facing the same street, and the site is not on a corner. | 6 metres for streets in a Road Zone, Category 1, and 4 metres for other streets. | Not applicable | | | |
| The site is on a corner. | If there is a building on the abutting allotment facing the front street, the same distance as the setback of the front wall of the existing building on the abutting allotment facing the front street or 9 metres, whichever is the lesser. If there is no building on | Front walls of new development fronting the side street of a corner site must be setback at least the same distance as the setback of the front wall of any existing building on the abutting allotment facing the side street or 3 metres, whichever is the lesser. Side walls of | | | |

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | | | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|--|--|---|--|---|
| | the abutting allotment facing the front street, 6 metres for streets in a Road Zone, Category 1, and 4 metres for other streets. | new development on a corner site must be setback the same distance as the setback of the front wall of any existing building on the abutting allotment facing the side street or 2 metres, whichever is the lesser. | | |
| Porches, pergolas and verandahs that are less than 3.6 metres high and eaves may encroach not more than 2.5 metres into the setbacks of this standard. | | | | |
| Site coverage Standard B8 The site area covered by buildings must not exceed 60 percent. | | | Buildings are not to cover more than 60% of the site. | Same or similar |
| Permeability Standard B9 The site area covered by the pervious surfaces must be at least 20 percent of the site. | | | No requirement | Less restrictive |
| Access Standard B14 The width of accessways or car spaces must not exceed 33 per cent of the street frontage, or if the width of the street frontage is less than 20 metres, 40 per cent of the street frontage. | | | No requirement | Less restrictive |
| Side and rear setbacks Standard B17 A new building not on or within 200mm of a boundary must be set back from side or rear boundaries: <ul style="list-style-type: none"> • At least the distance specified in a schedule to the zone, or • If no distance is specified in a | | | A wall of a new building is to be set back at least 1.2 metres from any side boundary for a single storey building and an additional 100mm for each 300mm that a wall is more than 3.6 metres high | Same or similar |

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|---|---|---|
| <p>schedule to the zone, 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.</p> <p>Sunblinds, verandahs, porches, eaves, fascias, gutters, masonry chimneys, flues, pipes, domestic fuel or water tanks, and heating or cooling equipment or other services may encroach not more than 0.5 metres into the setbacks of this standard.</p> <p>Landings having an area of not more than 2 square metres and less than 1 metre high, stairways, ramps, pergolas, shade sails and carports may encroach into the setbacks of this standard.</p> | | |
| <p>Walls on boundaries Standard B18 A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of lot must not abut the boundary: For a length of more than the distance specified in a schedule to the zone; or</p> <ul style="list-style-type: none"> • If no distance is specified in a schedule to the zone, for a length of more than: <ul style="list-style-type: none"> • 10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot, or • Where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports whichever is the greater. <p>A new wall or carport may fully abut a side or rear boundary where slope and retaining walls or fences would result</p> | Walls on boundaries not permitted | More restrictive |

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|--|---|---|
| <p>in the effective height of the wall or carport being less than 2 metres on the abutting property boundary.</p> <p>A building on a boundary includes a building set back up to 200mm from a boundary.</p> <p>The height of a new wall constructed on or within 200mm of a side or rear boundary or a carport constructed on or within 1 metre of a side or rear boundary must not exceed an average of 3.2 metres with no part higher than 3.6 metres unless abutting a higher existing or simultaneously constructed wall.</p> | | |
| Daylight to existing windows Standard B19 Buildings opposite an existing habitable room window must provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky. The calculation of the area may include land on the abutting lot. Walls or carports more than 3 metres in height opposite an existing habitable room window must be set back from the window at least 50 per cent of the height of the new wall if the wall is within a 55 degree arc from the centre of the existing window. The arc may be swung to within 35 degrees of the plane of the wall containing the existing window. Where the existing window is above ground floor level, the wall height is measured from the floor level of the room containing the window. | No requirement | Less restrictive |
| North-facing windows Standard B20 If a north-facing habitable room window of an existing dwelling is within 3 metres of a boundary on an abutting lot, a building | No requirement | Less restrictive |

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|--|--|---|
| <p>must be setback from the boundary 1 metre, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window.</p> <p>A north-facing window is a window with an axis perpendicular to its surface oriented north 20 degrees west to north 30 degrees east.</p> | | |
| Overshadowing open space Standard B21 Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space must receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September. If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight must not be further reduced. | No requirement | Less restrictive |
| Overlooking Standard B22 A habitable room window, balcony, terrace, deck or patio must be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio. Views must be measured within a 45 degree angle from the plane of the window or perimeter of the balcony, terrace, deck or patio, and from a height of metres above floor level. A habitable room window, balcony, terrace, deck or patio with a direct view | <p>No requirement</p> <p>If a window of one dwelling is less than 1.7 metres above floor level and could look into a similar window of the other dwelling on the site a visual barrier must be built to prevent such overlooking</p> | Less restrictive |

| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none"> • More restrictive • Less restrictive • Same or similar |
|--|---|---|
| <p>into a habitable room window of existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio must be either:</p> <ul style="list-style-type: none"> • Offset a minimum of 1.5 metres from the edge of one window to the edge of the other. • Have sill heights of at least 1.7 metres above floor level. • Have fixed, obscure glazing in any part of the window below 1.7 metre above floor level. • Have permanently fixed external screens to at least 1.7 metres above floor level and be no more than 25 per cent transparent. <p>Obscure glazing in any part of the window below 1.7 metres above floor level may be openable provided that there are no direct views as specified in this standard.</p> <p>Screens used to obscure a view must be perforated panels or trellis with a maximum of 25 per cent openings or solid translucent panels.</p> <p>Does not apply to a new habitable room window, balcony, terrace, deck or patio which faces a property boundary where there is a visual barrier at least 1.8 metres high and the floor level of the habitable room, balcony, terrace, deck or patio is less than 0.8 metres above ground level at the boundary.</p> | | |
| Internal views Standard B23 Windows and balconies must be designed to prevent overlooking of more than 50 per cent of the secluded private open space of a lower-level dwelling or residential building directly below and within the same development. | No requirement | Less restrictive |

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|--|---|---|---------------|-----|---------------------|-----|---------------|-----|---|------------------|
| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none">• More restrictive• Less restrictive• Same or similar | | | | | | | | |
| Daylight to new windows Standard B27 A window in a habitable room must be located to face: <ul style="list-style-type: none">• An outdoor space clear to the sky or a light court with a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky, not including land on an abutting lot, or• A verandah provided it is open for at least one third of its perimeter, or A carport provided it has two or more open sides and is open for at least one third of its perimeter. | No requirement | Less restrictive | | | | | | | | |
| Private open space Standard B28 A dwelling or residential building must have private open space consisting of: <ul style="list-style-type: none">• An area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 25 square metres, a minimum dimension of 3 metres and convenient access from a living room, or• A balcony of 8 square metres with a minimum width of 1.6 metres and convenient access from a living room, or• A roof-top area of 10 square metres with a minimum width of 2 metres and convenient access from a living room. Minimum garden area requirement Must provide a minimum garden area as set out in the following table: <table><tr><td>Lot size</td><td>Min % of a lot</td></tr><tr><td>400 - 500 sqm</td><td>25%</td></tr><tr><td>Above 500 - 650 sqm</td><td>30%</td></tr><tr><td>Above 650 sqm</td><td>35%</td></tr></table> | Lot size | Min % of a lot | 400 - 500 sqm | 25% | Above 500 - 650 sqm | 30% | Above 650 sqm | 35% | Each dwelling is to have open space free of buildings and car parking of 50 square metres. The open area is to be not less than 2.4 metres wide, in not more than two part and no part less than 16 square metres in area. | Less restrictive |
| Lot size | Min % of a lot | | | | | | | | | |
| 400 - 500 sqm | 25% | | | | | | | | | |
| Above 500 - 650 sqm | 30% | | | | | | | | | |
| Above 650 sqm | 35% | | | | | | | | | |
| Solar access to open space Standard B29 The southern boundary of secluded private | No requirement | Less restrictive | | | | | | | | |

| | | | | | | | | | | |
|--|---|---|------------------------|-------------------------------------|------------|--|---|------------------|----------------|------------------|
| Rescode Requirement A <u>planning permit is required</u> and should meet the following requirements | 90's Dual Occupancy Guidelines Requirement A <u>planning permit is not required</u> if the following requirements are met | Dual occupancy guidelines: <ul style="list-style-type: none">• More restrictive• Less restrictive• Same or similar | | | | | | | | |
| open space must be set back from any wall on the north of the space at least (2 + 0.9h) metres, where 'h' is the height of the wall. | | | | | | | | | | |
| Storage Standard B30 Each dwelling must have convenient access to at least 6 cubic metres of externally accessible, secure storage space. | No requirement | Less restrictive | | | | | | | | |
| Front fences Standard B32 A front fence within 3 metres of a street must not exceed: <ul style="list-style-type: none">• The maximum height specified in a schedule to the zone, or• If no maximum height is specified in a schedule to the zone, the maximum height specified in Table B3. <u>Table B3 Maximum front fence height</u> <table><tr><td>Street Context</td><td>Max front fence</td></tr><tr><td>Streets in a Road Zone</td><td></td></tr><tr><td>Category 1</td><td>2 metres</td></tr><tr><td>Other streets</td><td>1.5 metres</td></tr></table> | Street Context | Max front fence | Streets in a Road Zone | | Category 1 | 2 metres | Other streets | 1.5 metres | No requirement | Less restrictive |
| Street Context | Max front fence | | | | | | | | | |
| Streets in a Road Zone | | | | | | | | | | |
| Category 1 | 2 metres | | | | | | | | | |
| Other streets | 1.5 metres | | | | | | | | | |
| Car parking Must provide the number of car parking spaces required by Clause 52.06 Table 1 <u>Table 1: Car parking requirement</u> <table><tr><td>Rate</td><td>Car Parking Measure</td></tr><tr><td>1</td><td>To each one or two bedroom dwelling</td></tr><tr><td>2</td><td>To each three or more bedroom dwelling (with studies or studios that are separate rooms counted as bedrooms)</td></tr></table> | Rate | Car Parking Measure | 1 | To each one or two bedroom dwelling | 2 | To each three or more bedroom dwelling (with studies or studios that are separate rooms counted as bedrooms) | Parking is to be available for not less than two cars | Less restrictive | | |
| Rate | Car Parking Measure | | | | | | | | | |
| 1 | To each one or two bedroom dwelling | | | | | | | | | |
| 2 | To each three or more bedroom dwelling (with studies or studios that are separate rooms counted as bedrooms) | | | | | | | | | |

164. Fourteen standards in the Dual Occupancy Guidelines were less restrictive than the additional or more stringent requirements in Rescode.
165. Three standards the Dual Occupancy Guidelines were the same or similar to Rescode.

166. Only three standards Dual Occupancy Guidelines were more restrictive than Rescode, being:
- Building height
 - Floor area
 - Walls on boundaries.

Building height

167. In relation to height, the expectations of planning schemes and residential the zones have changed over the past 25 years since the *Dual Occupancy Guidelines* applied, as the population of Melbourne has increased significantly from 3,164,390 in 1996 to 5,078,193 in 2019. In this time the policy emphasis on residential infill in established areas has also increased, with Plan Melbourne seeking to locate at least 65 per cent of new housing in established areas of Melbourne. DELWP's *Victoria in Future 2019* report forecasts that the population of Melbourne will be 6,781,149 by 2036. This changed context is articulated in *Ronge v Moreland CC (Red Dot)* [2017] VCAT 550 (9 May 2017).
168. Submission 16 discusses height 'trade-offs' with reference to Design and Development Overlays 18, 19 and 20. These are discretionary building height requirements in the Brunswick Activity Centre. Amendment C190 relates to land in the Neighbourhood Residential and General Residential zones. It does not propose to alter any building height requirements in Moreland's Activity Centres.
169. Amendment C190 replicates the mandatory building height requirements of the Neighbourhood Residential Zone and General Residential Zone.
170. As highlighted in Council's Part A submission, only 6% of medium density development in the General Residential Zone of Moreland is 3 storeys and where 3 storey development occurs, it is located in less sensitive locations.
171. The Dual Occupancy Guidelines contained a requirement if the development is two separate houses, the one at the rear is to be one storey.
172. Only 22% of two dwelling on a lot development in Moreland is a one behind the other typology. The Neighbourhood Character local policy at clause 22.01 seeks to ensure development in rear yards is single storey unless certain neighbourhood character objectives are met. These objectives are very commonly met.
173. The *Better Outcomes for Two Dwellings on a Lot* review found that 89% of two dwelling on a lot applications in Moreland have both dwellings two storeys, or where one dwelling is existing, the new one is double storey. In only 11% of applications one of the dwellings single storey, or where one dwelling is existing the new one is single storey.
174. Any streamlining initiative at state or local level which limits medium density infill development to single storey is likely to have negligible influence and be out of step with the expectations of the residential zones.
175. In addition to compliance with the mandatory building height requirement to get through the VicSmart door, Amendment C190 retains all neighbourhood character considerations in the Moreland Planning Scheme. The Neighbourhood Character local policy at Clause 22.01 and Clause 55.03-2 moderate building height below the mandatory maximum.
176. Amendment C190 does not alter any planning scheme building height requirement or neighbourhood character guidance.

Floor Area

177. The Dual Occupancy Guidelines contained a requirement that the floor area of one of the dwellings shall be less than 100 square metres excluding parking areas. This appears to integrate with the single storey at the rear provision outlined above. Interestingly there was no floor area limitation on the other dwelling, so the Dual Occupancy Guidelines provided for one small dwelling and potentially one large dwelling without a planning permit, with no overall

floor area limitation other than the site coverage requirement which was the same as it is in Rescode.

178. Analysis undertaken by the *Medium Density Housing Review* and *Better Outcomes for Two Dwellings on a Lot* review concluded that medium density housing in Moreland, including two dwellings on a lot, is quite modest in its overall size compared with other parts of Melbourne. From the experience of Moreland City Council Planners who have worked elsewhere, in two dwelling on a lot development in many municipalities, the typical floor area excluding parking is in excess of 200 square metres per dwelling. In two dwelling on a lot development in Moreland the typical floor area excluding parking areas is in a 130-180 square metre range.
179. In relation to floor area, there is no floor area limitation on any medium density development in the VPPs and C190 does not alter this. C190 represents a neutral change.

Walls on Boundaries

180. The Dual Occupancy Guidelines precluded walls on boundaries within a process where no planning permit was required.
181. Rescode Standard B18 permits a single storey wall on a boundary, for a length of up to 10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot. This is then moderated by neighbourhood character considerations within this standard and by the Rescode objectives relating to daylight to existing windows, north-facing windows and overshadowing open space.

Private Open Space

182. The Dual Occupancy Guidelines required that each dwelling have open space free of buildings and car parking of 50 square metres. All open areas of at least 2.4 metres wide, and 16sqm in area were included, including the front setback area.
183. The *Medium Density Housing Review* found that since the introduction of the Garden Area Requirement the average Secluded Private Open Space size is 47sqm and a third of medium density dwellings have a SPOS of 50sqm or more. The overall amount of open space of at least 2.4 metres width and 16sqm in area, is on average, 80sqm per dwelling.
184. Taken holistically, the 90's Dual Occupancy Guidelines delivered a far more permissive development outcome without the requirement for a planning permit and no consideration of neighbourhood character. Rescode is delivering a more restricted outcome AND a planning permit is required.
185. Moreland City Council's position in relation to the submission that if two dwelling on a lot applications are to be assessed within a streamlined process that a new code is required, is that the current code for the assessment of two dwelling on a lot applications provides clear and relevant standards for the assessment of onsite amenity, amenity impacts and neighbourhood character.

Operation of Rescode

186. At the outset, it is important to highlight that VPP planning schemes operate with layers of provisions and requirements. The proposed Schedules to Clauses 59.15 and 59.16 do not stand alone within the planning scheme and do not contain the trigger for a planning permit application. The planning permit trigger to construct a dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot within the Neighbourhood and General Residential zones, resides in Clauses 32.09-6 and 32.08-6. These clauses require that a development must meet the requirements of Clause 55. The operational provisions within the header clause of Clause 55 requires that a development must meet all of the objectives and should meet all of the standards of Clause 55. These provisions cannot be turned off by a Schedule to Clause 59.15 and are not turned off by Amendment C190.
187. Beyond this, Submission 10 argues that Rescode standards are guidelines which will usually meet the objectives. This submission holds that if the decision maker thinks a more restrictive standard is needed than they can argue this. This submission references a VCAT decision that

supports this position; 16 Taylor Pty Ltd v Nillumbik SC [2020] VCAT 673. Submission 14 also touches on the operation of Rescode.

