

HUMAN RIGHTS ASSESSMENT OF MORELAND PLANNING SCHEME AMENDMENT C190

Summary

A human rights assessment of the Moreland Planning Scheme Amendment C190 was undertaken by the Community Development and Social Policy team at Moreland City Council in June 2020. A human rights assessment tool that referenced the Human Rights Charter Guidelines was adapted for this assessment, using the relevant rights outlined in the Victorian Charter of Human Rights and Responsibilities Act 2006. The Charter is an agreed set of human rights, freedoms and responsibilities protected by law.

Council officers with expertise in human rights including disability, gender equality, ageing, children's services, multicultural and religious diversity and disadvantage more generally participated in the assessment. All comments were made with the Charter in mind and based on the experience and expertise of Council officers involved. This is not legal advice.

HUMAN RIGHTS CHARTER GUIDELINES

What are Human Rights?

Human rights are the basic rights that belong to all of us for the simple fact that we are human beings. They are the basic standards required for governments, societies and communities to operate in a respectful and peaceful manner.

Everyone has the same human rights: men, women, and children, rich and poor, and all nationalities and faiths. Human rights are about recognising and respecting the dignity of other people. Our human rights entitlements include:

- Civil and political rights
- Economic and social rights
- Environmental and cultural rights.

The Victorian Charter of Human Rights

The Victorian *Charter of Human Rights and Responsibilities Act* 2006 came into operation with application to local government on 1 January 2008.

The Charter is an agreed set of human rights, freedoms and responsibilities protected by law. The Charter provides equal protection to all people in Victoria (not corporations). It contains 20 rights that reflect four basic principles. These principles are Freedom, Respect, Equality and Dignity (F.R.E.D.).

Victorian Councils must now, by law, act in a way that is consistent with the human rights protected under the Charter and take human rights into account in the preparation of Local Laws, Council Policies and Service Provision. Section 38(1) of the Charter states that: *"it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right."*

The focus of the legislation is on the prevention of breaches of human rights rather than on enforcement. It is designed to ensure that governments, including local councils, anticipate and prevent potential human rights infringements at the earliest possible stage.

The *Charter* does not specify a particular method for assessment against the rights and there exist a number of tools for doing so. This approach was adapted from guidance from the Victorian Equality Opportunity and Human Rights Commission (VEOHRC) and a tool initially developed by Stonnington City Council.

Charter Principles

FREEDOM	<ul style="list-style-type: none">• Freedom from forced work• Freedom of movement• Freedom of thought, conscience, religion and belief
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	<ul style="list-style-type: none"> • Freedom of expression • Right to peaceful assembly and freedom of association • Property rights • Right to liberty and security of person • Fair hearing • Rights in criminal proceedings • Right not to be tried and punished more than once • Protection from retrospective criminal laws
RESPECT	<ul style="list-style-type: none"> • Right to life • Protection of families and children • Cultural rights, including recognition that human rights have a special importance for the Aboriginal people of Victoria
EQUITY	<ul style="list-style-type: none"> • Recognition and equality before the law • Entitlement to participate in public life (including voting)
DIGNITY	<ul style="list-style-type: none"> • Prohibition on torture and cruel, inhuman or degrading treatment • Protection of privacy and reputation • Humane treatment when deprived of liberty • Appropriate treatment of children in the criminal process

Moreland Human Rights Policy

The Moreland Human Rights Policy 2016–2026 provides a framework and objectives for the implementation of Council’s human rights obligations. It is aligned with the Victorian Charter of Human Rights and Responsibilities Act 2006. An implementation plan supports the delivery of the policy.

The policy provides Council with an overarching framework for delivering accessible, equitable and inclusive programs, services and decision-making processes. It aims to unite and strengthen Council’s existing policies and commitment by adopting an intersectional approach in addressing discrimination and promoting diversity and inclusion.

This assessment makes mention of priority groups specified in the Policy, which are:

- Aboriginal and Torres Strait Islander communities
- Migrant and refugee communities
- People with disability
- Women
- GLBTIQ communities.

Moreland Planning Scheme Amendment C190

Council endorsed the *Better Outcomes for Two Dwellings on a Lot* review of dual occupancy development in Moreland in June 2019.

