

*Planning and Environment Act 1987*

**Panel Report**

**Moreland Planning Scheme Amendment C190more  
Better Outcomes for Two Dwellings**

**1 December 2020**

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## How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

## *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Moreland Planning Scheme Amendment C190more

Better Outcomes for Two Dwellings

1 December 2020



Tim Hellsten, Chair



Lisa Kendal

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## Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BESS	Built Environment Sustainability Scorecard
Better Outcomes Report	<i>Better Outcomes of Two Dwellings on a Lot: A review of dual occupancy development in Moreland, Moreland City Council, June 2019</i>
Compliance Assessment	Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment
Council	Moreland City Council
DELWP	Department of Environment, Land, Water and Planning
ESD	Environmentally Sustainable Development
GRZ	General Residential Zone
HIA	Housing Industry Association
LHA	Livable Housing Assessment
Livable Housing Guidelines	<i>Livable Housing Australia, Livable Housing Design Guidelines</i>
LPPF	Local Planning Policy Framework
MDH Review	<i>Medium Density Housing Review, Moreland City Council, 2018</i>
MPS	Moreland Planning Scheme
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
PIA	Planning Institute of Australia
Planning Scheme Review	<i>Planning Scheme Review Report, Moreland City Council, 2018</i>
PPF	Planning Policy Framework
Practitioner's Guide	<i>Practitioner's Guide to Victorian Planning Schemes, version 1.4, April 2020, Department of Environment, Land, Water and Planning</i>
RGZ	Residential Growth Zone
SDA	Sustainable Design Assessment
Supplying Homes Report	<i>Supplying Homes in Moreland, SGS Economics and Planning, 2019</i>
UDIA	Urban Development Industry Association
VCAT	Victorian Civil and Administrative Tribunal

## Overview

### Amendment summary

<b>The Amendment</b>	Moreland Planning Scheme Amendment C190more
<b>Common name</b>	Better Outcomes for Two Dwellings
<b>Brief description</b>	Amend the Schedules to Clauses 59.15 and 59.16 to introduce the construction of a dwelling if there is one dwelling existing a lot or two dwellings on a lot as a VicSmart class of application within the Neighbourhood Residential Zone and General Residential Zone
<b>Subject land</b>	All land in the General Residential and Neighbourhood Residential Zone
<b>Planning Authority</b>	Moreland City Council
<b>Authorisation</b>	7 April 2020
<b>Exhibition</b>	28 May to 17 July 2020
<b>Submissions</b>	16 submissions (Refer Appendix A)

### Panel process

<b>The Panel</b>	Tim Hellsten (Chair), Lisa Kendal
<b>Directions Hearing</b>	By video conference, 29 September 2020
<b>Panel Hearing</b>	By video conference, 27 and 28 October 2020
<b>Appearances</b>	<p>Moreland City Council represented by Ms Karen Bayly, Principal Strategic Planner and Ms Narelle Jennings, Manager of City Strategy and Design and Unit Manager Urban Planning, who called planning evidence from Mr John Glossop of Glossop Town Planning</p> <p>Housing Industry Association represented by Ms Teresa Davis</p> <p>Mr Stephen Rowley</p> <p>Brunswick Residents Network represented by Ms Joanna Stanley and Mr Nic Maclellan.</p> <p>Ms Marion Attwater</p> <p>Terrain Consulting Group represented by Ms Helen Toscas</p>
<b>Citation</b>	Moreland PSA C190more [2020] PPV
<b>Date of this Report</b>	1 December 2020

## Executive summary

Moreland City Council is experiencing housing pressures as its population grows, ages and diversifies. *Victoria in Future 2019* forecasts that an additional 59,820 residents will live in the municipality by representing, an annual increase of 1.6 per cent. Council's own research forecasts even higher growth to 2036 (78,600 persons) representing a demand for approximately 38,000 new homes.

Moreland currently has a greater proportion of medium density housing compared with the Melbourne average (70 per cent of all new dwellings were classified as medium density between 2005 and 2016), and with limited greenfield land supply new homes will continue to be medium or high density rather than separate dwellings. This is consistent with housing preference trends in the municipality.

Council currently processes approximately 400 applications for medium density development per year, representing almost a third of all planning applications. Council has identified that the significant workload in processing these applications is disproportionately spent on negotiating application compliance, and that third party notice and review is resulting in limited changes to development proposals beyond those required to ensure planning scheme requirements are satisfied.

The *Better Outcomes for Two Dwellings on a Lot* (Moreland City Council, June 2019) report concluded that a more straight forward planning assessment process could be used to incentivise better quality developments and improve resource efficiency.

The Amendment proposes to introduce a streamlined VicSmart application pathway for planning scheme compliant, enhanced quality, two dwellings on a lot applications in the Neighbourhood Residential Zone and General Residential Zone. The Amendment will create a new class of application under the provisions of Clause 71.06 (Operation of VicSmart applications and process), enabling compliant applications to be:

- exempt from notice and third party review
- processed in 10 days
- determined under the delegation of the Chief Executive Office.

Benefits of the proposal according to Council, include:

- facilitation of well-located, integrated and diverse housing that meets community needs
- improved accessibility design outcomes and environmental sustainability benefits
- an approvals pathway for development that will facilitate increased housing diversity and affordability.

By 'front loading' the assessment process and ensuring that permit applications are complete and compliant prior to lodgement, the initiative is designed to raise the quality of applications and put the 'ball in the applicant's court' regarding timeframes for assessment. Non-compliant applications will be assessed through the regular merit-based pathway. According to Council the Amendment "*reimagines the process and seeks to improve outcomes in the majority of two dwelling on a lot applications*".

The proposal does not propose to alter the housing framework plan, the zoning of any land or any provision within any schedule to the residential zones, nor does it propose any changes to strategic directions and objectives for neighbourhood character.

A total of 16 submissions were received to the Amendment which included nine supporting submissions (three supporting it outright and six supporting it in principle or subject to addressing a range of issues) with the remaining seven submissions not supporting the Amendment. The key issues related to:

- strategic justification in terms of need and alignment with policy
- Amendment notification and consultation process
- suitability of the VicSmart pathway, in particular:
  - loss of notice provisions and third party appeal rights
  - whether applications for two dwellings on a lot are too complex
  - entry criteria and suitability of requirements
  - administration and resourcing
- monitoring and review of the benefits and outcomes
- other specific design and amenity issues related to neighbourhood character and accessibility, sustainability and crossover and garage design requirements.

*Plan Melbourne* and Red Tape Commissioner's *Planning and Building Approvals Process – Discussion Paper* foreshadowed improvements to the way that planning permits are assessed, specifically streamlining approvals for specific housing types. It is clear to the Panel that in Moreland there is an opportunity to improve the quality of applications received, reduce timeframes for processing applications and ensure a high quality outcome in relation to amenity, livability and sustainability of new two dwellings on a lot development. This Amendment is endeavouring to make changes to the planning scheme to achieve this balance.

The Panel notes the Red Tape Commissioner's report findings that there *"is a strong case for more risk-based streamlining of applications by providing alternative pathways for the assessment of permit applications"*, and with this in mind the Panel has considered whether the benefits with the Amendment C190more outweigh the risks. It considers, on balance, that they do.

The proposed local VicSmart class of application is new territory for the Victorian planning system. The Amendment is pushing the boundaries of what can appropriately be assessed under VicSmart, and still deliver improved outcomes for the community. Significantly the application of VicSmart removes third party notice and appeal rights, and the Panel has not considered the implications of this lightly.

The Panel considers that the loss of notice and review rights is a key threshold for whether the Amendment is appropriate. Mr Glossop advised the Panel that while he believes that there is likely to be a positive social, environmental and economic benefit from the proposal, he accepted that there were some neutral or negative social aspects particularly relating to notice and review. Concern about the removal of notice and review rights was significant for community and resident group submitters.

Clause 71.02-3 (Integrated Decision Making) requires that Council endeavour to integrate a range of relevant planning policies and balance conflicting objectives in *"favour of net community benefit and sustainable development for the benefit of present and future*

*generations*". The Panel has considered how the proposal balances the benefits of fast tracking assessment of compliant permit applications with the loss of third party notice and review, and whether this achieves net community benefit for present and future generations. It considers on balance that there is a net community benefit associated with the Amendment.

The proposal has been examined against the considerations in the *Practitioner's Guide to the Victorian Planning System* (2020) to determine whether the proposal local VicSmart class of application will result in a positive planning outcome overall, and secondly whether the loss of notice and review provisions for this class of application will result in poor planning, built form and amenity outcomes. In this regard the Panel considers that the entry provisions should be tight to minimise poor planning outcomes including the loss of amenity, and to ensure that applications which do not comply with restricted provisions are assessed through the regular pathway.

The Panel considers that given the relatively low number of objections to applications and the fact that the notification process is not the determining factor influencing application assessment timeframes, if it were possible to introduce a VicSmart process while retaining notice and review this would be the preferred response. However, that option is not available.

A significant dilemma for the Panel is that the planning tools proposed for implementation are integral to the strategic justification of the Amendment. In forming a position on the Amendment, the Panel has explored the implications of the chosen tools as they relate to strategic justification and application of the tools.

Mr Glossop's evidence concluded that it *"is always difficult to be the first; to be the pioneer or the trailblazer. However, someone always has to be first and Moreland has deliberately (but not rashly) chosen to put itself in that position. Having read the Council's approach to the development of this amendment, I consider it to be an approach worth exploring"*. The Panel agrees with Mr Glossop's conclusion and supports the Amendment subject to the recommendations in this Report.

Being an earlier adopter of a relatively new provision is challenging, particularly where some submitters suggest the proposal may be too permissive and have unanticipated impacts and others suggest that it is too restrictive. The Panel considers that the Amendment has taken a balanced and considered approach, supported by analysis. It congratulates Council on its initiative which will have clear benefits however, it is strongly recommended that the Council closely monitor the outcomes and benefits and adjust the system as required.