188. Submission 10 discounts 'a series of VCAT decisions made by one VCAT member'. It is thought likely that this submission may be referring to Red Star Beaumaris Pty Ltd v Bayside CC [2015] VCAT 305; Li Chak Lai v Whitehorse CC (No.1) [2005] VCAT 1274; and Belokozovski v Port Phillip CC [2015] VCAT 1046, which are decisions of (then) Senior Member Byard. Member Byard was a Barrister practising at the Victorian Bar between 1969-1988, and from 1988 to 2016 was a senior member of the Victorian Administrative Appeals Tribunal and the Victorian Civil and Administrative Tribunal.

189. Clause 55 states:

'Operation

The provisions of this clause contain:

Objectives. An objective describes the desired outcome to be achieved in the completed development.

Standards. A standard contains the requirements to meet the objective.

A standard should normally be met. However, if the responsible authority is satisfied that an application for an alternative design solution meets the objective, the alternative design solution may be considered.

Decision guidelines. The decision guidelines set out the matters that the responsible authority must consider before deciding if an application meets the objectives.

Requirements

A development:

Must meet all of the objectives of this clause that apply to the application.

Should meet all of the standards of this clause that apply to the application.'

190. Moreland City Council's reading of this operational provision of Clause 55 is that the discretion to meet the objective in some other way other than meeting the standard, rests with the permit applicant and that if the standard is met it is deemed to meet the objective. By extension, the decision guidelines come into play only where the standard is not met or where the standard is not numeric and therefore discretion exists. This is particularly the case with Rescode requirements which include consideration of neighbourhood character.

191. It is Moreland City Council's reading of this operational provision of Clause 55 is that there is no discretion for a decision maker, whether that be a Council delegate, Council, or VCAT, to require a metric more restrictive than a Rescode metric requirement, except where required to meet a neighbourhood character objective, policy or statement set out in the scheme.

192. Council has obtained legal advice to inform the Panel's consideration of Submission 10. This advice is at **Attachment 1**.

193. In summary the advice considers that:

'We consider Senior Member Byard's interpretation of ResCode as explained in Belokozovski v Port Phillip CC [2015] VCAT 1046 and is Li Chak Lai v Whitehorse CC (No.1) [2005] VCAT 1274 should be preferred because:

he is an experienced and respected Tribunal member who is also a legal member and therefore, generally speaking, a legal member's decision on a question of interpretation of the planning scheme should be given more weight; and

we consider his analysis to be the better approach.

Applying Senior Member Byard's interpretation of ResCode, we consider that:

if a Standard is met, the Objective to which it relates is met as relevant to the subject matter of that Standard. It is not relevant to otherwise consider whether an Objective is met in order to meet the requirements of ResCode;

the decision guidelines are not relevant where a Standard is met through a numeric metric because the Objective as relevant to the subject matter of that Standard is met. The decision guidelines should be considered;

- where a Standard is not met, and an alternative solution is presented by the applicant to meet the Objectives;
- where a Standard is expressed in qualitative terms.

For permit applications more generally, the responsible authority can still require something more restrictive than ResCode, because a responsible authority must exercise its discretion while considering all relevant provisions of the Scheme (not just the ResCode provisions). The Tribunal or a decision maker must ultimately be satisfied that the proposal represents an acceptable outcome. However, where a ResCode Standard is met, it is likely that the proposal would be considered acceptable all other things being equal.

For VicSmart applications subject to the Amendment, the responsible authority can only require more restrictive requirements to be met if this is necessary to meet neighbourhood character policies, objectives or statements in the Scheme.'

194. As detailed in the expert evidence of Mr Glossop, within the VicSmart pathway an application for two dwellings on a lot 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.
195. For usability and to demystify the complex structure of planning schemes, reference to the requirement to meet the objectives of Clause 55 has been included as a decision guideline in the changes to the Schedule to Clause 59.16 suggested by Mr Glossop.
196. The case study analysis undertaken within the Medium Density Housing Review and Better Outcomes for Two Dwellings on a Lot review, indicates that the way the planning scheme is being applied in assessing two dwelling on a lot applications in Moreland at present is as described within the legal advice and the expert evidence of Mr Glossop, and Amendment C190 does not result in any change in this regard.

Process change

197. Submissions 1, 2, 7, 8, 11, 14 and 15 support the proposed process change. These submissions congratulate Council for its leadership, strategic foresight, the manner in which it has addressed the important issues associated with increasing dwelling supply in Moreland and commend Council for this initiative and for the approach taken in the Amendment.
198. They highlight that once again Moreland is the thought-leader in pioneering changes to support and deliver high quality housing outcomes, using the planning system to incentivise housing in the right locations and remove many of the debates that clog up the system.
199. These submissions describe the provisions within the Amendment as very beneficial and a real step forward for the City of Moreland and planning in Victoria. They observe that the benefits of a prescriptive planning control are clear, as the certainty it brings to the process will be of great benefit to those who wish to redevelop their land holdings and that the benefits to Council resources, VCAT and the community are also evident.
200. Submission 7 expresses a preference that dual occupancies be dealt with under the building approval system, with use of the VicSmart planning stream a second preference. This submission concurs with Council's analysis that the benefit of the streamlined process is an incentive to fully comply with Rescode and other numeric requirements.
201. Submission 11 observes that it is a matter of priority that approval processes for two dwellings on a lot be refined and a streamlined and more straightforward assessment process should be introduced to facilitate two dwellings on an allotment.

202. Submissions 5, 6, 9, 12, 13 and 16 do not support the exemption from notice and objector appeals within the VicSmart process. These submissions argue that the Amendment will reduce the voice of residents and therefore will reduce the quality of development. Submission 9 mentions that removal of notice requirements will mean that residents won't be aware that a development will occur next door to them and Submission 12 mentions that the exemption from notice and objector appeals is contrary to human rights. Submission 16 considers that Council-driven incentives and fast-track avenues are undesirable.
203. In order to understand the voice of residents, the *Better Outcomes for Two Dwellings on a Lot* review included extensive analysis of objections to applications for two dwellings on a lot to ensure a VicSmart process would continue to take into account those matters which are most important to neighbours.
204. Fifty four percent of two dwelling on a lot applications attract objections, but only one in 10 two dwelling on a lot applications is changed as a result of giving notice. Any changes made are almost always very minor in nature and typically involve a ruler length in difference in some aspect of the building envelope. This is a very low return on the investment of time and energy put into objections and VCAT appeals by neighbours. Conversely, requiring applicants to meet numerical standards regarding building envelope in a VicSmart process is not a significant impost on applicants and responds to the concerns that are often raised by objectors.
205. The planning system, which includes circumstances where there are third party notice and review rights, and circumstances which are exempt from third party notice and review, are a long-established part of government regulation of land use and development in Victoria.
206. Council's adopted Community Engagement and Public Participation Policy, developed with significant community input, confirms engagement should be purposeful and meaningful. Under the current process, detailed analysis has found that consultation on applications for two dwellings on a lot is not meaningful in that it is not substantially changing the outcome. The proposed VicSmart process removes steps which don't add value for any sector of the community and builds in mandatory requirements to ensure compliance with amenity impact standards which are often the subject of objector's concerns.
207. In the 10 years since 2010 there have been only 13 objector appeals in total relating to a two dwelling on a lot applications for the whole of Moreland. The objector appeal rate is less than one per cent. In all instances where an objector appealed to VCAT against Council's support of a dual occupancy application, VCAT supported Council's decision and directed that a permit issue.
208. None of the two dwelling on a lot applications over the past 10 years which were the subject of a section 82 objector appeal, fully met the Rescode standards and car parking requirements. That is, none of these applications would meet the mandatory requirements proposed within Amendment C190. As such, in all cases these applications would continue to be subject to the usual third-party notice and review process and importantly, residents would be participating in an application process where proposed variations to planning scheme have the potential to have an amenity impact on them.
209. Submitter 10 argues dual occupancies cannot be assessed without considering housing and sustainability policies; zone purposes, objectives and decision guidelines; all Clause 55 objectives, standards and decision guidelines and third party input. This is contrary to other matters raised by this same submitter where they advocate for the consideration of dual occupancies as of right or in a fast tracked application stream.
210. This cannot reasonably be argued both ways. Either you accept that assessment of low intensity urban infill can be simplified, to a degree codified and fast tracked, to deliver certainty to all parties OR you accept that assessment of planning scheme compliant two dwelling on a lot development is so complicated that 65 pages of discretionary planning scheme content and input of third parties is required to make a decision.
211. Application pathways to facilitate two dwelling on a lot urban infill in established areas are shown diagrammatically below.

Application pathways to facilitate two dwelling on a lot infill in established areas

| | | | |
|--|---|--|---|
| Option 1 No planning permit required Some Rescode numeric standards apply in the Building Code No third party process | Option 2 VicSmart streamlined application process Some Rescode standards apply, some are varied, some do not apply No or limited consideration of neighbourhood character No third party process | Option 3 VicSmart streamlined application process Key policy objectives are codified and are mandatory All numeric Rescode, zone and car parking standards are mandatory, including amenity impact standards Merits based consideration of all neighbourhood character objectives, policies and statements in the scheme No third party process | Option 4 Standard application process All policy objectives are discretionary All Rescode, some zone and car parking requirements are discretionary Consideration of neighbourhood character Third party notice and review |
|--|---|--|---|

This option is not within Moreland City Council's control as the permit trigger is within zone header provisions

Single dwellings on lots over 300sqm are an example of residential development considered in this application pathway

This option is not within Moreland City Council's control as the permit trigger is within zone header provisions

Secondary dwellings are an example of residential development considered in this application pathway

Optional application pathway proposed by Amendment C190

Rescode standards which have been varied in Moreland's NRZ and GRZ continue to apply and become mandatory

Simplifies current application pathway for development which does not vary Rescode, zone and car parking numeric standards

This is the current application pathway

This pathway is unchanged by Amendment C190 for development which varies Rescode, zone or car parking standards

212. Submission 10 seeks to argue that the provisions proposed by Amendment C190 represents a substantial change to the way in which two dwelling on a lot applications are currently assessed. Extensive case study analysis demonstrates that this is simply not the case.
213. Extensive case study analysis within both the *Medium Density Housing Review* and *Better Outcomes for Two Dwellings on a Lot* review did not reveal any instances where either Moreland City Council or VCAT found that the development of two dwellings on a lot in either the Neighbourhood Residential Zone or General Residential Zone anywhere in Moreland was considered to be unacceptable based on housing policy or zone purpose.
214. *Plan Melbourne* supports an increased percentage of new housing in established areas. A related strategy at Clause 16.01 (Residential development) is to 'increase the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land'. Case study analysis found that Moreland City Council and VCAT consider that two dwelling on a lot development within Moreland in both the Neighbourhood Residential Zone and General Residential Zone is consistent with the directions specified within the Planning Policy Framework and consistent with the purposes of the zones.
215. Both the Neighbourhood Residential Zone or General Residential Zone encourage development that respects the neighbourhood character of the area. So, neighbourhood character is the primary consideration in the assessment of applications, as opposed to whether development of two dwellings on a lot are at odds with housing policies or zone purposes.
216. As with many medium density housing proposals, the most important issues in determining whether the proposal is an acceptable planning outcome are onsite amenity, off-site amenity impacts and neighbourhood character.

Neighbourhood character

217. Submission 2 expresses the view that the amendment will remove many of the neighbourhood character debates that plague statutory planning and clog up the system. Submissions 9 and 14 raise queries about how the Amendment will alter consideration of neighbourhood

character. Submission 16 would like Amendment C190 to review neighbourhood character guidance in the Moreland Planning Scheme.

218. Submission 9 raises that a statement of how the proposal responds to the neighbourhood character of the area is not an application requirement. As clarified in the discussion of the operation of Rescode above, and in changes suggested by Council's expert witness, the requirement for a design response to explain how the proposed design responds to the neighbourhood character of the area is unchanged by Amendment C190. Consideration of all existing neighbourhood character objectives, policies and statements within the scheme is unchanged by the Amendment, and the way neighbourhood character is assessed is unchanged.
219. Submission 9 implies that Council considers neighbourhood character satisfactory if numerical Rescode standards are complied with and that the proposed VicSmart process ignores neighbourhood character aspects of ResCode. This is a misreading of the proposed provisions. Consideration of neighbourhood character is in addition to Rescode numeric standards and this is explicit in the operational provisions of the scheme and in the decision guidelines of the proposed provisions.
220. Submission 16 identifies a need to review the neighbourhood character guidance in the Moreland Planning Scheme. This further work was identified in the statutory review of the Planning Scheme in 2018 as an action to be undertaken in 2021. This does not impact the changes proposed as part of Amendment C190.
221. In addition, at the Council meeting 9 September 2020, a notice of motion was presented which resolved:

'That Council receives a report that investigates options and makes recommendations for future strategic work to inform a planning scheme amendment to strengthen neighbourhood character in planning that considers:

- 1. Preparing neighbourhood character and landscape objectives for Moreland's residential areas or precincts. These will be included in the schedules of the General Residential Zone (GRZ) and Neighbourhood Residential Zone (NRZ).*
- 2. Introducing site coverage, permeability, landscaping requirements, setbacks and decision guidelines to the schedules for Moreland's residential zones.'*

This resolution does not impact the changes proposed as part of Amendment C190.

Neighbourhood character considerations in Clause 55 applications

222. Clause 55.01 Neighbourhood and Site Description and Design Response, states:

'An application must be accompanied by:

A neighbourhood and site description.

A design response.

Neighbourhood and site description

The neighbourhood and site description may use a site plan, photographs or other techniques and must accurately describe:

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.'

Clause 55.01-2 states:

'The design response must explain how the proposed design...Meets the objectives of Clause 55.'

223. This includes neighbourhood character objectives in 11 of the 32 Clause 55 standards. Some of the Rescode provisions which include neighbourhood character considerations contain numeric standards and others do not.
- Under the heading Neighbourhood Character and Infrastructure:
 - Clause 55.02-1 Neighbourhood character Standard B1
 - Clause 55.02-5 Integration with the street Standard B5
 - Under the heading Site Layout and Building Massing,
 - Clause 55.03-1 Street setback Standard B6 (standard is numeric)
 - Clause 55.03-2 Building height Standard B7 (standard is numeric)
 - Clause 55.03-3 Site coverage Standard B8 (standard is numeric)
 - Clause 55.03-8 Landscaping Standard B13
 - Clause 55.03-9 Access Standard B14 (standard is numeric)
 - Under the heading Amenity Impacts:
 - Clause 55.04-1 Side and rear setbacks Standard B17 (standard is numeric)
 - Clause 55.04-2 Walls on boundaries Standard B18 (standard is numeric)
 - Under the heading Detailed Design:
 - Clause 55.06-1 Design detail objective Standard B31
 - Clause 55.06-2 Front fences objective Standard B32
224. Moreland is conservative in its consideration of neighbourhood character. This was evident in the engagement with the development sector in the *Medium Density Housing Review* and analysis of refusals and VCAT decisions in the *Better Outcomes for Two Dwelling on a Lot* review.
225. In the *Medium Density Housing Review* in relation to streetscape character and site context developers said:
- 'Moreland is too conservative in how it considers contemporary design'*
- 'Neighbourhood character policy is too restrictive and does not lead to contextual design'*
- 'There is a lack of flexibility to allow new design language especially where there is no clear streetscape character or a mixed building stock'*
- 'In relation to neighbourhood character, it's a guessing game in knowing what Council actually wants'*
226. Moreland refuses 1 in 5 (20%) of two dwelling on a lot applications on neighbourhood character grounds. This demonstrates that Moreland City Council takes assessment of neighbourhood character seriously and is a key reason why, as an outcome of the *Medium Density Housing Review*, Moreland City Council has invested in additional Urban Designer staff resources to improve development.
227. Of those decisions that are appealed, analysis in the *Better Outcomes for Two Dwellings on a Lot* review shows that Moreland City Council loses the appeals against these decisions 75% of the time. VCAT upholds Moreland City Council's neighbourhood character refusal of two dwelling on a lot applications only 25% of the time. In broad terms VCAT is concluding that Moreland City Council's consideration of neighbourhood character is too restrictive in the context of reasonable development outcomes in an established inner-middle municipality. As demonstrated by the discussion about the change in approach to side by side dual occupancies in Council's Part A submission, Moreland City Council has a process of reviewing VCAT decisions and reassessing the approach when needed.