The outcomes of this review are being implemented by Moreland Planning Scheme Amendment C190 which is being exhibited for public comment from 28 May to 17 July 2020.

Council wants to improve the quality of two dwelling on a lot developments by establishing a more straight forward planning assessment process for proposals which deliver good quality outcomes.

Medium density housing (units and townhouses) contributes to the range of housing options to suit different budgets and lifestyle needs. At present, 35% of Moreland's households live in medium density units and townhouses. This is forecast to grow to 51% by 2036.

Subject to meeting detailed design requirements, two dwelling on a lot housing is permitted in all residential zones across Victoria.

Amendment C190 proposes to amend the Neighbourhood Residential Zone and General Residential Zone of the Moreland Planning Scheme to introduce a new class of application into the VicSmart provisions. Planning scheme compliant, enhanced quality, two dwelling on a lot applications would be processed within the VicSmart application stream if the following requirements are met:

- Site layout and building massing: All numerical standards relating to street setback, site coverage, permeability and width of accessways and car spaces must be met.
- Amenity impacts: All numerical standards relating to side and rear setbacks, walls on boundaries, daylight to existing windows, solar access to existing north-facing habitable room windows, overshadowing of open space and overlooking must be met.
- On-site amenity and facilities: All numerical standards relating internal views, daylight to new windows, private open space, solar access to open space, storage and front fences must be met.
- Car parking: Numerical standards relating to the number of car parking spaces must be met. In addition, requirements have been included to reduce the dominance of crossovers and car parking from the street. These requirements ensure the retention of street trees, tree planting within the front setback and on street car parking between driveways.
- Standards for accessibility and ESD.

The key features of the VicSmart stream include a 10-day permit process and applications are exempt from notice and objector appeals of Council's decision at the Victorian Civil and Administrative Tribunal (VCAT).

Two dwelling on a lot development that complies with all numerical standards of the planning scheme achieves high quality outcomes for both those who live in this housing, and the broader Moreland community. The benefits of the straight forward assessment process are:

- Better quality housing for the Moreland community
- Improved customer service and certainty for landowners, developers and the community
- ResCode standards become mandatory rather than discretionary for those opting for this application pathway
- Better ESD outcomes due to the inclusion of ESD as a requirement in criteria
- Better housing accessibility due to a requirement for certification from Livable Housing Australia
- By requiring full compliance with requirements to qualify for this application stream, Council can secure these outcomes for the community without the time and expense for all parties associated with seeking improved compliance via objections or expensive VCAT reviews.

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. It is a development type where compliance with Rescode standards is very high.

Council has undertaken an extensive analysis of objections to applications for two dwellings on a lot to ensure a VicSmart process would not result in any inappropriate loss of neighbour's input into planning permit decisions.

One in two, two dwelling on a lot applications attracts objections, but only one in 10 two dwelling on a lot applications is changed as a result of giving notice. This is a very low return on the investment of time and energy put into objections and VCAT appeals by neighbours.

VCAT is concluding that Council's assessment of two dwelling on a lot applications against the requirements of the planning scheme is robust and reasonable. Third party rights of review are adding to the time taken to obtain a decision but not altering the outcome in any meaningful way.

To qualify to be processed within the streamlined process, all requirements must be complied with. By requiring development to adhere to all standards, it will be of high quality. If any of the requirements are sought to be varied, the application will be processed within the standard planning application process with public notice and VCAT review rights applicable.

This action guarantees better outcomes, for both those who live in this housing, and the broader Moreland community, whilst at the same time making more effective use of resources.

Human Rights Assessment

What human rights are impacted? List each right - refer to Appendix A – Your Rights Explained for a detailed explanation of rights.	Will any person feel their rights are limited and why? Refer to 'Limiting Rights' on page 2 of the Human Rights Guidelines for advice.	What are the interests you have to balance? List any other interests of the community that need to be considered.	Is the limitation reasonable? Against each right limited, state why the limitation is reasonable.	What practical solutions are available to reduce the limitation? If a limited right is not reasonable, ensure comment made that the document was amended so the right is either not limited or reasonably limited.
Freedom				
Section 20: Property rights				
<p>The Victorian Charter of Human Rights provides that a person must not be deprived of property rights 'other than in accordance with law'.</p>				<p>No parties are deprived of any legal or proprietary interest in land, or the ability to use and develop that land in accordance with the planning regulatory framework. The imposition of reasonable restrictions on the use and development of land under Amendment c190, and in particular the ResCode provisions in clause 55, is in accordance with the law.</p> <p>A person is considered to be deprived of their property rights if a regulation has the effect of substantially depriving a property owner of the ability to use his or her property or part of that property.</p> <p>Amendment C190 makes no substantial changes to existing planning scheme requirements.</p>