The Panel concludes that there is a need and opportunity to support, stimulate and streamline two dwellings on a lot applications in Moreland. It considers that Council has undertaken sufficient evidence-based research to identify the issues and opportunities to improve processes and outcomes for two dwellings on a lot, and that the proposal is strategically justified.

The Panel considers that there should be a net community benefit associated with economic, social and environmental outcomes, however implementation of the Amendment should be closely monitored to identify and address any unintended consequences specifically relating to social impact (including loss of notice provisions) and distribution of

residential growth. Monitoring and review of this initiative should be undertaken by Council as part of its Planning Scheme Review process.

While a preferred approach would have been to notify all landowners directly, notice of the Amendment was compliant with prescribed requirements, and Council did endeavour to adapt materials and processes to ensure that public notice did have a wide reach in the context of COVID-19 restrictions. Extensive and culturally appropriate community education will be important in effectively explaining and promoting the proposed changes to the planning scheme post Amendment approval.

With regard to the proposed planning tools, the Panel concludes that the VicSmart provisions can be used for applications for two dwellings on a lot, is suitable for the assessment pathway and Council is adequately resourced to manage this process. The consequential removal of third party notice and review provisions is, on balance, considered appropriate for two dwellings on a lot applications, based on the proposed (as amended) VicSmart entry criteria being considered stringent enough and decision guidelines accounting for particular policy and zone controls. Entry criteria to the assessment pathway relating to sustainability, livability and crossover and garage requirements is considered reasonable and appropriate.

The Panel concludes that the proposed Schedules to Clause 59.15 and Clause 59.16, with the additional changes proposed by Council and Mr Glossop, are appropriate and consistent with the Practitioner's Guide to Victorian Planning Schemes, April 2020, however the Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment is considered an inappropriate document to include in Clause 59.16 as an application requirement and should be deleted.

### **Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Moreland Planning Scheme Amendment C190more be adopted as exhibited subject to the following:

- 1. Amend Table 1 of the Schedule to Clause 59.15 consistent with the Panel's preferred version in Appendix C1 of this Report to:**
  - a) clarify the class reference to one dwelling**
  - b) delete the application of Clause 55 standard B18**
  - c) clarify that specific Clause 55 standards do not apply to existing dwellings**
  - d) include additional criteria for walls on boundaries and building height.**
- 2. Amend the Schedule to Clause 59.16 consistent with the Panel's preferred version in Appendix C2 of this Report to include:**
  - a) in Section 1.0 additional information requirements for a neighbourhood and site description, design response plan, elevation drawings and shadow drawings, and delete the requirement for 'A Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment'**
  - b) in Section 2.0 include additional decision guidelines relating to the objectives, standards and decision guidelines of Clause 55 and the design standards of Clause 52.06-9.**

- 3. Council undertake a wide reaching, culturally appropriate communication exercise to ensure that the purpose and implications of the Amendment are well understood by the community following the approval and gazettal.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to implement the outcomes of the *Better Outcomes for Two Dwellings on a Lot*, Moreland City Council, June 2019 (Better Outcomes Report). The Better Outcomes Report involved a review of dual occupancy development in Moreland following Council's 2018 *Medium Density Housing Review* (MDH Review) which recommended, among other things, to incentivise lower density housing development.

The Amendment seeks to introduce an additional class of application into the VicSmart assessment stream – 'Construct a dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot' within the Neighbourhood Residential Zone (NRZ) and General Residential Zone (GRZ).

Specifically, the Amendment proposes to:

- amend the Schedule to Clause 59.15 (Local VicSmart Applications) to identify the mandatory provisions for the new class of application including:
  - NRZ and GRZ maximum height and minimum garden area requirements
  - the B13 landscaping requirements of the zone schedules
  - the numerical standards of Clause 55 (Two or more Dwellings on a lot and Residential Buildings) relating to Site layout and building massing, Amenity impacts and Onsite amenity and facilities and Detailed design (B6, B8, B9, B14, B17, B18 to B23, B27 to B30 and B32)
  - car parking space requirements of Table 1 to Clause 52.06 (Car Parking)
  - additional crossover and garage requirements
  - achieving Silver Level rating for accessibility under the *Livable Housing Design Guidelines*, Livable Housing Australia (Livable Housing Guidelines)
  - achieving Environmentally Sustainable Design outcomes by complying with Clause 22.08 (Environmentally Sustainable Development)(ESD) and achieving a minimum Built Environment Sustainability Scorecard (BESS) score of 50 per cent<sup>1</sup>
  - the permit requirement provisions of 32.08-5 (Construction and extension of one dwelling on a lot) of the GRZ and Clause 32.09-6 (Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings) of the NRZ
- amend the Schedule to Clause 59.16 (Information Requirements and Decision Guidelines for Local VicSmart Applications) to identify (as appropriate) for the new class:
  - application requirements:
    - a certified Sustainable Design Assessment (SDA)
    - a Livable Housing Assessment (LHA) certified by a Livable Housing Australia Design Guideline Assessor

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<sup>1</sup> Built Environment Sustainability Scorecard tool - [www.bess.net.au](http://www.bess.net.au)

- a Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment (Compliance Assessment)
- decision guidelines including:
  - any relevant neighbourhood character objective, policy or statement
  - the neighbourhood and site description
  - the design response.

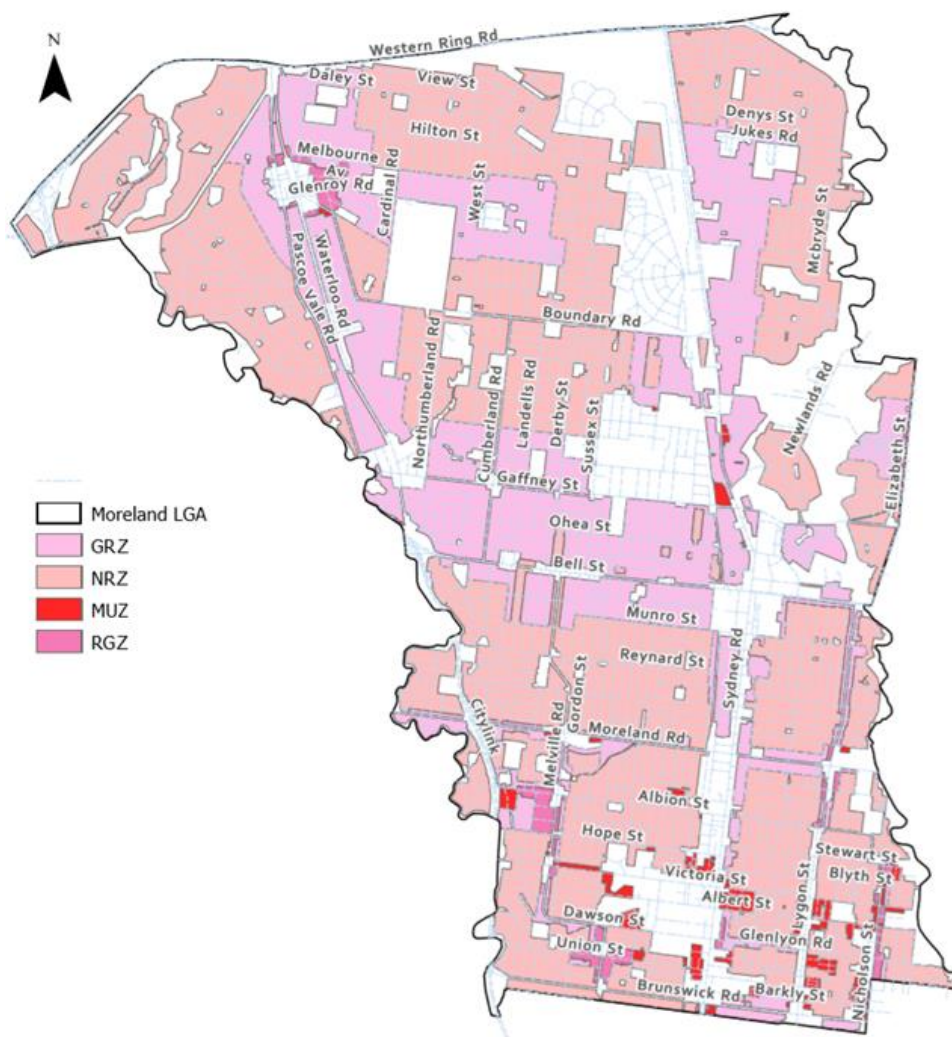
The Amendment will enable the new class of application to be created under the VicSmart application stream under the provisions of Clause 71.06 (Operation of VicSmart applications and process), enabling compliant applications to be:

- exempt from notice and third party review
- processed in 10 days
- determined under the delegation of the Chief Executive Office.

## (ii) The subject land

The Amendment applies to all land within the GRZ and NRZ zone within the City of Moreland and Moreland Planning Scheme. These zones represent over ninety per cent of the Municipality's residential zoning (Figure 1).

**Figure 1** Moreland Planning Scheme residential zones map



Source: Council's Part A submission

## 1.2 Background

### (i) A Home in Moreland and Supplying Homes in Moreland reports

*A Home in Moreland: The housing we need now and into the future*, .id consulting, August 2018 and *Supplying Homes in Moreland*, SGS Economics and Planning, July 2019 (Supplying Homes Report) provide a snap shot of the Municipality's changing housing needs in relation to population growth and demographic changes and underpins the directions of the MDH Review and the Better Outcomes Report. Key forecast findings include:

- growth of 78,596 additional persons by 2036
- an ageing population and increase in one and two person households, with lone person households replacing couples with children as the most common type of household by 2036
- 35 per cent of households live in medium density housing which will increase to more than half by 2036
- demand for 38,000 net additional dwellings by 2036, of which approximately 25,891 dwellings (or 68 per cent) will be medium density dwellings
- medium density development over the next 20 years will utilise only 39 per cent of available residential land capacity. The potential for a proportion of medium density applications being two, rather than three on a lot is not a threat to the ability to house Moreland's growing and changing population, with a significant buffer between medium density supply forecasts and capacity to accommodate medium density housing.