Neighbourhood character consideration in Moreland's Neighbourhood and General Residential Zones at VCAT

228. Neighbourhood Character is the key issue discussed in medium density housing VCAT appeals.
229. The change to the purpose of the Neighbourhood Residential Zone and General Residential Zone through Amendment VC110 has afforded VCAT to place less weight on neighbourhood character and consequently Local Neighbourhood Character Policy 22.01.
230. Site location, being close to Activity Centres and Neighbourhood Centres, public transport, services, and schools supports a greater change in character to provide the housing directed by state policies as detailed in Plan Melbourne and reflected in Clause 11 and Clause 16 of the PPF.
231. In particular, Council's consideration of neighbourhood character with regards to streetscape response and open yard character, is often at odds with VCAT's views in respect to policy guidance at Clause 22.01. In these instances, VCAT is finding that the scale, design and extent of built form was responsive to the context.
232. In relation to neighbourhood character VCAT has said:
- 'It is to be expected that there will be differences between a new medium density proposal and the surrounding neighbourhood character, and indeed planning policy relating to urban consolidation and good design anticipate that there will be change. The question is not, 'is what is proposed the same as the local neighbourhood character?', rather the question is, 'is what is proposed sufficiently respectful of neighbourhood character?'* (Australand Holdings v Whitehorse CC [1998] VCAT 115)
- 'State policy establishes a tension between the encouragement of urban consolidation in the established suburbs on the one hand, and seeking outcomes that respect the character of neighbourhoods on the other hand. In resolving this tension, it is appropriate to have regard to the extent to which a range of services and facilities are accessible, to the guidance provided by local policy, and to balance conflicting policy objectives in favour of net community benefit.'* (VCAT reference No. P2354/2017)
- * Construction of five, three storey dwellings in the GRZ.
- 'Neighbourhood character policy is at Clause 22.10 with specific policies for incremental and minimal change areas and areas zoned NRZ. There was considerable discussion about these at the hearing, particularly the relevance of the policy concerning development in rear yards. We are not persuaded that this specific policy is particularly relevant to the current application as it appears to be framed to deal with dual occupancies where a new dwelling is proposed in the backyard. But even if we are wrong, it is only one of many hundreds of policies and thousands of words that we need to consider in assessing the application.'* (VCAT REFERENCE NO. P458/2016)
- * Construction of 59 two and three storey townhouses in the NRZ.
233. In respect to the changes to the Neighbourhood Residential Zone through VC110, the tribunal has noted:
- 'Neighbourhood character is still an important consideration in the NRZ and it also appears throughout the objectives in Clause 55 (ResCode). However, the deletion of the two purposes ... has lessened both the emphasis on neighbourhood character and on limiting increases in new dwellings. It has shifted the balance in favour of allowing more dwellings in recognition of the necessity to provide additional housing in order to meet the need for the projected 1.6 million new dwellings by 2050.'* *(VCAT reference No. P458/2016)
- * Construction of a three storey building including four dwellings, and basement car parking in the NRZ.
234. Specific to recent two dwelling on a lot application in Moreland the tribunal has said:

'The Neighbourhood Character policy is to be balanced with all of the matters to be considered in assessing a proposed development. One statement in one local policy does not have an elevated weight. It must be balanced with all other matters including the contribution such developments can make to broad housing objectives. The policy should not be applied in a blunt and prescriptive manner, but contextually.' (VCAT reference No. P508/2018)

'...Despite the review site's access to services ... it has the designation of being in a minimal change area. Thus while there is a policy imperative towards lower scale and lower density development, the context of built form 'on the ground' is more reflective of the favourable locational attributes of the area...' (VCAT reference No. P1785/2017)

'The character of built form in the surrounding area is mixed. There is no consistent theme or style. Contemporary built form exists and is an emerging style, with flat roofs and modern design detail.' (VCAT reference No. P1092/2017)

'The built form reflects the emerging residential typology in that contemporary forms are employed with materials readily found in the streetscape such as face brick work, weatherboards and render, windows and door proportions match those found in the streetscape... and in the area. The cue for the development has been taken, not only from the single dwellings in the area, but also the multi-unit development.' (VCAT reference No. P972/2018)

'Policy in the planning scheme is not seeking replication. Respecting the character of an area is a notion that has been dealt with by the Tribunal on numerous occasions. The planning scheme seeks that new development respects the existing character of the area.' (VCAT reference No. P1092/2017)

'While there is a policy imperative towards lower scale and lower density development, the context of built form 'on the ground' is more reflective of the favourable locational attributes of the area and includes multi-unit development and one to two storey scale forms.' (VCAT reference No. P1785/2017)

'The character of built form in the surrounding area is mixed. There is no consistent theme or style. Contemporary built form exists and is an emerging style, with flat roofs and modern design detail. The combination of these two key factors weighs heavily in favour of allowing a more contemporary built form.' (VCAT reference No. P1092/2017)

'Appearance of the buildings is the next issue. They feature multiple gables, each with eaves, facing the street with decorative strapping. This is a common architectural feature in the original homes in the area. The 'appearance' of the buildings, as an aspect of the policy, is respectful.' (VCAT reference No. P2839/2017)

'The built form reflects the emerging residential typology in that contemporary forms are employed with materials readily found in the streetscape such as metal screening, blockwork and render, windows and door proportions match those found in the streetscape, and the built form is sited to respond to the front, side and rear setbacks found in the area. The cue for the development has been taken, not only from the single dwellings in the area, but also the multi-unit, higher scale development.' (VCAT reference No. P1785/2017)

'This is a modest original housing area, with few, but emerging forms of infill redevelopment. There is no cohesive architectural form that stands out in a unifying manner. In that sense the proposal, which takes a conservative approach with a mix of brick, weatherboard and pitched roofs, will not appear out of place with the existing development.' (VCAT reference No. P508/2018)

235. The Moreland Planning Scheme Neighbourhood character local policy at Clause 22.01 contains guidance in relation to two storey development at the rear which relates to a one behind the other development typology. In relation to this policy VCAT has observed:

'In terms of the impact of the proposal on what is commonly described as the 'backyard-scape' of the surrounding area, the proposal does not unacceptably impact on the rear yard character. There is no consistent character or significantly open 'backyard-scape' in the surrounding area with many lots supporting outbuildings in rear yards.' (VCAT reference No. P1092/2017)

'The two storey height proposed will not be intrusive in an area which includes both single and double storey dwellings and the pitched tile roof and the mix of external materials provide design detail that is respectful of nearby development.' (VCAT reference No. P2236/2017)

236. The neighbourhood character policy also contains guidance about landscaping contributing to an enhanced 'green, leafy' landscape character. In this regard VCAT has said:

'The physical context is diverse enough to allow a variety of different types of medium density housing. New medium density development in this network of local streets is quite different than the original low scale dwellings, while the second is that the opportunities for landscaping in some of the tandem dual occupancy developments are quite limited. So, the transformation that is occurring can absorb a different form of medium density development that provides reasonable landscaping outcomes.' (VCAT reference No. P310/2018)

'The development siting allows for reasonable levels of planting to the front and rear elevations. This will serve to soften the appearance of the building from the streetscape and in the rear private realm.' (VCAT reference No. P1785/2017)

'The setback to the street allows for landscaping that will contribute positively to the streetscape.' (VCAT reference No. P2236/2017)

'There is sufficient area within the frontage setbacks to provide adequate landscaping, on both sides of the crossing, including the provision of one canopy tree in each of those spaces as well as lower level planting.' (VCAT reference No. P1092/2017)

'The proposed planting will enhance the landscape character of the street, which my inspection confirms is not a strong feature of the immediate locality. The design proposes a setback of 7.5 metres, which will provide an appropriate area for landscaping and tree planting which will contribute to the preferred 'green leafy' landscape character.' (VCAT reference No. P508/2018)

237. Further commentary on VCAT dual occupancy decisions from 2018 is at **Attachment 2**.

238. Any ambiguity in regard to landscaping in medium density development in the Neighbourhood and General Residential Zone has been addressed by Amendment C189.

239. Analysis of VCAT decisions in two dwelling on a lot refusals, undertaken within the Better Outcomes for Two Dwelling on a Lot review concluded that neighbourhood character is arguably the most contentious aspect of residential development planning. In this regard, the Victoria Planning Provisions are based upon highly discretionary, subjective controls which create a lack of certainty for all users of the system.

240. Moreland City Council has sought to provide additional certainty and guidance for all medium density development, including dual occupancies in the recommendations of the adopted Medium Density Housing Review. Specifically:

- Medium Density Housing Review recommendation 2 seeks to improve exterior appearance through preparation of Good Design Advice Sheets to illustrate how to improve external appearance.
- Medium Density Housing Review recommendation 5 increases Urban Design Unit resources to work with permit applicants and increase Urban Design input into consideration of medium density permit applications.

241. These recommendations have been implemented.

242. The Neighbourhood Character local policy at Clause 22.01 was considered in the adopted Moreland Planning Scheme Review Report 2018 at **Attachment 3**. This review found:

'Clause 22.01 Neighbourhood Character Policy may be out of step with State Policy regarding residential densities. Amendment VC110 and the change to the objectives in the zones reduced the focus of the NRZ on limiting residential development (see VCAT Ronge V Moreland CC VCAT 550 and other VCAT decisions). Amendment VC110 also changed the residential zones to require neighbourhood character objectives to be inserted into the schedules to the zones.'

243. The Scheme Review report analysed 'Red Dot Decisions' from VCAT as follows:

'Ronge v Moreland CC - Medium density development on redundant industrial land. 57 dwellings with reduced car parking rates.

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/550.html>

The tribunal noted:

Neighbourhood character policy is at Clause 22.10 (sic) with specific policies for incremental and minimal change areas and areas zoned NRZ. There was considerable discussion about these at the hearing, particularly the relevance of the policy concerning development in rear yards. We are not persuaded that this specific policy is particularly relevant to the current application as it appears to be framed to deal with dual occupancies where a new dwelling is proposed in the backyard. But even if we are wrong, it is only one of many hundreds of policies and thousands of words that we need to consider in assessing the application. Likewise, with policies concerning car and bicycle parking and vehicle access (Clause 22.03), heritage (Clause 22.06) and environmentally sustainable development (Clause 22.08).

In relation to the changes to the NRZ through VC110, the tribunal noted:

Neighbourhood character is still an important consideration in the NRZ and it also appears throughout the objectives in Clause 55 (ResCode). However, the deletion of the two purposes cited above (intended to limit development and implement neighbourhood character guidelines) has lessened both the emphasis on neighbourhood character and on limiting increases in new dwellings. It has shifted the balance in favour of allowing more dwellings in recognition of the necessity to provide additional housing in order to meet the need for the projected 1.6 million new dwellings by 2050.

In relation to car parking and the future shift to walking, cycling and public transport, the tribunal noted:

State and local planning policies are already acknowledging the change that is required in the way in which people travel with Plan Melbourne 2017-2050 and State policies referring to 20-minute neighbourhoods and greater reliance on walking and cycling. At the municipal level, Moreland has long been recognised as being at the forefront of encouraging less reliance on car based transport. For example, the Moreland Integrated Transport Strategy 2010 includes a key principle that walking and cycling are the preferred modes of transport.

Our roads are already congested and will be unimaginably so if a 'business-as-usual' approach is accepted through until 2050. The stark reality is that the way people move around Melbourne will have to radically change, particularly in suburbs so well served by different modes of public transport and where cycling and walking are practical alternatives to car based travel.

The final order allowed a reduction of car parking due to the site's high level of access to shops, jobs, services and public transport.

Yue Qi Group Pty Ltd v Glen Eira CC (Red Dot) [2017] VCAT 153 (6 February 2017)

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/153.html>

Consideration of three storey apartment building accommodating 33 dwellings in a Housing Diversity Area.

The tribunal noted: Local policy is silent as to future and existing character in Housing Diversity Areas (HDA's) and so limited weight is to be given to preserving the existing mostly single storey suburban character. 3 storey apartments are considered an appropriate form of housing in residential areas designated for mid-range levels of change.

Moreland, similarly to Glen Eira, has the majority of residential land in the NRZ and so more significant levels of change can be expected in under the GRZ, including built for up to 11m and 3 storeys. In any review of neighbourhood character and the residential zones, it is recommended that apartment development should be considered.

Milonas v Moreland CC [2018] VCAT 644

In Milonas v Moreland CC [2018] VCAT 644, VCAT set aside Council's refusal to grant a permit for a second dwelling to the rear of an existing dwelling due to the site's well serviced location, with Member Slatterly questioning why the site was deemed a minimal change area and that in fact the proposal did satisfy local policy, a counter position to Council, a common view found by VCAT for development in Brunswick.

'...Despite the review site's access to some services (public open space within close proximity at Flemming Park to the east, public transport on Blythe and Lygon Streets, and shopping facilities in Lygon Street to the east) it has the designation of being in a minimal change area pursuant to Clause 22.01 of the Moreland Planning Scheme. Thus while there is a policy imperative towards lower scale and lower density development, the context of built form 'on the ground' is more reflective of the favourable locational attributes of the area and includes multi-unit development and one to two storey scale forms.'

I agree ... that local policy points to this area as being able to sustain a limited level of change to accommodate future increases in dwelling stock. I also agree that the policy also seeks to enhance the valued low scale character of consistent streetscapes the area through the implementation of styles and scale that are sympathetic to the area. I do not find however, that the proposed development offends against these local policies.

...I am persuaded that the development is positioned on the site so as to respond to the predominant siting and scale characteristics of the area in allowing adequate spacing for the planting of trees and low scale planting that contributes to the character of the site and the area. I find that the scale of the development represents a good transition to the one to two storey surrounding built form and note there is adequate spacing to accommodate the planting of screening vegetation. To this end, I am satisfied that the proposed development responds well to the local policy that seeks to maximise tree planting whilst ensuring that built form responds to the outcomes sought for the area within Clause 22.01.'

This was a common view found by VCAT for medium density developments in Brunswick. Member Slatterly further detailed:

'I am satisfied that the proposed development responds well to Clause 55 (ResCode). I say this for the following reasons:

- The built form reflects the emerging residential typology in that contemporary forms are employed with materials readily found in the streetscape such as metal screening, blockwork and render, windows and door proportions match those found in the streetscape, and the built form is sited to respond to the front, side and rear setbacks found in the area. The cue for the development has been taken, not only from the single dwellings in the area, but also the multi-unit, higher scale development to the south-west and north-east
- To the rear interface built form is located adjacent to either the laneway or existing built form which limits the impact of built form on the sensitive secluded private open spaces of adjoining properties. I considered the removal of the roof top deck in order to provide built form that is congruent with the area, but I note that the area is experiencing change
- I am satisfied that the proposed side and rear setbacks and walls on boundary respect the

existing neighbourhood character and limit the impact on the amenity of existing dwellings’

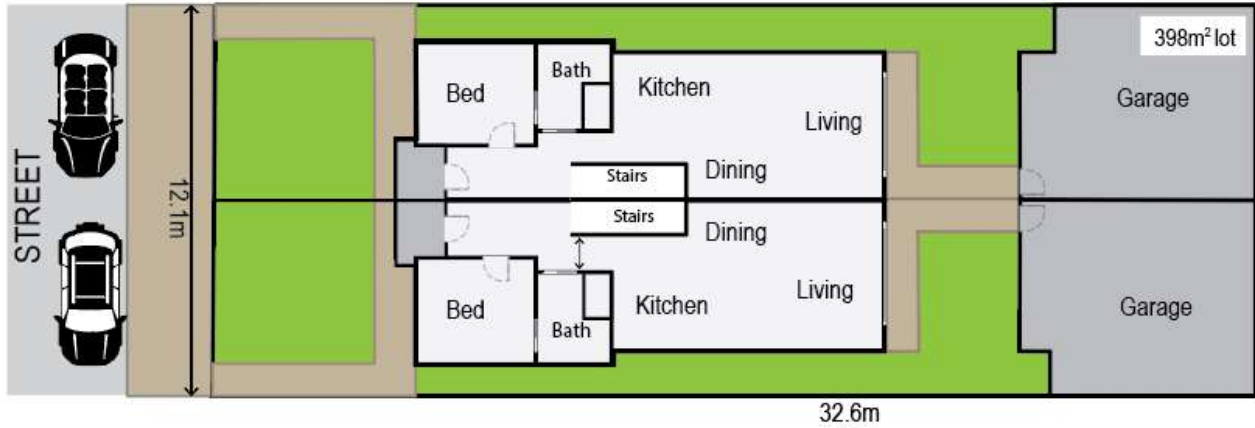
244. The adopted Planning Scheme Review report includes Action UD 6 to review the Neighbourhood Character Policy to align it with the Residential Zones.
245. In the case study analysis within the *Better Outcomes for Two Dwellings on a Lot* review, neighbourhood character, considered in the broadest possible interpretation of what neighbourhood character is, was a ground of objection in only 20% of applications. Once those in a Heritage Overlay are omitted (as they’re not eligible for the C190 VicSmart process) this proportion comes down to 15%.
246. Only 1% of applications were changed as a result of a neighbourhood character objection. In this application the issue was that a two storey garage (first floor studio with external stairs) was proposed on the rear boundary adjacent to a laneway. It was adjacent to outbuildings or substantial canopy trees on adjoining lots and minor changes to the height and setbacks of the upper level were directed by way of permit condition.
247. For two dwellings on a lot, objectors are significantly more concerned about overlooking, overshadowing and car parking than they are about what a new development next door to them looks like.
248. From the case study analysis, a typical neighbourhood character objection is ‘We have an area of nice single dwelling properties on blocks of land. By approving the construction of two townhouses you will be undoing the essence of the area.’ Almost all neighbourhood character objections for two dwelling on a lot proposals are a first principles opposition to medium density infill. Medium density housing is home to 35% of Moreland households and by 2036 this will increase to 51%. Within 20 years, only 37% of Moreland households are forecast to live in single dwellings.
249. State planning policy seeks to increase the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations and increase the proportion of new housing within established urban areas. There is no residential zone within the VPP which limits density to one dwelling on a lot, and for this reason, objections to development based on a general opposition to infill development do not result in an application being refused on this basis.