	<p>Accessibility</p> <p>Moreland Human Rights Policy 2016–2026 states public buildings, public places and open spaces must be accessible to all and that Council will maximise the accessibility of all new infrastructure.</p>				<p>The amendment does not relate to public buildings, public places or open spaces.</p> <p>However a positive aspect of the amendment is that it proposes to introduce the requirement to meet Silver Level of performance under the Livable Housing Australia, Livable Housing Design Guidelines for two dwelling on a lot applications in the VicSmart stream, which would increase the supply of housing that is easier to access, navigate and live in, as well more cost effective to adapt, when life’s circumstances change.</p> <p>Specifically, LHA Silver level requires:</p> <ul style="list-style-type: none"> • A safe continuous and step free path of travel from the street entrance and / or parking area to a dwelling entrance that is level. • At least one, level (step-free) entrance into the dwelling. • Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces. • A toilet on the ground (or entry) level that provides easy access. • A bathroom that contains a hobless shower recess. • Reinforced walls around the toilet, shower and bath to support the safe installation of grabrails at a later date. • Stairways are designed to reduce the likelihood of injury and also enable future adaptation.
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Equity

Section 19: Section 19: Cultural rights, including Aboriginal cultural rights

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<p>Council is strongly committed to respecting linguistic diversity of our community.</p> <p>Increased proportion of Council's communications output and methods are inclusive, accessible and respond to a variety of communication needs.</p> <p>The Human Rights Policy Implementation Plan 2019-2021 states that this will be achieved by reviewing and strengthening Council's accessible communication/Language Services policy and guidelines that set out requirements for staff to make communications accessible to and for people with a disability. This will be done in</p>				<p>In addition to the established process of including a language link on letters and information sheets, the standard letter used in the past was amended add specific content in the five languages other than English most commonly spoken by the Moreland community.</p> <p>The added content read '<i>Proposed changes to the Moreland Planning Scheme which may affect you. Please contact language link if you require assistance.</i>'</p> <p>The availability of information in community languages via the language link was also included on the page website related to this planning scheme amendment.</p> <p>The plain English information sheet will be translated into community languages on request.</p> <p>Where face to face meetings are requested an offer to have interpreters will be made.</p>

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consultation with the Disability Working Group by December 2020.				
Section 18: Entitlement to participate in public life (including voting)				
Council will work to systematically reduce barriers created by attitudes, practices and structures that limit opportunities for people with disability to fully participate in the life of the community.				The documents on the website were in PDF format. Information was included for those who have trouble opening or viewing a PDF document that information could be provided in a format that suits their needs with reference to Council's accessibility page.
Electronic access to information				As Council's customer service centres and libraries were not open to the public during part of the exhibition period, information was included in the Community Update delivered to all properties in Moreland, offering to post hard copies of information on request. In addition, more information was posted with the direct notice by mail than would normally be included.
Receiving notice during work from home period				In addition to sending notice by mail, where email addresses were publicly available, notice was also

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					<p>sent by email in case post was not being collected from business addresses during work from home office closures.</p>
Dignity					
Section 13: The right to privacy and reputation					
	<p>Overlooking private property</p>				<p>The amendment does not alter existing planning scheme requirements relating to overlooking of neighbouring properties.</p> <p>It is necessary to look at the scope of the right to privacy protected by the Charter. The human right to privacy would cover matters of 'territorial privacy' including, in a planning context, the unwanted overlooking of a person's home. It is not the case that any unwanted overlooking of a neighbouring property is a breach of the human right to privacy. The right to privacy under s13 is expressed in qualified terms. The protected right is that a person's privacy must not be 'unlawfully' or 'arbitrarily' interfered with.</p> <p>Arguably the existing planning scheme requirements relating to overlooking are strengthened as they become mandatory rather than discretionary.</p>