### (ii) Medium Density Housing Review

The MDH Review analysed medium density housing provision in the Municipality, including research on who lived in them and residents' perspectives about the quality of dwellings. It identified nine issues that need to be addressed to improve the appearance and quality of medium density development including:

- increase tree canopy and improve landscaping outcomes
- improved exterior appearance and internal amenity
- improved design outcomes for people with limited mobility
- improve amenity of private open space areas
- work with designers to improve design and increase urban design input
- increase planning permit the compliance
- incentivise high quality design excellence and create an easier process for high quality applications
- incentivise applicants to design fully compliant and improved quality lower density development
- advocate to raise ResCode standards.

Issue 8 identified a specific action (action 8) to *“Undertake further work to investigate the potential to incentivise better quality two dwelling on a lot permit applications through a more straight forward permit process”*.

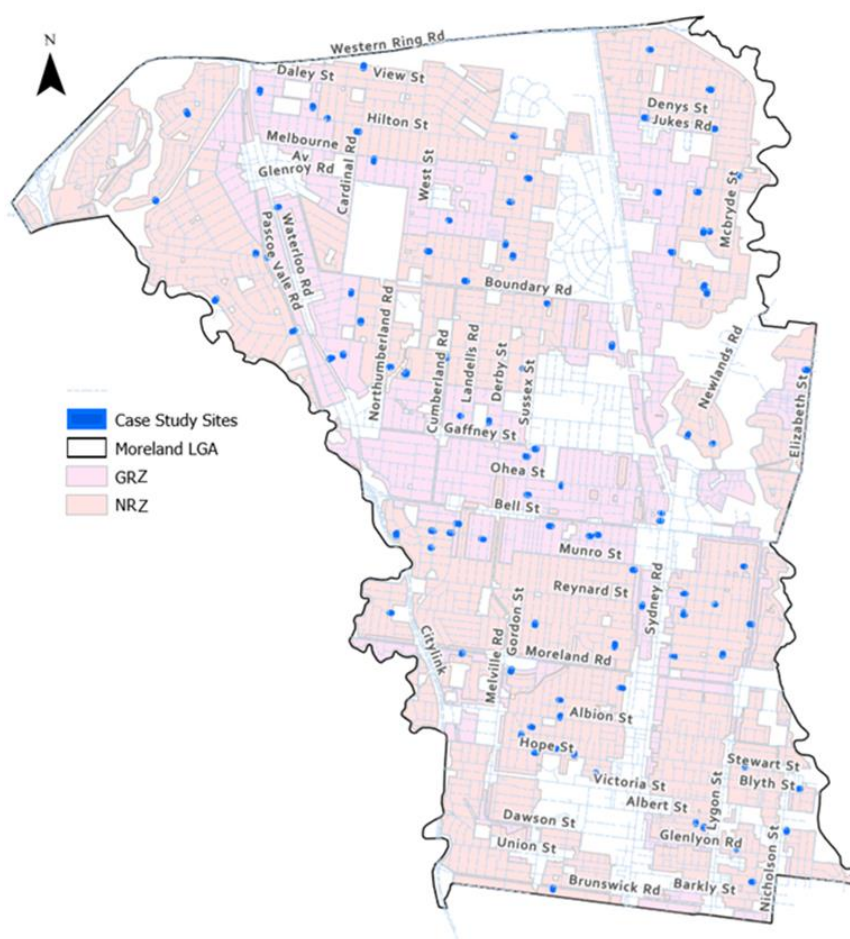
While this action resulted in the preparation of Amendment C190more, many of the other initiatives are relevant in understanding the suite of actions Moreland City Council is taking to improve the delivery and quality of medium density housing in Moreland.

### (iii) Better Outcomes for Two Dwellings on a Lot

The Better Outcomes Report was prepared in response to Issue and Action 8 of the MDH Review. It sought to analyse dual occupancy applications (two dwellings on a lot) and establish whether the planning permit process could be improved to maintain and enhance the quality of developments while achieving resource efficiency. The review was based on:

- case study analysis of 100 dual occupancy proposals approved in 2018 (Figure 2)
- case study analysis of refused dual occupancy proposals including analysis of Victorian Civil and Administrative Tribunal (VCAT) decisions for dual occupancy applications
- community and designer perspectives from previous consultation activities
- analysis of housing supply.

**Figure 2** Better Outcomes for Two Dwellings on a Lot case study sites



Source: Council's Part A submission

The Better Outcomes Report identifies:

- Moreland contains a greater proportions of medium density housing stock compared with the Melbourne average, with 70 per cent of all new dwellings classified as medium density between 2005 and 2016
- the proportion of dual occupancy developments has increased from 33 per cent to 40 per cent between 2017 and 2018

- 153 medium density housing applications in 2018 were for two dwellings on a lot, with 71 per cent 'side by side' or a 'new dwelling behind existing' dwelling typologies
- between 2015 and 2017 medium density housing applications in the GRZ comprised single storey (6 per cent) and two storey (88 per cent) developments
- 72 per cent of medium density applications are submitted by designers and drafting companies
- 71 per cent of these applications received no objections or one objection (46 per cent receive no objections) and 8 per cent received four or more objections
- objections commonly related to amenity impact on an immediately adjoining property (overlooking and overshadowing) – ten per cent of objections related to car parking, and many of the objections raised issues that were not specific to the application or were not planning related issues
- while half of all dual occupancy applications attracted objections, only one in ten applications were changed as a result
- there were only nine instances where objectors appealed a Council Notice of Decision to Grant a Permit for two dwellings in 2018 – VCAT did not overturn any of these decisions
- there was a very high degree of compliance of applications with the planning scheme provisions
- processing dual occupancy proposals uses significant Council resources and third party notice and review is resulting in limited changes to development proposals beyond those required by planning officers to ensure planning scheme requirements are satisfied.

The review concludes that a more straight forward process for fully compliant, enhanced quality dual occupancy development that has better environmental and accessibility outcomes could incentivise improved quality developments. The Better Outcomes Report recommends compliant proposals be assessed within the VicSmart process identifying schedule changes consistent with those contained in the Amendment.

#### **(iv) Planning and Building Approvals Process Review Discussion Paper**

On 24 October 2019 Better Regulation Victoria released a *Planning and Building Approvals Process Review Discussion Paper*. This Discussion Paper states:

DELWP is currently consulting on the possibility of introducing a new assessment pathway – VicSmart Plus – which would feature a 30-day turnaround with targeted notice provisions. DELWP is consulting on whether this pathway would be suited to approvals for secondary dwellings, extensions of home businesses, extensions to dwellings, and the construction of a dwelling on lots smaller than 500 square metres.

### **1.3 Procedural issues**

At the Directions Hearing parties raised concerns regarding a perception of bias associated with Ms Elizabeth McIntosh's appointment to the Panel. On the 21 October the Panel was reappointed with Senior Panel Member Ms Lisa Kendal replacing Ms McIntosh. Noting that a submission was received from the Planning Institute of Australia and Mr Rowley (submitter 10) was an editor of Victorian Planning Reports, Mr Hellsten declared he was a Fellow of PIA and attended their seminars and events and that he read the Victorian Planning Reports. Ms

Kendal declared that she was also a member of the Planning Institute of Australia. No issues were raised by parties about these declarations.

## **1.4 Summary of issues raised in submissions**

A total of 16 submissions were received to the exhibition of the Amendment which included nine supporting submissions (three supporting it outright and six supporting it in principle or subject to addressing a range of issues). The remaining seven submissions did not support the Amendment or identified concerns about it.

The submissions identified the following key issues:

- loss of notice provisions and third party appeal rights
- onerous and prescriptive provisions that will limit the benefits of the Amendment
- inappropriate use of VicSmart and ResCode provisions
- lack of guidance for criteria assessment
- impacts on neighbourhood character
- impacts on services and infrastructure
- potential unintended consequences and poor community outcomes
- Amendment notification and consultation process
- cost and process impacts on Council
- the need for monitoring and auditing.

## **1.5 Authorisation**

The Amendment was authorised on the 7 April subject to two conditions requiring the Amendment to be prepared in the Department of Environment, Land, Water and Planning's Amendment Track System and the Explanatory Report amended to clarify the *"operation of the proposed amendment"*. Council advised that these changes were made prior to exhibition of the Amendment.

The letter of authorisation also required Council to review the Amendment prior to exhibition to ensure consistency with recently released Planning Practice Notes 90 and 91 (Planning for Housing and Applying the Residential Zones respectively). Council addressed this issue in its submissions and is discussed in Chapter 6.1.

## **1.6 The Panel's approach**

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, submissions, evidence and other material presented to it during the Hearing. It has reviewed extensive material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context

- Strategic justification
- Notice of amendment and consultation
- Suitability of the VicSmart pathway
- Other issues
- Form and content of the Amendment.

## 2 Planning context

### 2.1 Planning policy

Council, supported by the planning evidence of Mr Glossop, submitted that the Amendment is supported by planning policy, which the Panel has summarised below.

#### 2.1.1 Planning and Environment Act 1987

The Amendment will assist in implementing the following objectives of planning in Victoria as set out in the *Planning and Environment Act 1987* (the Act):

- section 4(1):
  - (a) to provide for the fair, orderly, economic and sustainable use and development of land
  - (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
  - (f) to facilitate development in accordance with the objectives [outlined above]
  - (fa) to facilitate the provision of affordable housing in Victoria
  - (g) to balance the present and future interests of all Victorians.
- section 4(2):
  - (i) to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice.