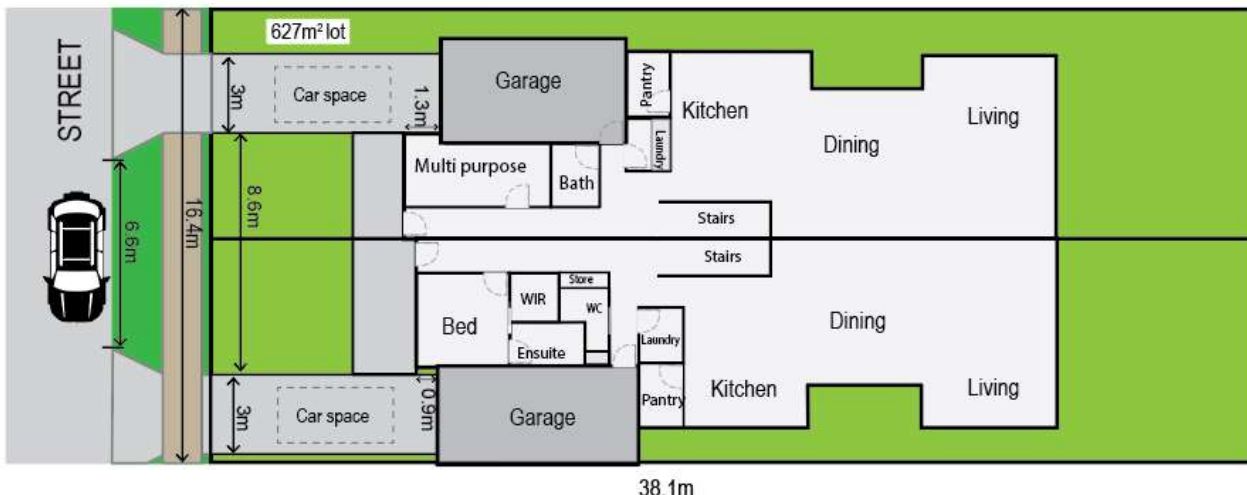
Crossovers and garages

250. The Local VicSmart provision proposed by Amendment C190 includes requirements for the design for new crossovers and garages, including:
- No street trees are removed (to provide space for vehicle access)
 - 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 spray
 - Crossovers maximum 3m in width
 - If more than one vehicle crossover is proposed, the crossovers must be a minimum of 8 meters apart measured at the front boundary
 - Any garages which faces the street must be no more than 4.5 meters wide
 - Any garage which faces the street must be setback from the street a minimum of 500mm more than the dwellings.
251. Submission 1 and 3 welcome the certainty provided for side-by-side two dwelling on a lot development types or make comment on matters of detail on the proposed requirements for new crossovers and garages.

252. In relation to the detail of the proposed requirements for new crossovers and garages, Submission 7 discusses whether the nature of the prescriptive requirements may mean that the lots that might be able to take a benefit of these provisions are potentially limited, particularly in relation to narrow lots.
253. Submission 11 argues that these requirements are restrictive and need to be refined. Submission 14 discusses the alignment between the requirements where more than one crossover is proposed and Clause 22.03 – Car and bike parking and vehicle access.
254. The requirements for crossovers predominantly relate to typologies that necessitate two crossovers to a street frontage. Half of all recently approved two dwelling on a lot development in Moreland is the side by side type and half of these (i.e. 25% of applications) have two crossovers to the street frontage. The proposed requirements vary the current policy guideline at Clause 22.03, which discourages more than one crossover.
255. These requirements aim to enable two crossovers to a street frontage whilst seeking to reduce the dominance of crossovers and garages, retain street trees and allow space for planting of new street trees, allow space for canopy tree planting in front setbacks and leave space for parking of one car on the street between the crossovers.
256. Seventy five percent of two dwelling on a lot development in Moreland occurs in the northern suburbs, where lot sizes are generally wider. Lots in the northern suburbs of Moreland are comparatively large and wide (typically 600 plus square metres and 15 to 17 metres wide). The specific numerics proposed by Amendment C190 are based on analysis of approved developments which met the objectives described above. This was discussed in further detail in Council's Part A submission.
257. Submission 16 acknowledges that the amendment may have a relatively negligible effect on Brunswick.
258. In the southern suburbs of Moreland lots are comparatively smaller and narrower and there is more widespread application of the Heritage Overlay, and the number of two dwelling on a lot applications in the south is low. In 2019 there were only 25 applications for two dwellings on a lot in Brunswick West, Brunswick and Brunswick East collectively.
259. Between 2011 and 2016 there has been a net increase of 1,349 dwellings in Brunswick. 23 of these net additional dwellings (or 2%) are a result of two dwelling on a lot applications which would meet the C190 criteria. 98% of the new dwellings in Brunswick would be unaffected by Amendment C190.
260. Rescode variations and car parking reductions in the south are significantly more common. Forty percent of two on a lot applications in the south do not meet all Rescode and parking criteria so the requirements relating to crossovers and garages become moot.
261. The specific requirements within the Amendment are based on extensive case study analysis of approved development, including analysis of lot widths and the attributes of crossovers and garages in approved side by side developments.
262. The parts of Moreland where lots are typically narrower, are the suburbs where a minority of two dwelling on a lot development occurs as these lots are not only narrower, they are also smaller in area. Case study analysis also revealed that laneways are more prevalent throughout the southern suburbs and side by side two dwelling on a lot development most commonly provides access to car parking for one or both dwellings from the rear.
263. The case study analysis of approved side by side two dwelling on a lot developments showed that only six per cent of applications of this type would not be able to meet the requirements for new crossovers and driveways. Two thirds of this six percent also varied amenity standards of Rescode and/or the car parking requirements of Clause 52.06, and as such it is not the requirements for new crossovers and driveways alone which would disqualify these applications from the VicSmart application stream.
264. The following case study examples represent typical side by side development occurring in Moreland from the *Better Outcomes for Two Dwellings on a Lot* review demonstrating

compliance with the crossovers and garages requirements proposed by the Amendment C190 VicSmart provision.

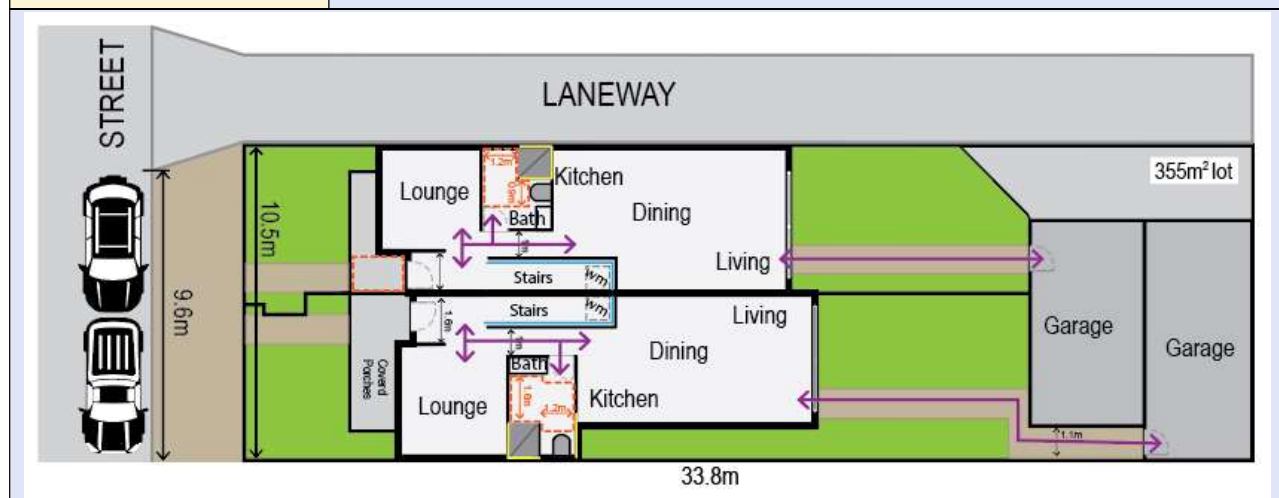
| Example 1 – Vehicle access and car parking from the rear laneway | | |
|--|---------------------------------------|-----------|
| Lot size | 398m ² | |
| Lot width | 12.1m | |
| Number of Bedrooms | 2 x 3 bedroom dwellings | |
|  | | |
| Commentary | Tree removal | Compliant |
| | Crossover distance from tree | Compliant |
| | Crossover width | Compliant |
| | Distance between crossovers | Compliant |
| | Width of garage fronting the street | Compliant |
| | Setback of garage fronting the street | Compliant |

| Example 2 – Two crossovers with vehicle access along the street frontage | | |
|--|---|-----------|
| Lot size | 627m ² | |
| Lot width | 16.4m | |
| Number of Bedrooms | 4 bedroom dwelling and 3 bedroom dwelling | |
|  | | |
| Commentary | Tree removal | Compliant |
| | Crossover distance from tree | Compliant |

| | | |
|--|---------------------------------------|-----------|
| | Crossover width | Compliant |
| | Distance between crossovers | Compliant |
| | Width of garage fronting the street | Compliant |
| | Setback of garage fronting the street | Compliant |

Example 3 – Vehicle access via side laneway

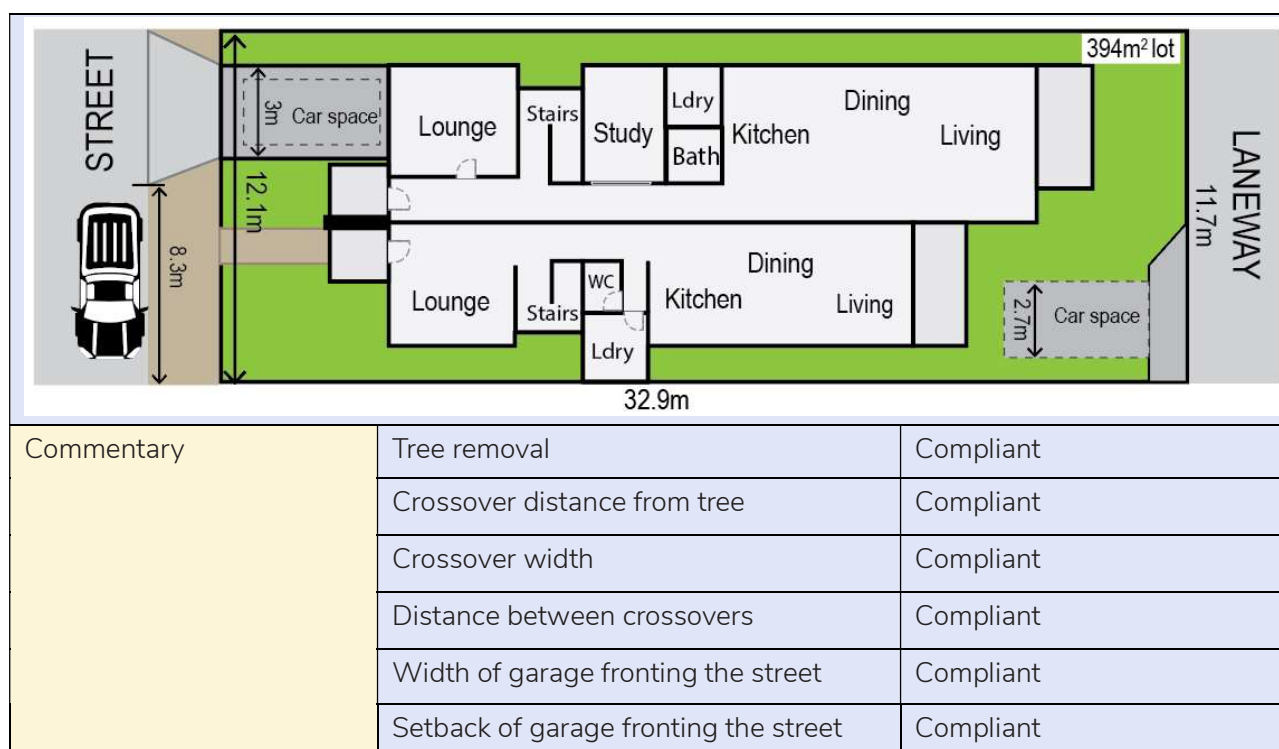
| | |
|--------------------|-------------------------|
| Lot size | 355m ² |
| Lot width | 10.5m |
| Number of Bedrooms | 2 x 2 bedroom dwellings |



| | | |
|------------|---------------------------------------|-----------|
| Commentary | Tree removal | Compliant |
| | Crossover distance from tree | Compliant |
| | Crossover width | Compliant |
| | Distance between crossovers | Compliant |
| | Width of garage fronting the street | Compliant |
| | Setback of garage fronting the street | Compliant |

Example 4 – Vehicle access from both the street frontage and rear laneway

| | |
|--------------------|---|
| Lot size | 394m ² |
| Lot width | 12.1m |
| Number of Bedrooms | 2 bedroom dwelling and 3 bedroom dwelling |



Liveable housing

265. Strategic Direction 3: Housing within the Moreland Municipal Strategic Statement at Clause 21.02-3 of the Moreland Planning Scheme, is that Council will facilitate housing development to meet the needs of the growing and diverse population, with a focus on housing designed to be visitable by people with limited mobility, and adaptable for residents with specific accessibility requirements.
266. The requirements proposed by Amendment C190 include compliance with the Liveable Housing Australia Design Guidelines which ensure that a home is easier to access, navigate and live in for families with young children, people who sustain a temporary injury, ageing people and people with disability and their families. These needs relate not just the first occupants of a dwelling, but all occupants over the life of a dwelling and the family and friends who visit them.
267. As detailed in Council's Part A submission, meeting the Silver Level LHA guidelines remains voluntary. The Amendment does not propose to alter any requirement in the Moreland Planning Scheme in the existing standard application pathway. It only becomes a requirement in relation to those applications where the applicant chooses to opt into the optional VicSmart application stream.
268. Submissions 9, 11 and 13 discuss the inclusion of a requirement within the amendment for housing which meets the Liveable Housing Australia Design Guidelines. Submission 13 is supportive and Submissions 9 and 11 do not support the proposed requirement.
269. Submission 9 notes that the Liveable Housing Australia, Liveable Housing Design Guidelines are a reference but not incorporated document in the Moreland planning Scheme. Moreland City Council's position is that as an LHA assessment which has been certified by a Liveable Housing Australia Design Guideline Assessor is an application requirement, the Guidelines do not need to have statutory status in order for the responsible authority to make a decision. More broadly Submission 9 argues against a change to the Moreland Planning Scheme to require Silver Level Liveable Housing. Submission 11 does not support the inclusion of a mandatory requirement for liveable housing.
270. Twenty five percent of Moreland's population is aged over 55. The vision in Council's *Living and Ageing Well in Moreland Framework* maintains that the current and future housing needs of older people are considered. This includes encouraging the design of dwellings to meet the

needs of people with limited mobility and increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community.

271. Council's *Disability Access and Inclusion Plan* identifies that almost a quarter of Moreland residents identify as having disability. Six percent require daily help with core tasks and one person in ten provides unpaid care to an older person or someone with disability. It states that every day people with a disability and their families and carers face significant barriers, including barriers to housing.
272. The mandatory requirements proposed by the Amendment include compliance with the Liveable Housing Australia Design Guidelines which ensure that a home is easier to access, navigate and live in for families with young children, people who sustain a temporary injury, ageing people and people with disability and their families.
273. The LHA Livable Housing Design Guidelines contain three performance levels as follows:
- Silver Level is the lowest performance level. It contains seven core livable housing design elements. It focuses on the key structural and spatial elements that are critical to ensure future flexibility and adaptability of the home. Incorporating these features will avoid more costly home modification if required at a later date.
 - Gold Level contains enhanced requirements for most of the core livable housing design elements plus additional elements. The gold level provides for more generous dimensions for most of the core livable housing design elements and introduces additional elements in areas such as the kitchen and bedroom.
 - Platinum Level contains some further enhanced requirements for the core livable housing design elements plus all remaining elements. All 15 elements are featured in the platinum level. This level describes design elements that would better accommodate ageing in place and people with higher mobility needs. This level requires more generous dimensions for most of the core livable design elements and introduces additional elements for features such as the living room and flooring.
274. The LHA Livable Housing Design Guidelines details that the following seven core design elements are associated in the Silver Level:
- Dwelling Access
 - Dwelling Entrance
 - Internal Doors and Corridors
 - Toilet
 - Shower
 - Reinforcement of bathroom and toilet walls
 - Internal stairways.
275. This requirement is unrelated to the Rescode requirement at Clause 55.05-1, which requires only that dwelling entries be accessible, so a person with altered mobility can get to the front door but cannot then move around within a dwelling or use a toilet or bathroom.
276. The Australian Building Codes Board is reviewing the National Construction Code (NCC) to consider whether or not to introduce a minimum Livable Housing Australia accessibility standard for housing nationally. This review is considering Silver, Gold and Platinum LHA standards. The livable housing requirements within Amendment C190 align with the lowest standard within this review and are not onerous in nature.
277. As detailed in Council's Part A submission, the Accessible Housing: Estimated Cost Impact of Proposed Changes to National Construction Code, found that the construction cost of inclusion of Silver Level LHA requirements in townhouse typologies is \$1,839 per dwelling.

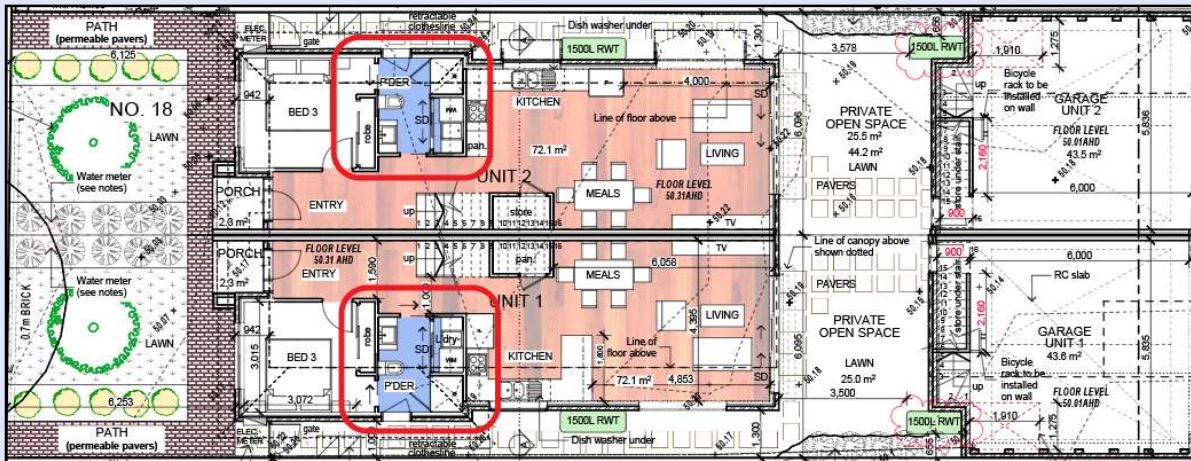
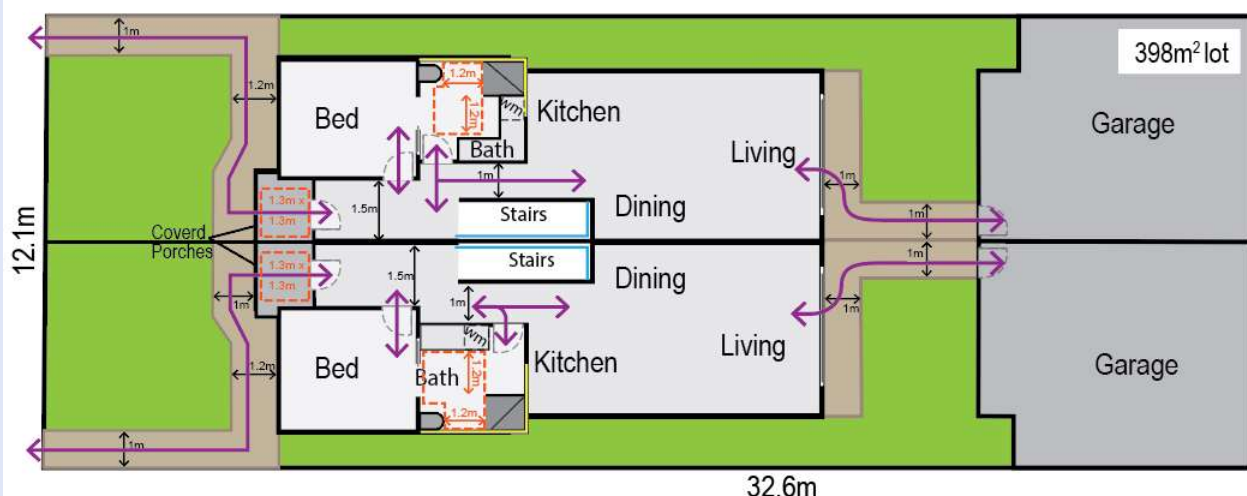
278. However the [Consultation Regulatory Impact Assessment](#) forming part of the NCC review, in relation to accessible housing concludes that the costs of regulating to set minimum standards for accessible housing would exceed the benefits and is recommending continuation of the current voluntary code of practice. The current voluntary approach is not delivering any accessible medium density housing in Moreland to house current and future households.
279. The following table summarises the LHA Livable Housing Design Guidelines Silver Level requirements.

| Design Element | Performance Statement | Summary of associated LHA guideline |
|----------------------------|--|---|
| Dwelling Access | There is a safe continuous and step free path of travel from the street entrance and / or parking area to a dwelling entrance that is level. | <p>Pathways from the street or car space are to be:</p> <p>Clear and even</p> <p>Constructed with a firm and non-slip surfaces</p> <p>Be a minimum of 1m in width if dedicated pedestrian path or if associated with a car park, be at least 3.5m.</p> <p>Include no steps</p> <p>Provide landings to manage slopes in sites (size and location of landing depends on the ramp slope)</p> <p>Step ramps can be used where</p> |
| Dwelling Entrance | At least one, level (step-free) entrance into the dwelling | <p>The dwelling entry with:</p> <p>A clear door opening of 0.82m</p> <p>An even floor level on either side and through the doorway (no steps)</p> <p>A level landing area outside of the front door that is at least 1.2m x 1.2m</p> <p>A shelter to protect from the weather (such as a porch structure)</p> <p>The dwelling entry connected to be level with pathway described in Dwelling Access</p> |
| Internal Doors & Corridors | Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces. | <p>Doorways of ground level living, dining, bedroom, bathroom, kitchen, laundry and toilets with:</p> <p>At least 0.82m in width</p> <p>Any associated corridors/passageways to be at least 1m in width</p> <p>An even floor level on either side and through the doorway (no steps)</p> |
| Toilet | A toilet on the ground (or entry) level that provides easy access. | <p>There should be at least one toilet on the ground floor that:</p> <p>Locate the toilet pan in the corner of the room</p> <p>Has an internal clear circulation space of at least 1.2m in front of the toilet pan or if it is</p> |

| | | |
|--|--|---|
| | | a separate room a clear space that is a minimum of 0.9m internal width. Has a minimum internal width of 0.9m |
| Shower | A bathroom that contains a hobless shower recess | At least one bathroom to include a shower that is: Located in the corner of the room Constructed with a non slip surface Has a hobless shower recess (or one where shower screens can be easily removed) |
| Reinforcement of bathroom & toilet walls | Reinforced walls around the toilet, shower and bath to support the safe installation of grabrails at a later date. | Reinforce the non-masonry walls of bathrooms and toilets to provide a fixing surface for the safe installation of grabrails |
| Internal stairways | Stairways are designed to reduce the likelihood of injury and also enable future adaptation. | Include a continuous handrail along one side of the stairway. This could be detailed with a note on the plan |

280. The following case study examples illustrate application of the LHA Silver standard to two dwelling on a lot development in Moreland, including:
- Side by side development on small and average sized lots
 - In tandem development on small and averaged size lots
 - Development on corner sites and irregular shaped and sloping lots.
281. Of these examples, the layouts predominantly demonstrate compliance with the dwelling access, dwelling entrance, internal doors and corridors and stairways.
282. All layouts however did not achieve compliance with the Silver Level design toilet and shower elements. In most part however, minor changes to the internal layout could accommodate a toilet and shower design to meet Silver Level whilst retaining the integrity of the existing layout.
283. Where this could not be achieved it was largely due to irregular lot shape or sloping sites. Silver Level may be able to be achieved in some of these instances however would require more significant change to the design of the development.

Side by side layout

| Example 1 – Small sized lot | | |
|--|--|---|
| Lot size | 398m ² | |
| Typology | Side by Side – two double storey dwellings with vehicle access from the rear | |
| Number of Bedrooms | 2 x 3 bedroom dwellings | |
| Original ground floor plan | | |
|  | | |
| Modified ground floor plan for compliant Silver Level design | | |
|  | | |
| Commentary | Dwelling Access | Compliant |
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Compliant |
| | Toilet Shower | Compliant with minor increase to bathroom width of 500mm and reconfiguration of bathroom layout |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls |
| | Stairways | Compliant with addition of a handrail |

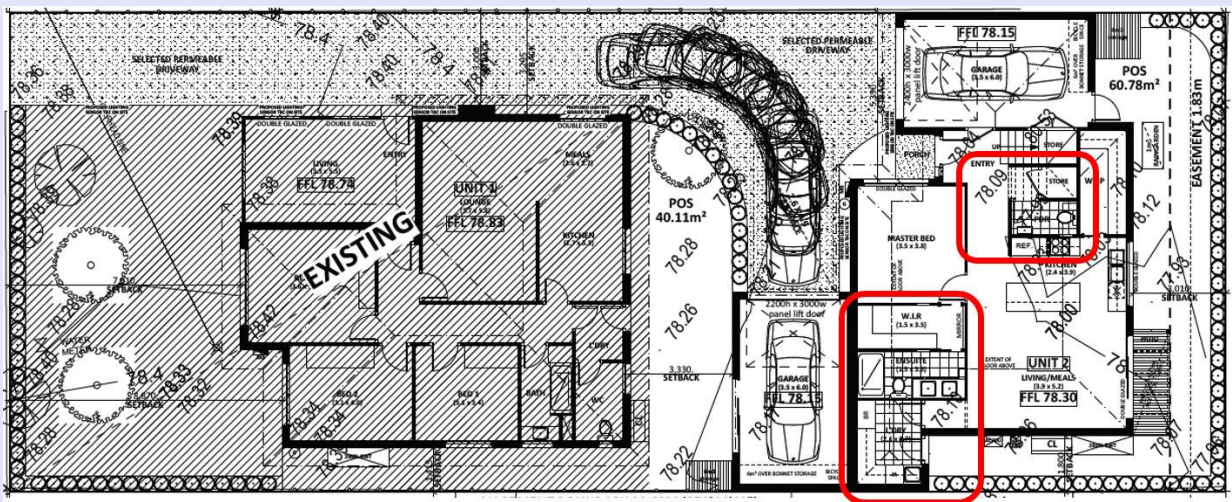
| Example 2 – Average sized lot | | |
|--|--|---|
| Lot size | 627m ² | |
| Typology | Side by Side – two double storey dwellings, built to only one boundary and vehicle access from the front | |
| Number of Bedrooms | 4 bedroom dwelling and 3 bedroom dwelling | |
| Original ground floor | | |
| | | |
| Modified ground floor plan for compliant Silver Level design | | |
| | | |
| Commentary | Dwelling Access | Compliant with widening of car space by 500mm for shared pedestrian access |
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Compliant with 120mm increase in width of hallway that enters the garage. |
| | Toilet Shower | Dwelling 1 - Compliant with minor reconfiguration of bathroom and use of sliding door |

| | | |
|--|--|---|
| | | Dwelling 2 – Compliant with minor reconfiguration of ensuite, toilet and laundry layout and minor decrease in pantry width. |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls |
| | Stairways | Compliant with addition of a handrail |

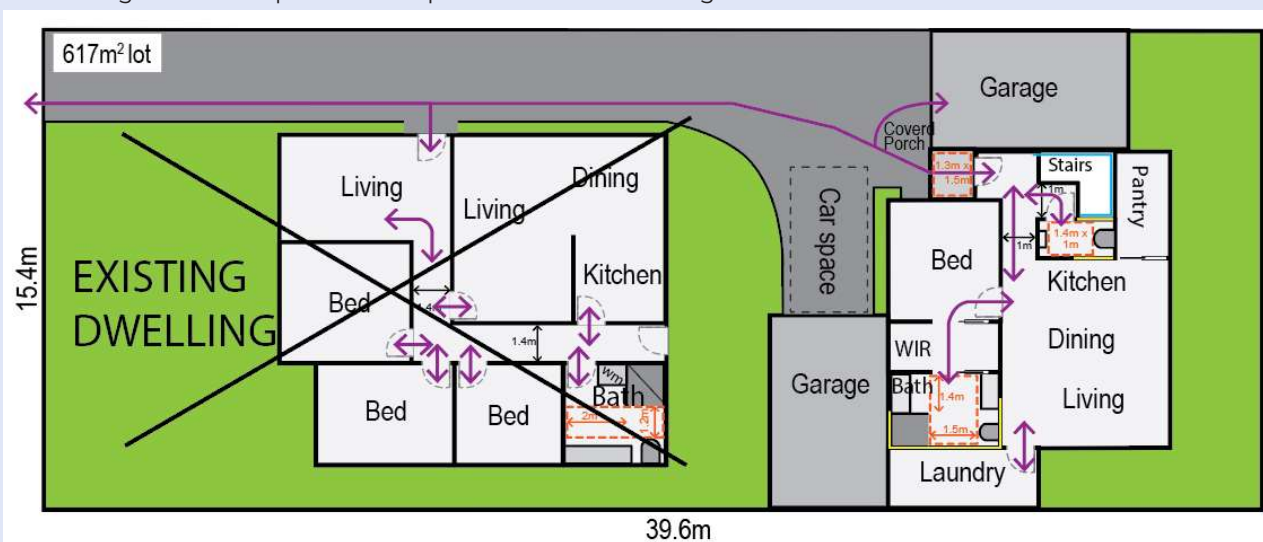
One behind the other layout

| Example 3 – Existing dwelling retained average sized lot | |
|--|--|
| Lot size | 617m ² |
| Typology | One behind the other – retain the existing dwelling and new double storey dwelling with shared vehicle accessway |
| Number of Bedrooms | 3 bedroom dwelling |