#### 2.1.2 Planning Scheme

##### Clause 11 (Settlement)

The Amendment supports Clause 11 by:

- providing for housing supply and opportunities for infill development (Clause 11.01-1S and 11.02-1S).

##### Clause 13 (Environmental Risks and Amenity)

The Amendment supports Clause 13 by:

- responding to the risks of climate change (Clause 13.01).

##### Clause 15 (Built Environment and Heritage)

The Amendment supports Clause 15 by:

- encouraging environmentally sustainable development (Clause 15.02-1S)
- ensuring neighbourhood character remains a relevant consideration in the assessment of permit applications (Clause 15.01-4S).

##### Clause 16 (Housing)

The Amendment supports Clause 16 by:

- facilitating well-located, integrated and diverse housing that meets community needs, provides choice and is well designed including high levels of internal and external amenity and includes universal and adaptable design aspects (Clause 16.01-1S)

- improving housing affordability and promoting good housing design to minimise resident costs (Clause 16.01-2S)
- introducing an approvals pathway for development that will facilitate increased housing diversity and affordability.

### **Clause 21 (the Municipal Strategic Statement)**

The Amendment supports the Municipal Strategic Statement by:

- providing for sustainable neighbourhoods including housing choice (21.02-2)
- encouraging housing that is designed to be accessible including assessing housing proposals against the Livable Housing Guidelines reference document and providing design features consistent with Silver Level standard (21.02-3 and 21.03-3)
- providing for a range of housing for a diversity of household sizes (21.02-3 and 21.03-3)
- supporting affordable housing outcomes (21.02-3 and 21.03-3)
- providing for incremental housing growth and change in the GRZ through multi dwelling infill townhouse and unit development and minimal change in the NRZ comprising single dwellings and low density multi dwelling developments (21.02-3)
- improving design quality including through environmentally sustainable development (21.02-3, 21.03-4 and 21.03-5).

### **Clause 22 (Local Planning Policies)**

The Amendment supports the Local Planning Policy Framework by:

- ensuring development is consistent with neighbourhood character objectives in the GRZ and NRZ (Clause 22.01)
- encouraging car parking provision and vehicle access design consistent with Clause 22.03 (Car and Bike Parking and Vehicle Access)
- ensuring new housing development is environmentally sustainable and that development applications are supported by a SDA based on BESS, an existing reference document, consistent with Clause 22.08 (Environmentally Sustainable Development).

## **2.2 VicSmart planning scheme provisions**

Relative to the Amendment, VicSmart provisions are found:

- within the provisions of the GRZ (Clause 32.08) and NRZ (Clause 32.09) which identify classes of eligible subdivision and development applications and information requirements and decision guidelines clause references
- at Clause 59.15 (Local VicSmart Applications) which allows additional, local VicSmart classes to be identified in a schedule using particular tables and column content, including reference to information requirements and decision guidelines (outside those relevant to State VicSmart classes contained in Clauses 59.01 to 59.14) in a schedule to Clause 59.16
- at Clause 71.06 (Operation of VicSmart Planning Applications and Process) which sets out the operational aspects of this stream of applications including notice and review exemptions, referral and information requirements, limitation of matters to be considered and decision guidelines.

Chapter 5.3 'Using VicSmart' and Chapter 5.3.2 'Creating a local VicSmart provision' of the *Practitioner's Guide to Victorian Planning Schemes*, April 2020 (Practitioner's Guide) provide guidance to a planning authority considering introducing local VicSmart classes.

The Practitioner's Guide describes VicSmart in the following terms:

VicSmart is a streamlined permit application process. VicSmart only affects the assessment procedure and has no effect on any permit requirement. Where a proposed development is assessable against only a VicSmart permit requirement, it must be assessed under the VicSmart process, which is set out at Clause 71.06.

It identifies that:

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

The Practitioner's Guide sets out criteria for establishing whether a class of application is eligible for VicSmart including:

- The proposed class should be capable of being received, reviewed and determined in 10 business days in almost all cases
- The proposed class should only require a small number of discrete issues, with little to no policy balancing to be considered
- Where an external referral authority is required to give comment under **Clause 66**, this should be able to be obtained before lodgement without the assistance of the responsible authority
- Where internal comment is required, it should involve no more than one or two basic matters
- The information requirements for the proposed class should be simple to prepare
- The proposed class should not involve matters that would typically require third party notice
- Whether the proposed class would be more suitable for a permit exemption, where possible.

## **2.3 Other relevant planning strategies and policies**

### **2.3.1 Plan Melbourne**

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and livable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in

Table 1.

**Table 1** Relevant parts of Plan Melbourne

Outcome	Directions	Policies
2. Melbourne provides housing choice in locations close to jobs and services. Issues to be addressed include: housing affordability, the types of housing available to cater for different household needs and lifestyles, and the provision of medium- and higher-density housing close to jobs and services	2.1 Manage the supply of new housing in the right locations to meet population growth and create a sustainable city 2.4 Facilitate decision making processes for housing in the right locations	2.1.2 Facilitate an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods close to existing services, jobs and public transport 2.1.4 Provide certainty about the scale of growth in the suburbs. The strategy identifies the need to provide greater certainty and facilitate long-term growth and housing choice in the right locations 2.4.1 Support streamlined approval processes in defined locations

Council identified that the Amendment supported Plan Melbourne and Ministerial Direction 9 (Metropolitan Planning Strategy) by providing greater certainty through clearer prescriptive requirements, reducing lengthy decision making processes and housing costs, particularly in areas identified for change and housing growth. It submitted that the Amendment supported Plan Melbourne Implementation Plan Action 28 to:

Review residential development provisions in the Victoria Planning Provisions to increase the supply of housing in established areas and streamline the planning approvals process for developments in locations identified for housing change. This will include:

- reviewing the VicSmart provisions
- establishing measures to develop a codified process for the approval of medium-density housing in identified locations.

### 2.3.2 Ministerial Directions and Practice Notes

The Explanatory Report, Council submissions and the evidence of Mr Glossop discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction - The Form and Content of Planning Schemes pursuant to Section 7(5) of The Act
- Ministerial Direction 1 - Potentially Contaminated Land
- Ministerial Direction 9 - Metropolitan Planning Strategy
- Ministerial Direction 11 - Strategic Assessment of Amendments
- Ministerial Direction 19 - Preparation and content of Amendments that may significantly impact the Environment, Amenity and Human Health
- Planning Practice Note 10 - Writing Schedules
- Planning Practice Note 13 - Incorporated and Background Documents

- Planning Practice Note 15 - Assessing an Application for One of More Dwellings in a Residential Zone
- Planning Practice Note 16 - Making a Planning Application for One or More Dwellings in a Residential Zone
- Planning Practice Note 90 - Planning for Housing
- Planning Practice Note 91 - Using the Residential Zones.
- Planning Practice Note 46 - Strategic Assessment Guidelines, August 2018.

That discussion is not repeated here.

## **2.4 Other amendments**

### **(i) Amendment C189**

Moreland Planning Scheme Amendment C189 seeks to direct specific canopy tree planting outcomes for medium density housing throughout Moreland's residential zones by amending the B13 standard of Clause 55.03-8 landscaping requirements in the schedules to the residential zones and including a neighbourhood character objective relating to canopy trees in the schedules of the NRZ and GRZ. Amendment C189 was submitted to the Minister for Planning for approval on 25 June 2020. Council advised that VicSmart applications will be required to respond the neighbourhood character objectives and the requirements of B13 in the relevant zone schedules.

### **(ii) Amendment C200**

Moreland Planning Scheme Amendment C200 proposes to translate the existing Local Planning Policy Framework into the new Planning Policy Framework including a Municipal Planning Strategy. Council advised that it had resolved to request the Minister for Planning prepare, adopt and approve Amendment C200 pursuant to section 20(4) of the Planning and Environment Act 1987. Under Amendment C200, the key elements of Clause 22.01 (Neighbourhood Character) will sit within Clause 15.01 and 16.01. Council advised for this reason the proposed Schedule to Clause 59.15 has been drafted to not refer to Clause 22.01. It considered Amendment C200 does not have any direct impact on the Amendment.

### **(iii) Amendment VC186**

Amendment VC186 was gazetted on 27 August 2020 and amends the Victoria Planning Provisions by introducing a definition for a secondary dwelling and secondary dwelling requirements at Clause 51.06. Council submitted that a:

... secondary dwelling is a small-scale garden studio style dwelling, similar to a dependent person's unit. Unlike a dependent person's unit, it may be permanent, and the occupant does not need to be dependent on a resident of the existing dwelling. A planning permit is required a secondary dwelling.

It introduces interim planning scheme provisions for secondary dwellings into the planning schemes of four pilot councils including Moreland City Council, enabling compliant applications to be considered under VicSmart.<sup>2</sup>

To date Moreland City Council has received only one secondary dwelling application and was not in a position to share any learnings about applying the VicSmart process to this class.

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<sup>2</sup> To be compliant a secondary dwelling must be: on the same lot as an existing dwelling and cannot be subdivided; not exceed a gross floor area of 60 square metres; not exceed a building height of 5 metres or one storey and meet the garden area requirement of the zone. The provisions of Clause 52.06 (car parking) do not apply.

## 3 Strategic justification

### 3.1 The issues

The issues are:

- whether there is a strategic need or opportunity to improve processes and outcomes for assessing applications for two dwellings on a lot
- whether the Amendment is consistent with policy and directs housing to the right locations
- whether the Amendment will improve assessment processes and outcomes
- whether the Amendment is strategically justified.

Issues relating to the appropriateness of the tools proposed are addressed in other sections of this report.

### 3.2 Submissions and evidence

Council submitted that residential growth in Moreland is strong and the following trends and challenges are identified in the Supplying Homes Report:

- 38,000 homes in the next 20 years
- Moreland has no greenfield land and little brownfield land, so new homes will be medium density or high density dwellings rather than separate houses
- drawing on housing preference trends from 2006 to 2016, it is estimated that 68 per cent of new households in Moreland would prefer medium density dwellings and the balance (32 per cent), high density dwellings
- as land in Moreland is a finite resource, it must be redeveloped efficiently to avoid future supply constraints, further increases in house prices and continued displacement and loss of community diversity.