Original ground floor plan

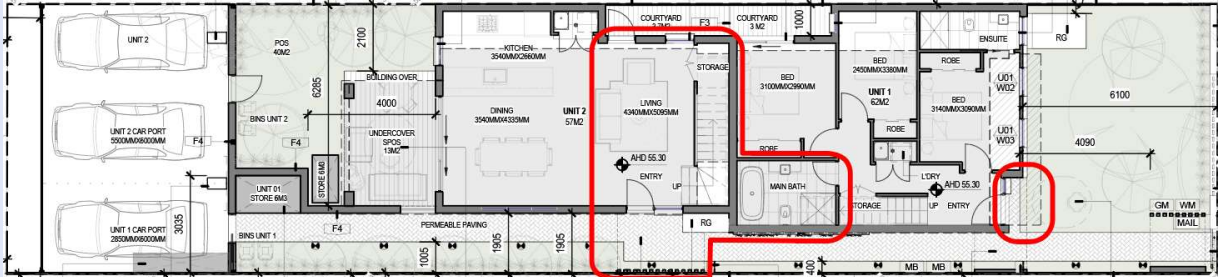
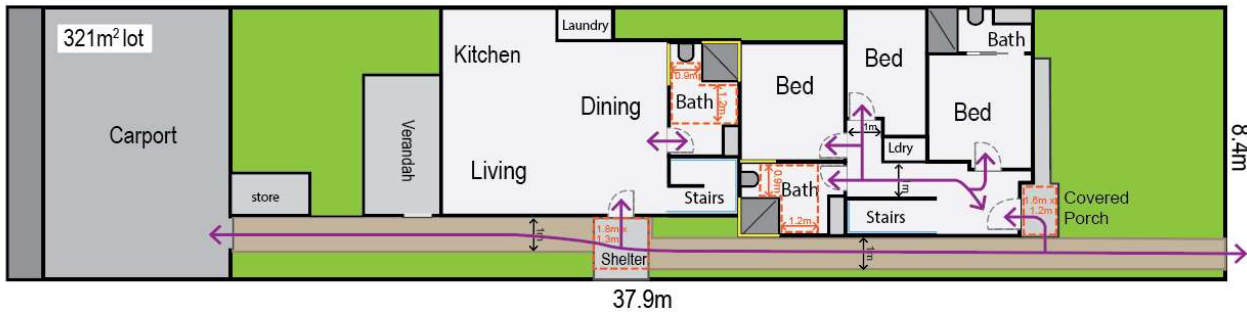


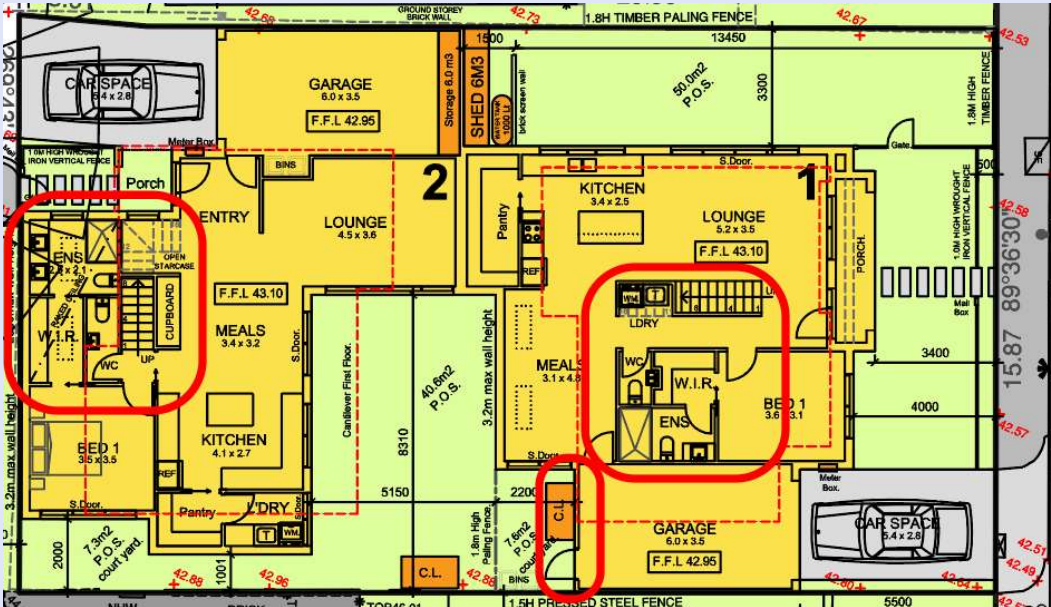
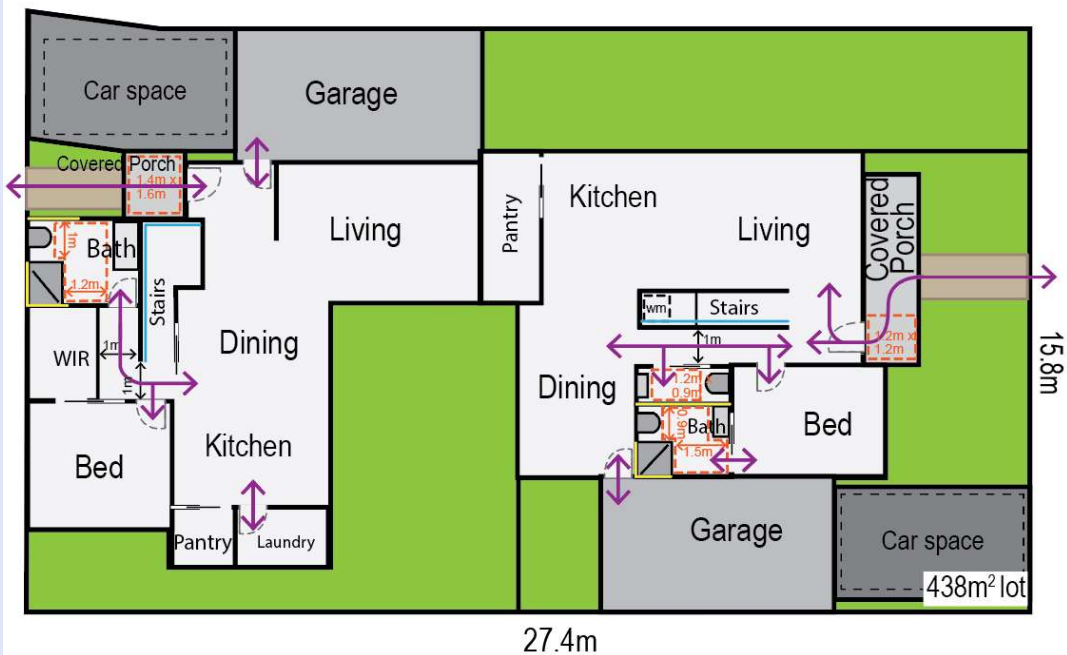
Modified ground floor plan for compliant Silver Level design



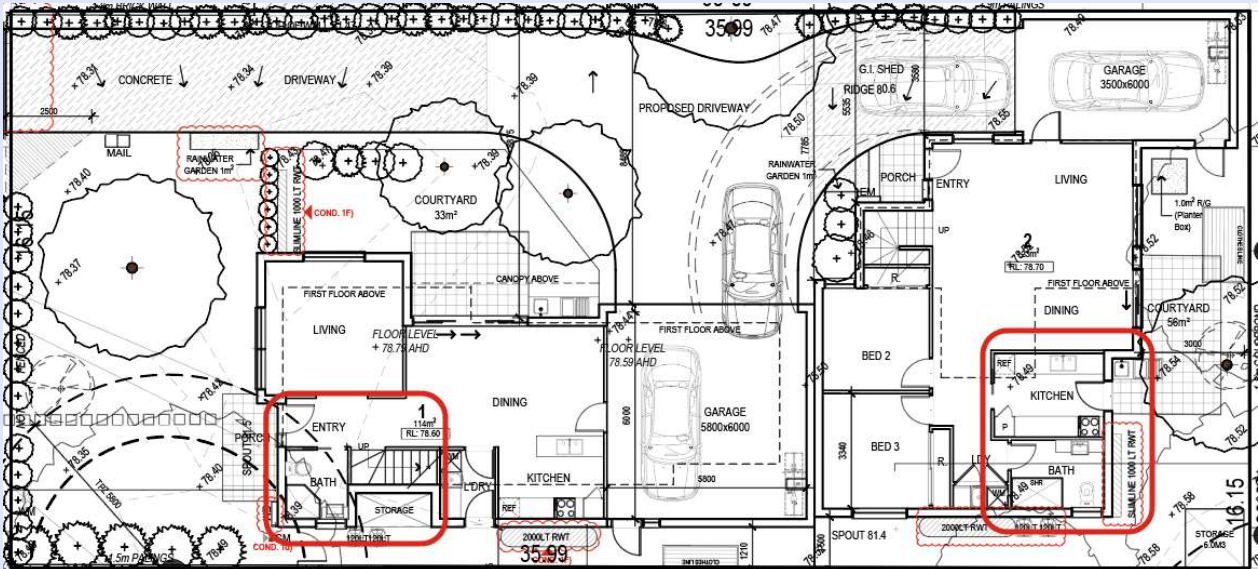
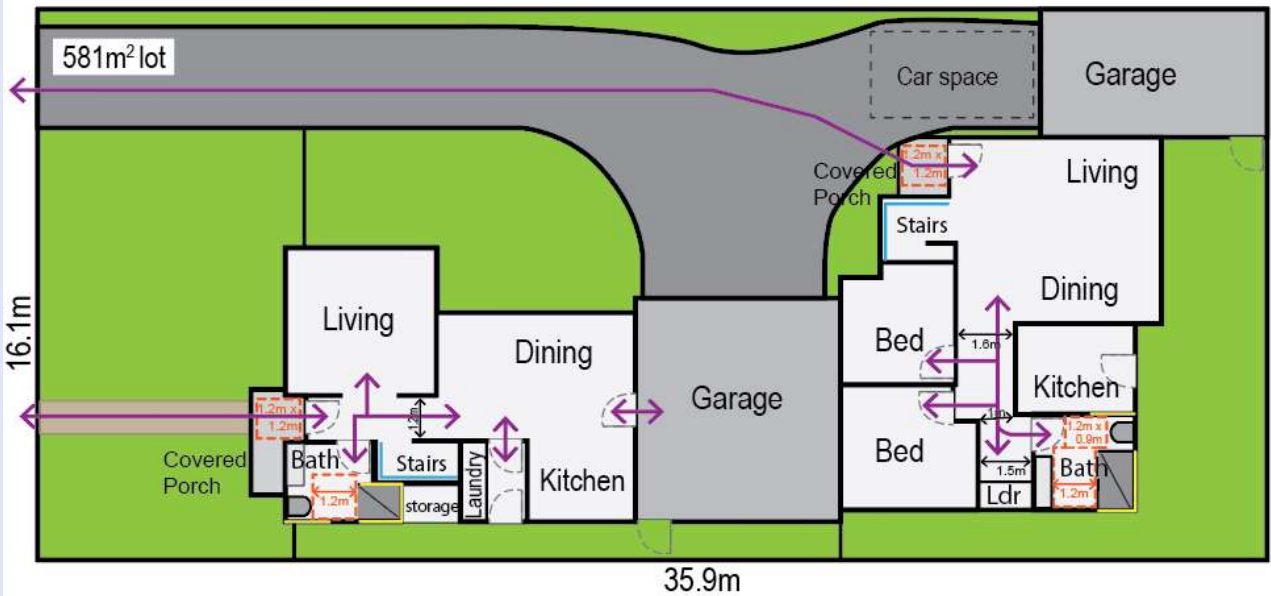
| | | |
|------------|-----------------|-----------|
| Commentary | Dwelling Access | Compliant |
|------------|-----------------|-----------|

| | | |
|-------------------|---|--|
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Compliant |
| | Toilet Shower | Compliant with: minor reconfiguration of ensuite and WIR layout and increase of 0.5m to ensuite width minor increase to toilet rooms length by 0.3m. |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls. |
| | Stairways | Compliant with addition of a handrail |
| Existing dwelling | Whilst LHA design would not be applicable to the existing dwelling, relocating the dwelling entry to the front walls of the living room with a porch structure and reconfiguring the bathroom and laundry would provide a compliant design. | |

| Example 4 - Small sized lot | | |
|---|--|---|
| Lot size | 321m ² - Small lot size | |
| Typology | One behind the other – two new attached double storey dwellings, one reverse living in design. Car park access via the rear laneway. | |
| Number of Bedrooms | 2 x 3 bedroom dwellings | |
| Original ground floor plan | | |
|  | | |
| Modified ground floor plan for compliant Silver Level design | | |
|  | | |
| Commentary | Dwelling Access | Compliant |
| | Dwelling Entrance | Dwelling – 1 Compliant with a 0.5m extension to roof above porch landing to Dwelling 1. Dwelling 2 – Compliant. Existing canopy moved to align with modified front door position. |
| | Internal Doors & Corridors | Compliant |
| | Toilet Shower | Dwelling 1 – Compliant with removal of bath and minor reconfiguration of bathroom. Dwelling 2 – Compliant with moving the dwelling entry 1m, alternative stair design and the addition of bathroom at ground which takes up 1m of the dining area. |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls. |
| | Stairways | Compliant with addition of a handrail |

| Example 5 – Two street frontages small sized lot | | |
|--|--|--|
| Lot size | 438m ² | |
| Typology | One behind the other – fronting streets at front and rear of the site. | |
| Number of Bedrooms | 2 x 3 bedroom dwellings | |
| Original ground floor plan | | |
|  | | |
| Modified ground floor plan for compliant Silver Level design | | |
|  | | |
| Commentary | Dwelling Access | Compliant |
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Dwelling 1 – Compliant with 180mm widening of bathroom hallway Dwelling 2 – Compliant with 180mm widening of hallway between stairs and toilet. |

| | | |
|--|--|--|
| | Toilet Shower | <p>Dwelling 1 – Compliant with re-configuration of bathroom and use of sliding door, in addition to extending bedroom to accommodate a wardrobe in lieu of a WIR.</p> <p>Dwelling 2 – Compliant with turning toilet into a hallway and replacing the ensuite with a bathroom. Stairs are also moved 200mm to provide additional space to bathroom.</p> |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls |
| | Stairways | Compliant with addition of a handrail |

| Example 6 – Average sized lot | | |
|--|---|---|
| Lot size | 581m ² | |
| Typology | In tandem – two new double storey dwellings with shared vehicle accessway | |
| Number of Bedrooms | Both dwellings with 3 bedrooms | |
| Original ground floor layout | | |
|  | | |
| Modified ground floor plan for compliant Silver Level design | | |
|  | | |
| Commentary | Dwelling Access | Compliant |
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Compliant |
| | Toilet Shower | Dwelling 1 – Compliant with a minor increase to bathroom size (500mm towards the front and occupying 600mm of the adjacent storage) and reconfiguration of its layout |

| | | |
|--|--|---|
| | | Dwelling 2 – Compliant with a minor increase in the bathroom's width of 600mm and reconfiguration of its layout |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls. |
| | Stairways | Compliant with addition of a handrail |
| | | |

Corner and irregular shaped lots

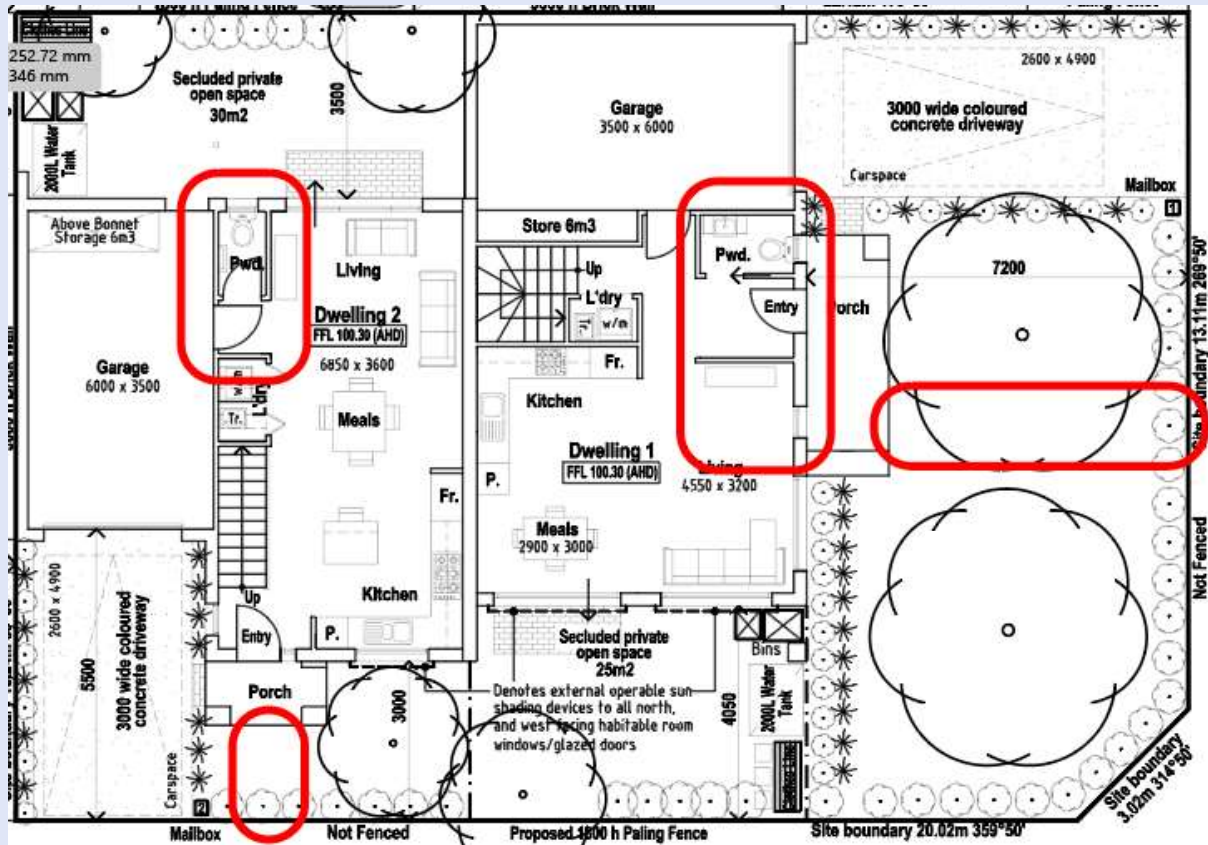


| | | |
|------------|--|--|
| Commentary | Dwelling Access | Compliant with widening of car space by 500mm for shared pedestrian walkway |
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Compliant |
| | Toilet Shower | Dwelling 1 – Compliant with reconfiguration of bathroom and use of sliding door for separate toilet Dwelling 2 – Compliant with reconfiguration of bedroom and bathroom |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls |
| | Stairways | Compliant with addition of handrail |

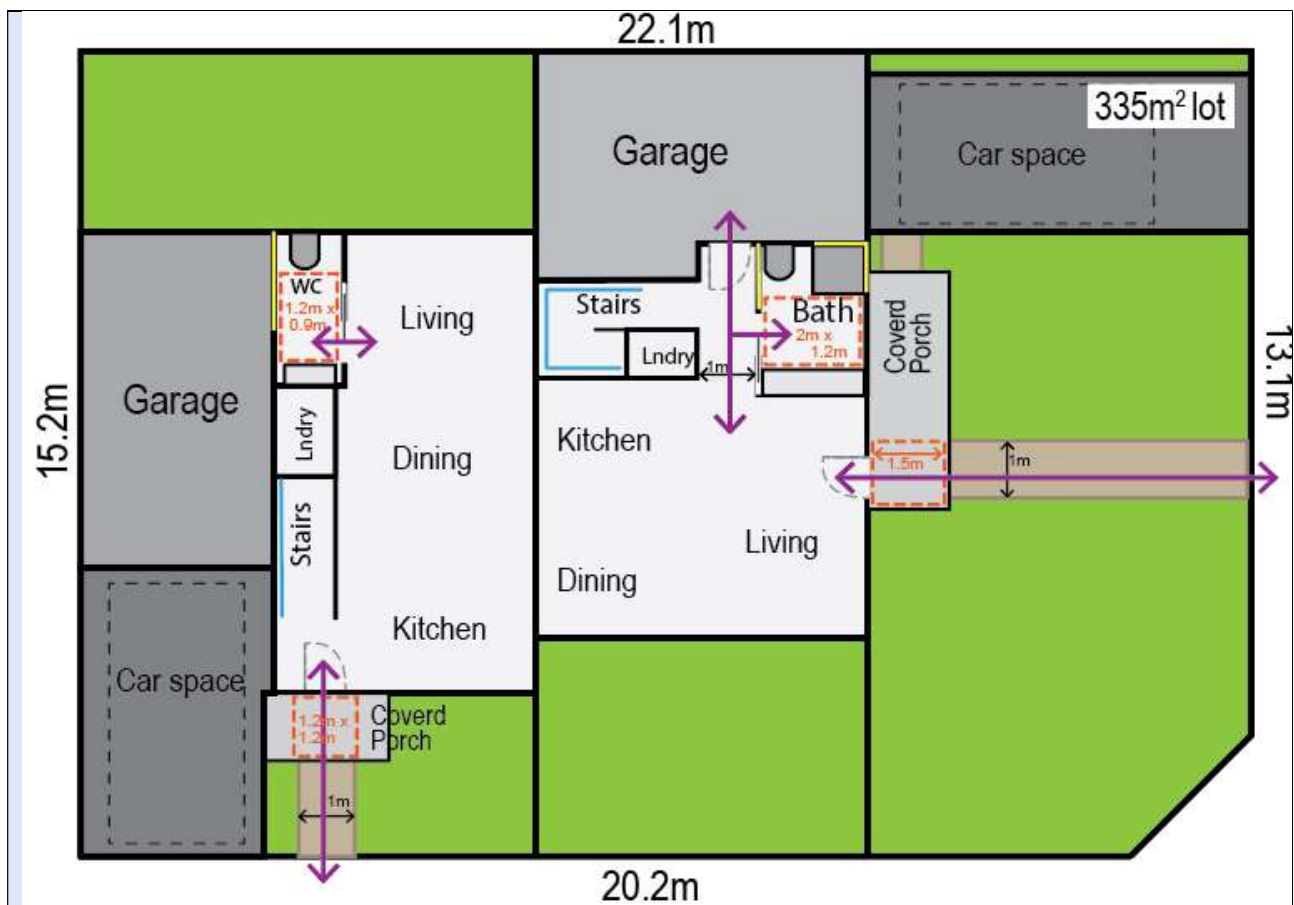
Example 8 - Small sized lot

| | |
|--------------------|--------------------------------------|
| Lot size | 335m ² |
| Typology | Corner lot – Double storey dwellings |
| Number of Bedrooms | 2 x 3 bedroom dwelling |


Original ground floor layout



Modified ground floor layout for partial compliance with Silver Level design



| | | |
|------------|--|--|
| Commentary | Dwelling Access | Compliant with the addition of 1m wide pedestrian path from the street to the dwelling entry. |
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Compliant |
| | Toilet | Dwelling 1 – Compliant with increase to bathroom size of 1.5m, use of sliding door and reconfiguration of its layout, in addition to repositioning of the front door's location Dwelling 2 - Compliant with increase in toilets width (180mm) and length (900mm) and removal of internal garage entry door |
| | Shower | Dwelling 1 - Compliant with increase to bathroom size of 1.5m, use of sliding door and reconfiguration of its layout, in addition to repositioning of the front door's location Dwelling 2 – <u>Non-compliant</u> – the inclusion of a bathroom on the ground level to accommodate a shower would necessitate a change to the layout of the development to ensure adequately sized internal habitable spaces are provided |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls |
| | Stairways | Compliant with addition of handrail |

| Example 9 - Irregular lot shape | |
|---|------------------------------------|
| Lot size | 664m ² |
| Typology | In tandem – Double storey dwelling |
| Number of Bedrooms | 3 bedrooms |
| Original Ground Floor & Level 1 layout | |
|  <p>The architectural site plan illustrates the original ground floor and level 1 layout for two split-level brick houses situated on an irregular lot. The lot is bounded by title boundaries, and the plan shows the placement of two houses, each with its own concrete driveway and carport. The houses are labeled as 'SPLIT LEVEL BRICK HOUSE' with 'GALVANISED IRON SKULLION ROOF' and 'BLUESTONE 2.5m HIGH'. The plan includes various rooms such as living, dining, kitchen, and bedrooms, along with outdoor areas like 'BRICK RETAINING WALL & POTURIA ON RAISED OPEN AREA' and 'CONCRETE DRIVEWAY'. Red boxes highlight specific areas of interest on both houses, likely indicating the locations of the bedrooms mentioned in the typology. The plan also shows 'CARPORT' areas and 'STORAGE' spaces. The overall layout is designed to maximize the use of the irregular lot shape.</p> | |
| Modified ground floor & level 1 | |



| | | |
|------------|--|--|
| Commentary | Dwelling Access | <p><u>Non-compliant</u> – Pedestrian pathway to rear dwelling's entrance has substantial slope that includes steps (challenging to modify to achieve compliance)</p> <p>It is noted that the majority of land in Moreland is flat, with slopes only present in close proximity to Moonee Ponds and Merri creeks. Likewise, most lots in Moreland are regular in shape. This atypical example has been included to acknowledge that such sites may not be appropriate for Livable Housing</p> |
| | Dwelling Entrance | Compliant |
| | Internal Doors & Corridors | Compliant |
| | Toilet Shower | Compliant with a 500mm increase in the bathroom's width and reconfiguration of the layout |
| | Reinforcement of toilet and shower walls | Compliant with reinforcement of toilet and shower walls |
| | Stairways | Compliant with addition of handrail |

285. Amendment C190 introduces a new requirement for base level accessible housing to meet the needs of the growing and diverse population. The existing process and accessibility requirements for two dwellings on a lot development are unchanged by Amendment C190 for applications that do not wish to provide basic level accessible housing at low cost, to avail themselves to the optional streamlined process proposed by Amendment C190.

ESD

286. Amendment C190 proposes that one of the requirements which must be met in order to be eligible for assessment within the VicSmart application process is a minimum BESS score of 50%, including achieving the mandatory minimum score paths for water, energy, storm water and Indoor Environmental Quality (IEQ). The amendment includes an information requirement for a Sustainable Design Assessment (SDA) which has been certified by Moreland City Council demonstrating that all new dwellings meet this requirement.
287. Three submissions discuss the ESD requirements proposed by the amendment.
288. Submission 9 says it is unclear whether BESS reports will be referred to Council's ESD department as per usual procedure and supply feedback to the Council Planner within the 10 day time limit or whether the Council Planner will review the BESS report and decide whether it is satisfactory.
289. Submission 10 argues the ESD provisions of Amendment C190 compromises Council's sustainability objectives.
290. Submission 11 argues the inclusion of environmental sustainability provisions in the planning system duplicates, conflicts with and overlaps with the role of the building regulatory system. This submission contends that such an approach is contrary to the State Governments policy position regarding the delineation of planning and building systems. The submission adds that building regulation is the primary and most efficient means for addressing the environmental performance of buildings, given the existing and evolving matters within the building regulatory system and does not support the proposed ESD provisions within Amendment C190

ESD Planning or Building?

291. Environmentally Sustainable Development is a keystone principle in Victoria's planning system, embedded in the strategic objectives of State and Local Planning Provisions. These are outlined in Council's Part A submission.
292. The Environmentally Sustainable Development local policy at Clause 22.08 in the Moreland Planning Scheme (and numerous other planning schemes) contains an expiry provision that '*This policy will expire if it is superseded by a comparable provision in the Victoria Planning Provisions*' so irrespective of any existing and evolving matters in the National Construction Code, the existing ESD requirements in the Moreland Planning Scheme continue to apply.
293. Amendment C190 does not propose to introduce new or more onerous ESD requirements into the Moreland Planning Scheme. It requires exactly the same ESD outcomes for two dwelling on a lot applications in the VicSmart stream as applications assessed in the standard planning permit assessment stream. It simply expresses the existing ESD requirement as a best practice performance score rather than as policy objectives and requirements to achieve the identical best practice outcome.

Who reviews the BESS report?

294. At present planning permit applications for all development types, including applications for two dwellings on a lot, are lodged with a BESS report, or if submitted without one, are subject to a request for further information under s54 of the *Planning and Environment Act*.
295. Within the statutory time period between receipt of all information and making a decision, the BESS report is referred to Moreland City Council's ESD Referrals Unit. The ESD Referrals Unit reviews the BESS report to ensure that there is alignment between the ESD actions in the

BESS report and the application plans and that the minimum 50% best practice score has been achieved.

296. The information requirements proposed by Amendment C190 in the Schedule to Clause 59.16 require the applicant to have the Sustainable Design Assessment (SDA) certified by Moreland City Council prior to lodgment of the application. This certification will be done by Council's ESD Referrals Unit. The planning scheme is not specific about naming the specific team that provides input on the BESS report lodged to demonstrate that an application meets the requirements of Clause 22.08 and so Amendment C190 does not represent a change to an existing situation in this regard. The specific team has not been mentioned by name as organisations are restructured from time to time and work areas are given new names. In any case, it is highlighted that personnel within the ESD unit who review BESS reports are almost always Urban Planners seconded temporarily or permanently into this team.
297. This pre-certification process frontloads the process to empower applicants and enables an application to be determined within the 10 day statutory timeframe of the VicSmart process. This is the identical process that is already in place across Victoria for VicSmart applications under a Special Building Overlay, where Clause 59.08 requires an application to be accompanied by written advice from Melbourne Water, rather than this referral occurring after the application is lodged.

Background to ESD requirements in planning schemes

298. Since 2003 Moreland City Council has sought ESD outcomes in planning permit applications. The challenges of the early voluntary phase of ESD in planning processes is documented in this report. <https://cur.org.au/cms/wp-content/uploads/2017/09/implementing-sustainability-in-the-built-environment.pdf>
299. In 2004, a group of local Councils initiated a reform of planning policy with the aim of achieving improved sustainability outcomes in the built environment. In 2009 they established the Council Alliance for a Sustainable Built Environment (CASBE) to lead and represent these Councils. CASBE started with 10 member councils in 2010 and now has 30 member Councils.
300. In 2009 a number of Victorian councils coordinated their efforts to introduce a consistent Environmentally Sustainable Development (ESD) policy into their planning schemes. Six councils including Banyule, Moreland, Port Phillip, Stonnington, Whitehorse and Yarra successfully had an ESD local planning policy gazetted in November 2015.
301. A framework has been developed by CASBE Councils to provide a consistent methodology for requesting, receiving and assessing built environment sustainability outcomes through the planning process. It uses the Built Environment Sustainability Scorecard (BESS) online sustainability assessment tool to demonstrate compliance with the framework in their local planning policies.
302. BESS is owned by the Municipal Association of Victoria and was developed with support by the Victorian Government.
303. ESD local policies in planning schemes include:
- Banyule (Gazetted 19 November 2015)
 - Brimbank (Gazetted 18 October 2018)
 - Darebin (Gazetted 31 August 2017)
 - Greater Bendigo (Gazetted 18 October 2018)
 - Greater Dandenong (Gazetted 18 October 2018)
 - Greater Geelong (Gazetted 17 October 2019)
 - Hobsons Bay (Gazetted 18 October 2018)
 - Kingston (Gazetted 18 October 2018)
 - Knox (Gazetted 14 December 2017)
 - Maribyrnong (Gazetted 15 September 2011)
 - Manningham (Gazetted 31 August 2017)

- Melbourne (Gazetted 4 April 2013)
 - Mildura (Gazetted 17 November 2016)
 - Monash (Gazetted 29 September 2016)
 - Moonee Valley (Gazetted 19 June 2020)
 - Moreland (Gazetted 19 November 2015)
 - Port Phillip (Gazetted 19 November 2015)
 - Stonnington (Gazetted 19 November 2015)
 - Whitehorse (Gazetted 19 November 2015)
 - Whittlesea (Gazetted 18 October 2018)
 - Wyndham (Gazetted 18 October 2018)
 - Yarra (Gazetted 19 November 2015).
304. Moreland City Council has been at the forefront of ESD in the planning system for more than 20 years and has a leading climate change mitigation agenda more broadly. Council is leading by example in its own operations.
305. Through a combination of energy efficiency and renewable energy, Council's greenhouse gas emissions will soon be 70% less than 2011 levels. Moreland Council will continue acting to reduce its own emissions, by transitioning its car fleet to zero-emissions vehicles and shifting away from fossil gas use in its facilities. Council's Zero Carbon 2040 Framework and Action Plan supports residents, businesses and schools to act together in response to the climate emergency and achieve a zero carbon community by 2040. This action plan includes ongoing review of ESD planning requirements to support a zero carbon Moreland by 2040.
306. It is considered that including an ESD certification within this Amendment will reinforce rather than compromise Council's sustainability objectives.