Council submitted that the Amendment provides a streamlined VicSmart application pathway for planning scheme compliant, enhanced quality, two dwellings on a lot applications in the NRZ and GRZ consistent with its objective to *“improve the quality of two dwelling on a lot developments and establish a more straight forward planning assessment process for proposals which deliver good quality outcomes”*.

Council considered that the proposal is consistent with the objectives of planning in Victoria, policy in the Moreland Planning Scheme and Plan Melbourne and was supported by the Plan Melbourne Implementation Plan Action 28 to increase housing supply and streamline approval processes for developments in housing change areas.

Council submitted that the opportunity to improve systems and outcomes was identified in the MDH Review and subsequent Better Outcomes Report and that these reports provided a broad evidence base and strong strategic justification for the Amendment with:

- the MDH Review recommending the investigation of *“the potential to incentivise better quality two dwelling on a lot development through a more straight forward planning permit process”*
- the Better Outcomes Report identifying that *“a more straight forward process for fully compliant, enhanced quality dual occupancy development that is healthier and*

*more liveable, could incentivise improved quality outcomes for the Moreland community and for future residents of Moreland”.*

Council’s Part A submission detailed the findings of the MDH Review including:

- medium density housing is a housing form of choice for many of Moreland’s current and future residents
- providing medium density homes that are not only of quality appearance, but also offer a high standard of amenity to occupants, will ensure a quality, diverse housing stock, that meets the needs of Moreland’s growing and changing diverse population
- Moreland City Council receives approximately 400 applications for medium density development per year, representing almost a third of all planning applications
- the garden area requirement has resulted in a greater number of dual occupancy applications.

Council identified that the Better Outcomes Report concluded that:

- fully compliant, low intensity applications for two dwellings on a lot are achieving high quality outcomes
- 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
- the streamlining of fully compliant two dwelling on a lot proposals will not have any unreasonable impacts on housing supply or dwelling typology, to house Moreland’s growing and changing population.

Council outlined that the Better Outcomes Report recommended:

- ... the Moreland Planning Scheme be amended so that planning scheme compliant, enhanced quality, two dwelling on a lot applications be considered within a more straight forward assessment process. The proposed requirements are simple and clear and empower the applicant by front loading process to put project time frames within their control. Existing state planning standards deal with amenity impacts and car parking, which are the issues of most concern to objectors.

In justifying the Amendment, Council explained that non-compliant applications were creating a significant resource impost on Council and impacting on timeframes and that implementation of the Amendment would free up resources to be expended on more complex applications. For example, further information is requested for 94 per cent of two dwellings on a lot applications and Council planners currently spend on average 100 gross days *“trying to extract a complete application and acceptable design from two dwelling on a lot permit applicants”*. Council further advised that *“37 per cent of two dwelling on a lot applications where further information is requested, request an extension of time to the standard 60 days period to submit the further information”*. This, Council submitted created a situation where *“the ratepayers of Moreland are subsidising Council staff not just to assess planning permit applications against the requirements of the planning scheme, but to act as defacto planning consultants to applicants. This goes well beyond giving advice about what the planning scheme says, how Council exercises its discretion and undertakes the process.”*

Council submitted that the case study analysis underpinning the MDH Review and Better Outcomes Report demonstrated that *“compliance with ResCode standards is very high and ResCode variations are typically genuinely very minor in nature. One in two, two dwelling on a lot applications in Moreland attracts objections, but only one in ten is changed as a result of giving notice. This is a very low return on the investment of time and energy put into objections by all parties”*.

To help manage demand and housing affordability, the Supplying Homes Report concluded that *“Council can ensure that housing markets operate efficiently and effectively, and that overall supply of housing is not unduly constrained.”*

Council is anticipating approximately 100 of the annual 400 two dwellings on a lot applications each year to run through the VicSmart assessment stream.

In support of its proposal to streamline medium density infill development, Council cited the Grattan Institute’s report - *Housing Affordability: re-imagining the Australian dream* (2018):

Planning regulations are limiting medium density development supply and raising prices. Planning restrictions significantly increase delays or uncertainty in development, either precluding it altogether, or increasing its costs.

Of course land use planning rules benefit other land users by preserving the views of existing residents or preventing increased congestion. But studies assessing the local costs and benefits of restricting building generally conclude that the negative externalities are not nearly large enough to justify the costs of regulation.

Mr Glossop of Glossop Town Planning was called by Council to provide planning evidence. He identified in his evidence that, based on the volume of applications for medium density and in particular dual occupancy dwellings, and the shift towards smaller households, it *“makes sense that this Council would look towards ways to streamline its approvals processes”*.

Mr Glossop identified that he had reviewed the Amendment against Planning Practice Notes and considered that the Amendment was supported by the background strategic work and was generally consistent with the objectives of the Act and state and local planning policy. While considering that the Amendment was likely to have a positive social, environmental and economic effect, he accepted that there were some neutral or negative social aspects of the Amendment, in particular relating to notice and review.

In response to submitter questions about the impact of any change to population projections as a result of COVID-19 and the lack of basis for the Amendment in Plan Melbourne, Mr Glossop gave evidence that the benefits of a streamlined permit assessment pathway was not dependent on Victoria in Future 2019 growth projections and that it was not the role of Plan Melbourne to limit local government in process reform or identify all initiatives. In principle Mr Glossop considers that Plan Melbourne encourages consideration of streamlining assessment.

Seven submissions were generally supportive of the Amendment and commended Moreland City Council on the initiative and approach taken in the Amendment, including the Urban Development Industry Association (UDIA), Housing Industry Association (HIA) and Planning Institute of Australia (PIA).<sup>3</sup> Justification and benefits of the Amendment were seen as:

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<sup>3</sup> Submitters 1, 2, 3, 7 (UDIA), 8, 11 (HIA), 15 (PIA)

- leading delivery of high quality housing
- facilitating well designed side-by-side development
- using the streamlined VicSmart process
- relief and certainty for homeowners when developing their sites
- providing a cheap, affordable and efficient way for the elderly to downsize in place within their community while opening up access to dwellings for younger families to purchase.

The HIA submission supported the Amendment identifying that:

... the housing industry and the broader community would benefit from controls that would facilitate infill development, such as secondary dwellings or dual occupancies, where certain conditions are met. Improvements in the planning system can significantly reduce approval delays and therefore improve the supply and delivery of housing to the market at an affordable price.

The HIA's submission also raised concerns about the ability of the Amendment to reach its full potential due to the prescriptive nature of some of the proposed provisions but identified:

This initiative demonstrates a pragmatic approach towards utilising existing mechanisms within the planning system to streamline processes for common planning permit applications. It is considered that if the relevant provisions are appropriately implemented and administered by Moreland City Council, the proposed amendment will assist in creating much needed planning system efficiencies.

PIA's submission commended Council on the Amendment stating that *"with 51 per cent of Moreland householders anticipated to live in medium density by 2036, this is a great example of how the planning system can be used to better incentivise high quality development outcomes in the right locations"*.

Two submissions raised specific queries in relation to the Amendment, including Submission 14 which was also generally supportive of the intention of the Amendment and considered it brave and forward thinking on the basis that a 10 day assessment process *"will be a positive initiative for many applicants and appears to reduce the bureaucratic process many consider lengthy and at times frustrating"*.<sup>4</sup>

Seven submitters objected to the Amendment, with issues relating to strategic justification, alignment with and implementation of policy intent relating to housing changes areas.<sup>5</sup>

Ms Attwater submitted that Council *"has not conducted the necessary surveying and mapping of transport and land use to understand the consequences and impacts of its decisions"*, as evidenced by the findings of the Panel Report for Moreland Planning Scheme Amendment C183. She considered that the current proposal will result in increased population density in residential areas adding to the existing pressure on infrastructure, services and transport systems. Ms Attwater submitted that she believed that Council had *"failed to identify the most suitable, well serviced areas for attracting population and housing growth"*. This, she considered impacted the planning for open space, neighbourhood character and environmental and land capability constraints.

<sup>4</sup> Submission 4 (Mr Ivanovic) and 14 (gvk Town Planning)

<sup>5</sup> Submitters 5, 6, 9, 10 (S Rowley), 12 (M Attwater), 13 (Fawkner Residents Association), 16 (Brunswick Residents Association)

Mr Rowley submitted that the title of the Amendment 'Better Outcomes for Two Dwellings on a Lot' misrepresented the proposal as there was no mechanism proposed *"such as improved assessment tools"* to achieve better outcomes for such applications. He considered that the Amendment was *"fundamentally misguided and should be abandoned"* on the basis that it misuses both the VicSmart provisions and the ResCode provisions creating *"... considerable risks for council, including increased likelihood of process errors and mistakes in assessment, heightened workloads, potential cost impacts to council from VCAT failure appeals, and potentially bad outcomes"*.

A number of submitters contended that the Amendment was not consistent with Moreland's housing policy. Conditional authorisation from DELWP required Council to review the Amendment prior to exhibition to ensure consistency with recently released Planning Practice Notes 90 and 91 (Planning for Housing and Applying the Residential Zones respectively). In response Council submitted that:

- it had undertaken substantial work to understand housing supply and demand
- the Amendment had considered the forecast housing growth by providing opportunities for increased medium density housing by cutting red tape while incentivising improved outcomes
- the Amendment responds to Plan Melbourne Direction 2.4 (Facilitate Housing Developments in the Right Locations) and the Plan Melbourne Implementation Plan Action 28 to develop a codified process for medium density approvals
- Planning Practice Notes 90 and 91 provide guidance about how to plan for housing growth and protect neighbourhood character to ensure a balanced approach to managing residential development in planning schemes. Planning Practice Note 91 identifies that all residential zones support and allow increased housing, unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist
- Moreland's housing growth hierarchy, set out in the Local Planning Policy Framework at Clause 21.02, includes:
  - incremental Change Areas (General Residential Zone) with a policy objective to support incremental housing growth to accommodate a mix of single dwellings and infill multi dwelling developments
  - minimal Change Areas (Neighbourhood Residential Zone) with a policy objective is to support minimal housing growth with a mix of single dwellings and lower density multi dwelling developments
- the Amendment does not propose to alter the housing framework plan or any of the zoning of any land or any provision within any Schedule to any residential zone, nor does it propose any changes to strategic directions and objectives for neighbourhood character
- the proposed streamlining of fully compliant two dwellings on a lot medium density housing development will not have any unreasonable impacts on housing supply or dwelling typology.

As a municipality with strong medium and high density infill housing growth in well serviced locations close to jobs and services, Council submitted that *"Moreland's residential zones are the right locations for streamlined approval processes for medium density housing as supported by Plan Melbourne, as evidenced by the Minister for Planning's authorisation of Amendment C190"*.

In response to submissions that the Amendment might result in an under development of land, Council submitted that the proposal aimed to support and enable medium density housing, and that the Amendment does not restrict applications for three dwellings on a lot. Council argued that the proposal *“will not have any unreasonable impacts on housing supply or dwelling typology”*. It identified that the number of dwellings on lots varies greatly across different parts of the municipality, and this is not driven by lot size alone, but is a *“combination of lot size, land value, site attributes and the buyer market it is built to”*.

Council referred to the Supplying Homes Report which identified that:

Medium density development in Moreland over the next 20 years will utilise only 39 per cent of available capacity. The potential for a proportion of medium density applications becoming two, rather than three on a lot is not a threat in real terms to Moreland’s ability to house its growing and changing population as there is a significant buffer between supply forecasts and capacity to accommodate medium density housing. .

Mr Glossop’s evidence identified that the GRZ and NRZ are incremental and minimal housing growth areas respectively, and within these areas there is recognition that consolidation of urban form is an acceptable outcome. He considered the Amendment is consistent with this broad strategic direction and noted that medium density housing is permitted in all residential zones with the municipality, and that density controls do not apply.

Mr Glossop stated that in his opinion the Amendment would not stimulate development that is not already supported by the Planning Scheme, and that there was no policy misalignment with incentivising two dwellings on a lot. He suggested however, that Council should closely monitor and review to determine whether this occurs.

Council agreed that supply and demand needs to be monitored to ensure that the local planning policy framework continues to provide sufficient housing capacity. It identified that it had a plan in place to review housing capacity after the release of the next census.

In closing, Council submitted that:

- it had undertaken a thorough process to prepare and analyse an evidence base to support the Amendment
- the Amendment was founded on strong strategic justification through that evidence based work
- the Amendment is consistent with state and local policy within the Moreland Planning Scheme and Plan Melbourne
- it could accommodate and resource a new VicSmart stream for two dwellings on a lot within 10 days.

### **3.3 Discussion**

With approximately 400 permit applications each year for two dwelling proposals represents the highest proportion of all applications processed by Council each year (about one third). Council has identified that it has a significant workload in processing these applications and that time and resources are disproportionately spent on negotiating application compliance.

Clause 71.02-3 (Integrated Decision Making) requires that Council endeavours to integrate a range of relevant planning policies and balance conflicting objectives in *“favour of net community benefit and sustainable development for the benefit of present and future generations”*. In relation to this Amendment, the Panel has considered how the proposal

balances the benefits of fast tracking assessment of compliant permit applications with the loss of third party notice and review, and whether this achieves net community benefit for present and future generations.

A significant dilemma for the Panel is that the planning tools proposed for implementation are integral to the strategic justification of the Amendment. In forming a position on the Amendment, the Panel has explored the implications of the chosen tools as it relates to strategic justification in this chapter and application of the tools in other parts of this Report.

The Panel notes that there is strong industry support for the Amendment with submissions from UDIA, HIA and PIA.

It is clear to the Panel that there is an opportunity to improve the quality of applications received, reduce timeframes for processing applications and ensure a high quality outcome in relation to amenity, livability and sustainability of new two dwellings on a lot development. This Amendment is endeavouring to make changes to the planning scheme to achieve this balance.

The Panel observes that Council has expressed frustration with the high proportion of poor quality of applications and the associated resource and timeframe implications. This is not an adequate argument to justify the Amendment and the Panel comments that it is a choice for Council on how it manage this challenge and that there are other mechanisms available to Council to change the industry culture and improve the quality of applications, such as refusal of applications that are non-compliant. Council advised the Panel that it was pursuing other options to improve the quality of applications and the Panel supports a multi-pronged approach rather than relying on statutory tools alone.

The Amendment does provide a mechanism to achieve the existing policy objectives of Clause 21.02, 21.03 and 22.08 relating to accessible housing and ESD within two dwellings proposals and as a result will improve housing outcomes.

The Panel acknowledges the concern of some submitters that there may be unintended consequences of the Amendment, particularly in directing housing growth away from well serviced areas. The Panel considers that Council has undertaken adequate strategic planning work to ensure that housing growth is being managed appropriately and in well serviced locations.

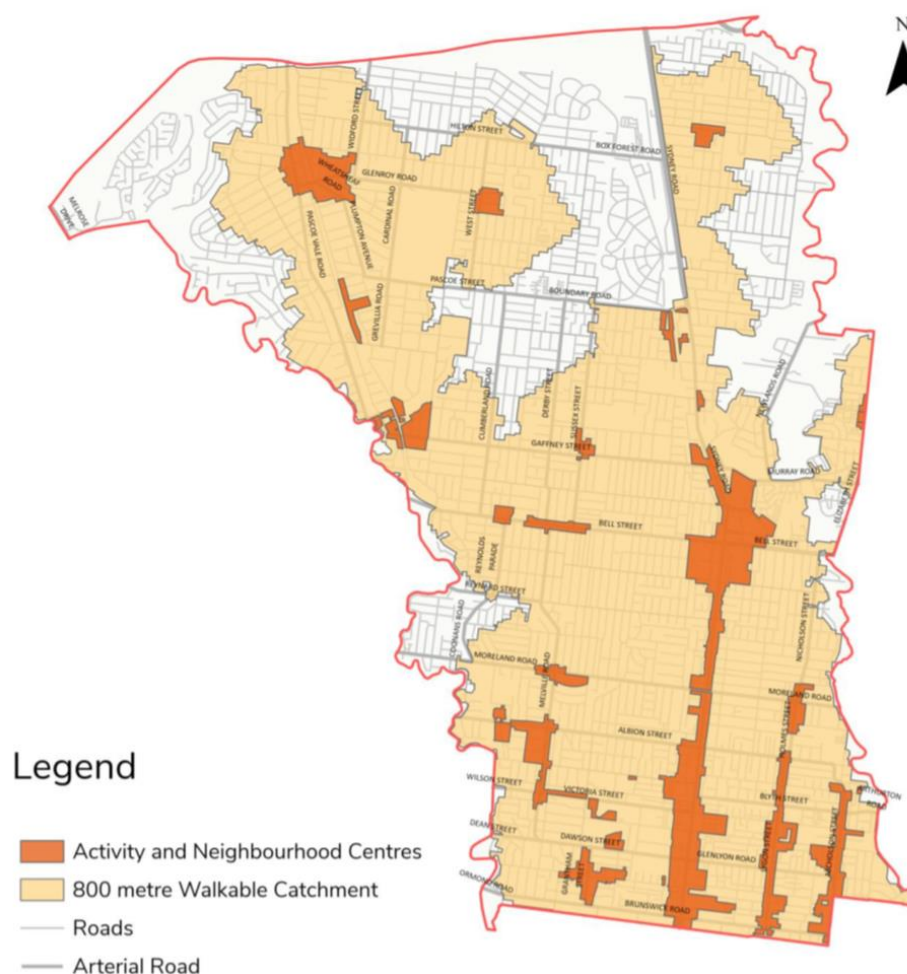
Monitoring and review will be crucial to ensure there are no unintended consequences relating to distorting the housing supply market. This is discussed in more detail in Chapter 6.5.

The Panel notes that DELWP's letter of authorisation states that *"authorisation to prepare the amendment is not an indication of whether or not the amendment will ultimately be supported"*. The Panel cautions the reliance on authorisation as an indicator of strategic support. It does not consider that the letter of authorisation is evidence that Moreland's residential zones are the right location for a streamlined approval process. In relation to this Amendment it is not the Panel's role to establish whether the residential zones are in the right place but rather whether the zones are appropriate candidates for this VicSmart class and will not distort Council's housing policy objectives.

Planning Schemes are evolving documents that are updated as strategic planning work is completed. This is important to ensure that content is relevant and informs good decision

making. The Panel is reassured that Council has a plan in place to review housing demand and supply following release of the census data, and any update in local policy will be informed by this review. With the recent introduction of Planning Practice Notes 90 and 91 to guide Planning for Housing and application of the Residential Zones, and noting submitter concerns about neighbourhood character, the Panel considers that further strategic work to review its housing policy and framework plan would be beneficial. The submission by Council shows that significant residential growth will occur outside of the 800 metre walkable catchment to activity centres (Figure 3). This suggests that any future review of local housing policy consider the implications of this to ensure that growth is directed into well serviced areas.