Housing affordability

307. Submission 8 highlights that many elderly people live in the municipality and this submission considers that given rising house prices, the amendment will assist with a cheaper, affordable and efficient way for the elderly to downsize in place and within their community, enabling younger families to purchase vacated family homes.
308. Research and state policy which aligns with this submission is contained in Council's Part A submission.
309. *Homes for Victorians*, the State Government housing plan contains an objective to Streamline planning approvals to reduce costs and uncertainty for developers and target around a four month supply of lots on the market. It states:
- 'Planning uncertainty, as well as the time and costs of obtaining planning approval, limit the supply of available new homes and, in doing so, drive up prices. Unnecessarily slow approvals by councils and utilities delay developers and also drive up costs.*
- Smarter planning and faster approval is a win-win for developers and home buyers alike and ensures more competitive pressure on prices.'*
310. Facilitating low density urban infill assists in providing homes for Moreland's growing and changing population and adds to dwelling diversity. Lengthy application processes add to the cost of housing and these costs are passed on to purchasers and their tenants. Removing process steps which add no value has the potential to reduce the cost of housing or allow this budget to be spent on design features which improve housing quality.
311. Twenty five percent of Moreland's population is aged over 55. The vision in Council's *Living and Ageing Well in Moreland Framework* includes current and future housing needs of older people are considered. This includes encouraging the design of dwellings to meet the needs of people with limited mobility and increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community.

312. The framework identifies that housing security is becoming a more significant issue in Moreland, particularly for older women. Research has shown that lower income older single women, who are currently private tenants with little savings or superannuation funds, are more vulnerable to homelessness than men.
313. Council's *Affordable Housing Action Plan* identifies that the lack of supply of affordable housing is continuing to negatively impact Moreland's diverse community. It notes that recent research identifies a need for at least 7,000 new affordable homes by 2036.
314. The strategic direction for housing within the Moreland Municipal Strategic Statement at Clause 21.03-3 of the Moreland Planning Scheme, is that Council will facilitate housing development to meet the needs of the growing and diverse population, including a focus on housing affordability.

Infrastructure

315. Submission 12 considers that two-dwellings on a lot will result in increased population density in residential areas. This will add to the already existing pressure on infrastructure, services and transport systems. In particular, parking and transport issues are expressed as being of concern.
316. The submission refers to Moreland Amendment C183. This amendment sought to limit and reduce on site car parking in Moreland's Activity and Neighbourhood Centres. It did not affect land in the Neighbourhood and General Residential zones. It has been abandoned.
317. Reference is made in this submission to the *Moreland Parking Management Policy*. This policy relates to apportioning kerbside and public parking bays in areas of high demand. It is not relevant to Amendment C190.
318. Reference is made in the submission to two developments by the developer Nightingale Housing which included reduction in onsite car parking. Both developments are in an Activity Centre and not in residential zones. In both cases discretion was exercised in accordance with the PPF and Clause 52.06-7. Neither decision is relevant to the proposed provisions in Amendment C190.
319. Amendment C190 does not alter the policy or zone support for medium density infill development in established areas. It simply alters the process for assessing these applications. The requirements for this process do not include any variation to the state-wide car parking requirements. Amendment C190 does not seek to limit or reduce on site car parking.
320. Submission 12 contends that that Moreland City Council has failed to identify the most suitable, well serviced areas for attracting population and housing growth.
321. The housing growth hierarchy in the MSS and demonstration the consideration of 'well serviced areas' in the exercise of discretion, were outlined in Council's Part A submission.
322. This submission identifies out of date references and data within the Moreland MSS. As is routinely the case, such things are updated in any comprehensive refresh of the MSS and have been addressed in the PPF translation occurring in Amendment C200.

Legislative requirements and human rights

323. Submission 12 raises matters regarding various legislative requirements, including the Charter of Human Rights.
324. A detailed human rights assessment was undertaken and attached to the Council report which has been provided to the Panel. It outlines that public notice and appeal rights for planning permit applications is not a relevant consideration to Section 18 (Entitlement to participate in public life (including voting)) of Victorian Charter of *Human Rights and Responsibilities Act 2006*.
325. The Human Rights Assessment for Amendment C190 had regard to *Victorian Charter of Human Rights and Responsibilities Act 2006*, the Human Rights Charter Guidelines and the Moreland Human Rights Policy, which is aligned with the Act.

326. The Assessment concluded that the change in planning permit application process and the specific standards within this amendment do not limit or interfere with any Human Rights. No expert evidence has been provided to the contrary.
327. Submission 12 argues that Amendment C190 does not meet Section 18 of the Charter as a consequence of there being no third-party rights. Section 18 provides for the entitlement to participate in public life (including voting), and the Guidelines state that Section 18 needs to be considered in assessing legislation, a policy or a program where it:
- *limits the ability of a category of individuals to take part in municipal and parliamentary elections;*
 - *requires individuals to meet certain conditions in order to be eligible to participate in municipal and parliamentary elections;*
 - *regulates how individuals vote in elections (for example, the method of voting);*
 - *regulates access to employment in the public service or appointment to public office;*
 - *establishes requirements for membership of public bodies;*
 - *regulates the conduct of elections and the electoral process;*
 - *regulates the suspension and conduct of local government;*
 - *regulates the suspension and removal of statutory office holders.*
328. None of these requirements are applicable to Amendment C190.
329. The right to have a say about an application within a statutory process is not a human right. The planning system, which includes circumstances where there are third party notice and review rights, and circumstances which are exempt from third party notice and review, are a long-established part of government regulation of land use and development in Victoria and do not constitute a breach of the Victorian Charter of Human Rights.

Consultation and notice of the amendment

330. Consultation and notice of the amendment are detailed in Council's Part A submission.
331. Amendment C190 proposes what is widely acknowledged as being a necessary and desirable change in the planning process. There are very limited ways local Councils can innovate within the *Planning and Environment Act* and Victoria Planning Provisions. Moreland City Council is seeking to make best use of the tools available to improve the process and the quality of housing.
332. Amendment C190 submitters, including the Planning Institute Australia, the Urban Development Institute of Australia and the Housing Industry Association congratulate Council for its leadership, strategic foresight and the manner in which it has addressed the important issues associated with increasing dwelling supply in Moreland. They commend Council for this initiative and for the approach taken in the Amendment. Submitters describe the provisions within the Amendment as very beneficial and a real step forward for the City of Moreland and planning in Victoria. They observe that the benefits of a prescriptive planning control are clear, as the certainty it brings to the process will be of great benefit to those who wish to redevelop their land holdings and that the benefits to Council resources, VCAT and the community are also evident.
333. Some commentators have argued that Moreland should wait for state led reform or advocate for development of new VPP tools which have not been identified in the Plan Melbourne Implementation Plan. It is evident from the Plan Melbourne Implementation Plan that the VicSmart tool has been identified by DELWP and the Minister for Planning as being an appropriate and acceptable tool to facilitate medium density housing growth in well serviced areas for proposals which deliver good outcomes.
334. Most local planning scheme provisions that guide medium density housing development are better suited to restricting or limiting the housing market. Moreland is seeking to enable and incentivise a housing typology our current and future community wants and needs, whilst

seeking to improve the quality, and hence liveability and community acceptance of this increasingly dominant housing type in our municipality.

335. Submissions 12 and 13 discuss notice of the Amendment. Submission 12 discusses notice in newspapers and Submission 13 raises concern that they were not notified of the Amendment.
336. On 24 April 2020, in response to the restrictions from the COVID-19 pandemic, temporary measures were introduced into the *Planning and Environment Act 1987*. Specifically, Part 10A - Division 2 – section 205 outlines the requirements to make documents available for inspection. Notice of an amendment that is made available on the Council internet site is considered to satisfy the requirement of Clause 1 of this section.
337. In respect to notice in newspapers, Section 19(1C)(2) of the *Planning and Environment Act 1987* provides that a planning authority must publish a notice of any amendment it prepares in a newspaper generally circulating in the area to which the amendment applies.
338. Notice was given in the Saturday edition of *The Age* and *Herald Sun* newspapers. Both *The Age* and the *Herald Sun* are newspapers circulating in Moreland. In the past such notice has been given in *The Leader* newspaper. *The Leader* is no longer published in print in most parts of Melbourne, including Moreland. The *Leader* has not been published at all during Covid-19 restrictions on real estate sector.
339. Advice was sought regarding notice to ensure the requirements of the Act were met. Publication of a notice in either *The Age* or the *Herald Sun*, on any day of the week, fulfils the requirement under Section 19(1C)(2). Notice was given in both papers and notice was placed in Saturday editions as they are the most widely read. There is a substantial cost difference between a notice in *The Leader* and a notice in *The Age* or the *Herald Sun* and notice on a Saturday is a more substantial cost difference again. It is positive that Submitter 12 saw the notices in both newspapers.
340. In addition, the Amendment was publicised in the Moreland City Council *Community Update*, a hard copy publication distributed to every property in the week commencing on 28 May 2020. This included the offer to post hard copy documents to people who do not have internet access.
341. Submitter 13 was notified of the amendment by email on Tuesday 2 June 2020 at 9:38 AM. Submitter 13 is a member of a resident group and Moreland City Council does not have a postal address for this group. In response to this submission Council provided the submitter with a copy of the notice and details about where Council sourced their email address (from the Group's own Facebook page, which is the only listed contact information for this group). The submitter confirmed that the notice was in fact received. This correspondence is at **Attachment 4**. It is positive that Submitter 13 was aware of the amendment and made a submission during the exhibition period.

Monitoring

342. Submission 11 says it would be good planning practice that the implementation and administration of Amendment C190 be monitored and audited for the first two years. It expresses the view that such monitoring should be undertaken by the Commissioner for Better Regulation and Red Tape so that data can be utilised to demonstrate the anticipated benefits of implementing this system within other local government jurisdictions within Victoria.
343. Council's Expert witness, Mr John Glossop, has also highlighted the importance of monitoring.
344. Section 12B of the *Planning and Environment Act 1987* requires continual review of planning schemes. The objective of a review under this section is to enhance the effectiveness and efficiency of the planning scheme. S12B(1) (5) requires that on completion of a review under this section, the planning authority must without delay report the findings of the review to the Minister.
345. Planning Practice Note 32 outlines the purpose and process for conducting and reporting the review. This includes whether local planning policies, zones, overlays and schedules have been effective and efficient in achieving the objectives and strategies of the planning scheme. The methodology for the review is outlined in the *Continuous Improvement Review Kit (2006)*

published by the Department of Sustainability and Environment and the Municipal Association of Victoria, applying Best Value Principles and reporting outcomes and actions to the community.

- 346. The function of Better Regulation Victoria is to boost Victoria's productivity, competitiveness and economic and jobs growth by cutting red tape and improving regulation, as directed by the Treasurer of Victoria, for the Victorian Government. The Commissioner's role in the 2019 Planning and Building approvals process review was to consider the cost of avoidable delays in planning and building approval processes to the Victorian economy.
- 347. The proposed local Schedules to Clause 59.15 and 59.16 are local provisions in one planning scheme and are of no consequence to the productivity or economy of Victoria and irrespective, it proposes to shorten rather than lengthen the planning approval process.
- 348. The *Planning Scheme Review Report 2018* at **Attachment 3** demonstrates that Moreland City Council monitors, audits and reviews the Moreland Planning Scheme in a robust way, in accordance with the *Planning and Environment Act* and Planning Practice Note 32.
- 349. In Figure 4 of Council's Part A submission, Council outlined the actions arising from the Medium Density Housing Review. It details the introduction of Good Design Advice Sheets which are being used by Council's Urban Planners and Urban Designers in their conversations with permit applicants and the employment of a medium density referral Urban Design Officer, who is providing advice on an increased proportion of development applications to upskill developers and Council staff. Moreland City Council is monitoring the outcomes of these actions as an input into the next Planning Scheme Review. This is another example of Moreland City Council's robust monitoring of its actions improve the quality of development.
- 350. Section 12B of the *Planning and Environment Act 1987* requires ongoing review of planning schemes and reporting of the findings of reviews to the Minister. If Amendment C190 is approved the outcomes will be monitored so that the positives may be considered for applications more broadly, or any undesirable outcomes can be addressed. DELWP's monitoring of the secondary dwelling provisions would be used to guide this monitoring.
- 351. Moreland City Council also recognises that the circumstances of sustained long-term development pressure combined with a higher community acceptance of two dwelling on a lot development and a desire for improved quality of development may be fairly unique to the pressures and extent of change being experienced in Moreland. The provisions of Amendment C190 are specifically tailored to the circumstances faced by Moreland and a VicSmart approach is unlikely to be adopted by most municipalities.
- 352. It does however present an excellent, and we believe rare, opportunity to test an initiative which is aligned with Plan Melbourne Policy 2.4.1; Plan Melbourne 5-year Implementation Plan Action 28; *Homes for Victorians*, and the objective of Better Regulation Victoria's *Planning and Building Approvals Process Review*, to streamline planning processes and reduce delays, as advocated by industry peak bodies, in a discrete location, with unique development pressures and quality design challenges.
- 353. It is not an objective of Amendment C190 that it be implemented within other local government jurisdictions within Victoria.

Final Position on the Amendment

- 354. Moreland Amendment C190 does not seek to amend the *Planning and Environment Act 1987* to create new assessment pathways or amend the Victoria Planning Provisions. It sets out the merits of an optional local provision to address the unique circumstances facing Moreland.
- 355. As outlined, Moreland receives more than twice the metropolitan average number of medium density planning permit applications and 40% of these applications are for two dwellings on a lot. In 2016, 35% of Moreland's households lived in medium density housing and it is forecast that by 2036, medium density housing will be home to 51% of Moreland households. This is while apartment housing is also forecast to double from 8% to 17% of Moreland households.
- 356. Processing two dwelling on a lot applications utilises significant resources of all parties to the process. The detailed analysis of these two dwelling on a lot applications reveals that third

party notice and review processes are resulting in limited changes to development proposals beyond those required by Council's Planning Officers to ensure planning scheme requirements are satisfied.

357. In recognition of the medium density development pressure experienced across Moreland over the past 15+ years, Council is motivated to incentivise the lodgment of higher quality, fully Rescode compliant development, that currently significantly burdens the planning system and ensure that finite resources are directed to more significant proposals.
358. Moreland is seeking to provide improved customer service and certainty for landowners, developers and the community; reduce the time, cost and resource burden associated with negotiating outcomes and VCAT reviews; and achieve Rescode compliant, good quality development.
359. The benefits will be:
- Better quality housing for residents of Moreland, canopy trees, disability access and ESD designed upfront rather than afterthoughts during the processes
 - All requirements proposed in C190 are mandatory
 - Compliant, quality two dwelling development, upfront with no debate
 - A recipe for certainty - removes ongoing disputes and conflict between residents and developers
 - Stops developers using the appeals process through VCAT to challenge "currently discretionary" planning scheme requirements
 - Mandatory requirements mean Council's decision cannot be overruled
 - The amendment makes requirements that are currently discretionary, mandatory. It is not possible to recommend projects which breach design requirements or height limits where they are mandatory.
 - Any potential cost savings in staff resources arising from streamlining compliant two dwelling on a lot development, may be directed towards things like increasing Urban Design input to improve neighbourhood character outcomes and improving ESD outcomes for 'regular' medium density applications
 - Non-compliant applications will continue to be considered within the standard planning process with public notice and objector rights of review.
360. The amendment enjoys broad support of academic research, state and local policy, the Planning Institute of Australia, the Urban Development Industry Association and the Housing Industry Association.
361. It is informed by a significant body of strategic research and evidence. This evidence demonstrates that the current process is not serving anybody particularly well and Amendment C190 seeks to change this whilst leveraging better outcomes.
362. The Expert evidence before the Panel holds that the Amendment is consistent with broad policy direction to encourage increased housing diversity, accessibility and affordability, consistent with neighbourhood character and that the VicSmart assessment pathway represents the best tool available to Council to incentivise improved outcomes.
363. The Expert evidence concludes:
- 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.

364. These minor amendments to the controls are supported by Council, with the exception that the requirement that a development 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, should not be applied to corner sites.
365. No expert evidence has been advanced by any party to demonstrate that the Amendment does not take a reasonable and balanced approach to delivering better housing for current and future Moreland households or make appropriate use of the Victoria Planning Provisions.
366. This completes the Part B submission for Council.

List of Attachments

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| 1 | Operation of Rescode legal advice |
| 2 | Moreland VCAT dual occupancy decisions 2018 |
| 3 | Moreland Planning Scheme Review Report 2018 |
| 4 | Correspondence with Submitter 13 regarding notice of the amendment |