**Figure 3 Activity centre walkable catchments**



Source: Council's Part A submission

The Panel agrees with the evidence of Mr Glossop that the Amendment is consistent with broad policy direction to encourage increased housing diversity, accessibility and affordability, consistent with neighbourhood character. In response to questions from the Panel, both Council and Mr Glossop considered that while eligible proposals would enjoy streamlined assessments and be attractive because of the greater certainty and cost savings provided they would not displace proposals which might otherwise support more intensive development. The Panel agrees with this assessment and considers that it is likely only very marginal proposals will elect to pursue a two dwelling rather than a three dwelling proposal and that such an outcome would have minimal housing supply impacts. The Panel notes

that two dwellings on a lot proposals are currently permitted within the minimal change NRZ regardless of the application stream and that the zone and related policy considerations still remain in place to manage character and amenity impacts and refuse applications if necessary. The Panel finds no basis to support a position that the Amendment will act as a de facto density control.

The Panel considers that there is a strong case for exploring opportunities to streamline planning decision making, without the reliance on the broader directions and policies within Plan Melbourne. The Panel considers that Council has undertaken a substantial body of strategic and analytical work to establish that using the VicSmart assessment pathway (effectively the only statutory tool available to Council) will triage many eligible applications out of the standard assessment process and will provide the following benefits:

- the delivery and supply of a key housing typology within the municipality
- the reduction in housing costs through process time savings and avoiding notice and decision reviews by VCAT
- improvements to the standard of housing provision, particularly relating to accessibility and ESD design treatments and a high level of compliance with Clause 55 standards.

The Panel considers these benefits will provide for a net community benefit.

### **3.4 Conclusions**

The Panel concludes that:

- There is a need and opportunity to support, stimulate and streamline medium density housing in Moreland
- Council has undertaken sufficient evidence based research to identify the issues and opportunities to improve processes and outcomes for two dwellings on a lot
- There is an opportunity to improve the quality of applications received, timeframes for processing applications and ensure high quality outcomes in relation to amenity, livability and sustainability of two dwellings on a lot developments
- The Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes
- While there will be a net community benefit associated with economic, social and environmental outcomes, there is potential for localised negative social aspects particularly relating to notice and review
- The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

## 4 Notice of amendment and consultation

### 4.1 The issue

The issue is whether there was adequate notice of the Amendment.

### 4.2 Submissions and evidence

Council's submissions set out the general and targeted consultation and engagement it had undertaken in preparing the background reports and the process it undertook to give notice of the Amendment. It submitted that the Amendment was exhibited in a manner that went beyond statutory requirements. The Amendment was exhibited from 28 May 2020 to 17 July 2020 and notice of the Amendment was placed in a Saturday edition of The Age and Herald Sun and the Government Gazette. Direct notification was provided to:

- prescribed Ministers and referral authorities
- resident groups
- regular medium density planning permit applicants
- planning consultants, local architects and drafting companies
- social housing agencies
- real estate agents
- ESD consultants
- Victorian accessible housing consultants.

Council submitted that it did not give direct notice of the Amendment to all affected properties under subsection (1)(b) of the Planning and Environment Act 1987 *"as it considered the number of owners and occupiers affected made it impractical to notify them all individually about the amendment"*. It noted that this was not uncommon practice at Moreland and elsewhere, and that the notice given complied with alternate requirements of the Act to ensure that reasonable steps were undertaken to notify the public and affected owners and occupiers.

To accommodate COVID 19 restrictions and closure of its customer service centres and libraries, Council extended the exhibition to a seven week period, emailed notices where email addresses were publicly available and made its strategic planners available by phone, email or teleconference.

The Amendment was also publicised in the Moreland City Council *Community Update*, a hard copy publication distributed to every property, in the week commencing 28 May 2020. This included the offer to post hard copy documents to people who did not have internet access.

With reference to the objectives of planning framework established by the Act, specifically Section 4(2)(i) *"to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice"*, three submitters expressed concern that Council had not provided adequate notice of the Amendment.

Ms Attwater stated that the Council had *"most likely"* not fulfilled its public notice obligations under Section 9 the Act, and that only advertising in The Age and Herald Sun would only reach a small portion of residents. Council confirmed that it sought advice that publication of a notice in either The Age or the Herald Sun on any day of the week would

fulfil the statutory requirement for notice under the *Planning and Environment Act 1987*. A copy of that legal advice was provided with its submission.

At the Hearing Ms Attwater considered the content of various notices was inadequate to convey the implications of the Amendment. Ms Attwater provided a copy of the text used in the Community Update and public notice and submitted that:

For a municipality that is so highly diverse, I'm not sure how it is appropriate to expect residents and traders to understand planning jargon in public notices.

As mentioned earlier, I had no clue what the word VicSmart meant, until trawling through the lengthy documents that are part of this Amendment.

Ms Attwater advised the Panel that the notice in this community newsletter “... *did not communicate that public notification and appeal rights were being removed*”. Likewise the Gazette and weekend newspaper notices did not disclose such impacts.

Ms Attwater considered that the notice process undertaken by Council’s planning department was inconsistent with its own recently updated community engagement plan as well as the Public Health and Wellbeing Act.

The Fawkner Residents Association expressed immense disappointment and annoyance that the group was not directly notified, and submitted that Council had demonstrated a “*pattern of convenient exclusion of vocal groups*”. Council’s Part B submission provided details of how the Association had been notified via email on 2 June 2020, and a subsequent email exchange between Council and the submitter that acknowledged that the original email had gone into spam rather than the recipient’s inbox.

Council submitted that it was aware that the Brunswick Residents Network did promote the Amendment to its members via an online newsletter and Facebook.

Ms Stanley presented on behalf of the Brunswick Residents Network and advised of the Fawkner Residents Networks position on the Amendment as their representative was unable to attend the Hearing. She submitted that “*Brunswick Residents Network is concerned that such a significant change to the planning scheme is being made without individual residents being written to, or resident groups given an initial seat at the so called ‘round-table’ at the start of this process*”.

Three submitters expressed general concern about Council’s commitment to meaningful and purposeful engagement with residents on planning matters. Ms Stanley submitted that “*we’d like to say that we did not have any awareness that a Medium Density Housing review was done last year, or that it was heard at Panel in February this year*”.

Council in closing submitted that:

Our exhibition strategy was very mindful of the need to make the broader Moreland Community aware of the amendment. Known resident groups were notified.

The inclusion of information about the Amendment in the Community Update that was circulated to all properties, was key to Council being satisfied that we made the broader community aware of the Amendment.

Council identified that if the Amendment is approved that it would undertake broad community engagement to ensure that residents understand what will happen if a planning application is assessed through the VicSmart pathway.

### 4.3 Discussion

In relation to notice of the Amendment submitters raised issues relating to:

- whether adequate notice had been given to affected residents
- concerns that the proposed changes were clearly explained
- Council's general lack of commitment to genuine community engagement.

Given the extent of properties affected by this Amendment and the significance of the proposed changes, in particular the removal of public notice and review rights, it is important to contemplate what was adequate notice for the Amendment. A key question is whether all affected properties should have been notified directly of the proposed changes.

Council submitted that it relied on the Community Update to notify all properties and this *"was key to Council being satisfied that we made the broader community aware of the Amendment"*. Feedback from submitters indicated that it is likely that many residents and landholders may not have become aware of the Amendment though the channels used by Council.

The Panel acknowledges that Council did directly notify relevant residents' groups, and notes that the number of submissions was relatively low considering the significance of the Amendment.

The Panel accepts that public notice of the Amendment was compliant with requirements of the Act and acknowledges that in the context of restrictions resulting from the COVID-19 pandemic that Council endeavoured to adapt materials and processes to ensure that public notice had a wide reach.

However, the Panel is mindful that Moreland is a culturally diverse community and the Amendment proposes significant change to the planning scheme, including removal of third party notice and review rights. On reviewing the material used to provide notice, and with consideration of the submissions advising of the culturally diverse demographic of the community, the Panel considers that the notice of Amendment (particularly the Community Update notice, the content of which is not constrained by planning regulations) could have been drafted to more clearly articulate the proposed changes in plain English, and potentially in other languages.

The Panel considers that a preferred approach would have been to notify all landowners directly and not just to rely on an article in the Community Update.

As identified by submitters, there is a risk that lack of community awareness and understanding of the proposed changes will result in confusion and frustration during implementation.

In relation to community consultation in relation to the strategic work underpinning the Amendment, submitters argued that Council did not adequately engage with community.

On reviewing the supporting reports, it is evident that Council did undertake some engagement with residents of medium density dwellings and conducted workshops with external stakeholders, including community during preparation of the MDH Review 2018. It appears however that no direct community consultation was undertaken on the Better Outcomes Report, but that this relied on secondary sources of information from other

projects. The Better Outcomes Report does state that *“the community would be consulted on the proposed change in process”*.

The Panel does not make specific comment on the appropriateness of community consultation undertaken by Council on strategic planning work, however the Panel observes that the community and resident submitters feel somewhat disenfranchised from the strategic planning processes undertaken by Council in this instance and believe that Council could make greater effort to undertake genuine and meaningful community consultation.

The Panel considers that future strategic planning work would benefit from comprehensive and culturally appropriate community engagement.

The Panel notes the suggestion from HIA and confirmation from Council that if the Amendment is approved it intends to undertake early engagement with the community to ensure residents understand the implications of the proposal.

#### **4.4 Conclusions and recommendations**

The Panel concludes that:

- While a preferred approach would have been to notify all landowners directly, notice of the Amendment was compliant with prescribed requirements, and Council did endeavour to adapt materials and processes to ensure that public notice did have a wide reach in the context of COVID-19 restrictions.
- The material used to provide broader community notice could have been drafted to more clearly articulate the proposed changes in plain English and include information in other languages.
- Extensive and culturally appropriate community education will be important in effectively explaining and promoting the proposed changes to the planning scheme post Amendment approval.

The Panel recommends:

**Council undertake a wide reaching, culturally appropriate communication exercise to ensure that the purpose and implications of the Amendment are well understood by the community following approval and gazettal.**

## 5 Suitability of the VicSmart pathway

Making an application class assessable under VicSmart results in:

- a reduced permit application fee
- exemption from third party notice and review
- the Council's Chief Executive Officer is the responsible authority
- a 10 day application assessment timeframe
- restriction to consideration of specified decision guidelines (noting that the requirements of the zone still apply).

The Practitioner's Guide specifies that any provision of a planning scheme can specify local classes of application that can be assessed under VicSmart. It sets out a range of criteria that planning authorities are encouraged to consider in deciding whether to create a local VicSmart class as described in Chapter 2.

### 5.1 Can the VicSmart approach be used and is it suitable?

#### (i) The issues

The issues are:

- whether the VicSmart assessment pathway can be used for applications for two dwellings on a lot
- whether the proposed development class is appropriate for the VicSmart assessment pathway.

#### (ii) Submissions and evidence

Council identified that its Better Outcomes Report had considered a range of options to facilitate two dwellings on a lot applications through a streamlined process and achieve its objective of improving the quality of housing outcomes (Figure 4).

**Figure 4 Two dwellings on a lot application pathway options**

<p><b>Option 1</b></p> <p><b>No planning permit required</b></p> <p><b>Some Rescode numeric standards apply in the Building Code</b></p> <p><b>No third party process</b></p>	<p><b>Option 2</b></p> <p><b>VicSmart streamlined application process</b></p> <p><b>Some Rescode standards apply, some are varied, some do not apply</b></p> <p><b>No or limited consideration of neighbourhood character</b></p> <p><b>No third party process</b></p>	<p><b>Option 3</b></p> <p><b>VicSmart streamlined application process</b></p> <p><b>Key policy objectives are codified and are mandatory</b></p> <p><b>All numeric Rescode, zone and car parking standards are mandatory, including amenity impact standards</b></p> <p><b>Merits based consideration of all neighbourhood character objectives, policies and statements in the scheme</b></p> <p><b>No third party process</b></p>	<p><b>Option 4</b></p> <p><b>Standard application process</b></p> <p><b>All policy objectives are discretionary</b></p> <p><b>All Rescode, some zone and car parking requirements are discretionary</b></p> <p><b>Consideration of neighbourhood character</b></p> <p><b>Third party notice and review</b></p>
<p>This option is not within Moreland City Council's control as the permit trigger is within zone header provisions</p> <p>Single dwellings on lots over 300sqm are an example of residential development considered in this application pathway</p>	<p>This option is not within Moreland City Council's control as the permit trigger is within zone header provisions</p> <p>Secondary dwellings are an example of residential development considered in this application pathway</p>	<p>Optional application pathway proposed by Amendment C190</p> <p>Rescode standards which have been varied in Moreland's NRZ and GRZ continue to apply and become mandatory</p> <p>Simplifies current application pathway for development which does not vary Rescode, zone and car parking numeric standards</p>	<p>This is the current application pathway</p> <p>This pathway is unchanged by Amendment C190 for development which varies Rescode, zone or car parking standards</p>

Source: Council Part B submission page 36

It noted that Option 1 (no permit required) and Option 2 (a modified version of VicSmart) were not available options and Option 4 which focused on process improvements and relied on discretionary policy objectives would not achieve a compliant application. It identified that the VicSmart pathway was effectively the only statutory planning tool available to it to achieve its objectives. Mr Glossop agreed identifying that *“adoption of the VicSmart assessment pathway represents the best ‘tool’ available to Council to incentivise improved outcomes”*.

Council submitted that since its introduction in 2014 through Amendment VC114 the VicSmart provisions had continued to evolve and be added to. It considered that the use local VicSmart provisions were not constrained by Ministerial Directions or Planning Practice Notes. It submitted that the Amendment was consistent with the Practitioner’s Guide and was an appropriate candidate for the pathway.

Mr Glossop identified that VC114 when introduced only outlined a fairly limited range of eligible applications that were considered relatively ‘straightforward’. He gave evidence that since then several amendments have extended the range of applications that can be considered under VicSmart, including some classes of application that were not necessarily ‘straightforward’, for example *“buildings and works of up to \$500,000 in a commercial or Activity Centre Zone and \$1 million in an industrial zone can be somewhat complex applications”*.

Mr Glossop’s evidence included an assessment of the proposed application eligibility criteria, information requirements and decision guidelines against the Practitioner’s Guide, identifying that:

- that only neighbourhood character policy and certain Clause 55 matters would relevant considerations in deciding the application and that little ‘balancing’ of policy required and was similar to a ‘code assess’ model
- the proposed class provisions were similar to the current VicSmart pathway for single dwellings on a lot, where an application must be assessed against the objectives, standards and decision guidelines of Clause 54.02-1 and consideration of an existing or preferred character informed by relevant character policy or statements
- sites within the Heritage Overlay or that are subject to more complex built form requirements under a Design and Development Overlay were appropriately excluded from this application pathway
- in some respects, the issues that are to be considered are considerably simpler and more discrete than some other VicSmart classes which need to be assessed within the same timeframe
- there is no expectation that VicSmart applications should be limited to only the simplest of application classes. The degree of complexity for application requirements should be relative to the type of application requirements that might ordinarily be expected for an application of the same degree of complexity
- the application requirements, including SDAs, are relatively simple to prepare and that the level of complexity is comparable to other VicSmart applications
- the proposed requirements are relatively simple and can be determined as part of any design process.

Mr Glossop considered that the key determinative issues were whether the application requirements are too complex for the VicSmart assessment stream and whether this type of application should be exempt from third party notice and review rights. As discussed further in Chapter 5.3 he considered that two dwellings on a lot applications are not hard to assess and were very straight forward.

Council's Part A submission also detailed how the Amendment met the considerations set out in the Practitioner's Guide. It added that:

- the degree of degree of complexity for the application requirements is relative to the type of application requirements that might ordinarily be expected for this type of application
- the application requirements are relatively simple to prepare and similar in the level of complexity with comparable VicSmart applications (such as the extension of a single dwelling on a lot and secondary dwellings)
- the information requirements proposed by Amendment C190 are reasonable and easily understood
- there are no external referral authorities specified for the proposed class of application
- the proposed class of application cannot be exempted.

Council considered that the proposed requirements were simple and clear and *"empower the applicant by front loading process to put project time frames within their control"*.

The UDIA and HIA supported the use of VicSmart although expressed concerns over some of the entry conditions which they considered onerous and likely to limit the benefit of a faster assessment stream.

Mr Rowley was critical of the VicSmart pathway option selected by Council to achieve *"the worthy goal of facilitating favoured housing models"* by making the best of the limited tools available to it. He considered that the use of the VicSmart provisions would not provide a mechanism to achieve better outcomes and that this was not a case where something is better than nothing. His extensive submission to the Panel included a detailed examination of VicSmart's development and introduction and a view that the Amendment was not true to the original commitments of VicSmart to not assess complex permit applications and stretched it beyond its original intent.

Mr Rowley considered that while there was merit in fast-tracked or even as-of-right dual occupancy models these required customised rules and benchmarks designed for that purpose. Mr Rowley submitted that the ResCode standards were not meant to be used as qualifiers in VicSmart or imply compliance with them provides an assurance of acceptability. This aspect of Mr Rowley's submission is discussed in Chapter 7. He considered that the Amendment was a misuse of both the VicSmart and ResCode provisions and created:

... considerable risks for council, including increased likelihood of process errors and mistakes in assessment, heightened workloads, potential cost impacts to council from VCAT failure appeals, and potentially bad outcomes.

Mr Rowley further submitted that fundamentally complex and permissive applications requiring the consideration of qualitative objectives should not be placed through the VicSmart stream. While having some reservations about the recently introduced VicSmart provisions for secondary dwellings, by way of contrast to the proposed class, he considered

that they were designed to facilitate specific policy objectives and are more targeted and cautionary. Of the available options to streamline two dwellings on a lot applications available Mr Rowley preferred a local policy approach or implementing internal practices.

### **(iii) Discussion**

The Amendment plays in a challenging space of endeavouring to guarantee better outcomes and secure faster processing times by focussing on the elements of approval that impact on the quality of outcomes.

In considering whether the VicSmart pathway is appropriate for this class of application the Panel has considered the risks of its application as identified by submissions regarding complexity, built form outcomes and removal of third party notice and the steps taken by Council to ameliorate those potential impacts.

The Panel agrees that VicSmart is effectively the only statutory tool Council has to require applications to meet identified ResCode standards and achieve its livability and sustainability outcomes. While options exist to further streamline its assessment processes or introduce further policy, they will not achieve the same outcomes and change Council is seeking.

The application of VicSmart provisions have evolved as identified in the evidence of Mr Glossop. While it is appropriate to be mindful of the stated purposes of VicSmart when it was first introduced, this should not constrain its application now. The tool exists to provide for local classes of applications and its structure contemplates this wider use. The use of VicSmart is appropriate where the strategic work has been undertaken to support it and following the considerations of the Practitioner's Guide. In the Panel's view this has been done.

The Panel agrees with Mr Glossop's evidence that the strategic work underpinning the Amendment supports the position that a more straight forward process which complies with standards and achieves a higher level of sustainable and livable requirements can be facilitated through the VicSmart process. The Panel is comfortable that Council has undertaken a comprehensive analysis of two dwellings on a lot applications, including the levels of compliance with ResCode numeric standards and common issues arising from notice objections.

Both Council's submission and the evidence of Mr Glossop demonstrate that the development of the local provisions that the considerations set out in the Practitioner's Guide have been properly considered. The Panel agrees with that analysis and that the proposed application class:

- requires a relatively small number of discrete issues to be considered, with little to no policy balancing required
- will be capable of being received, reviewed and determined in 10 business days. This is discussed in more detail in Chapter 5.3
- does not rely on extensive conditions that require a detailed assessment of the application to decide the appropriate assessment pathway before the application is lodged. While there are a number of entry criteria, they are relative to the application class, clearly expressed, largely numerical and simply answered or satisfied. This is discussed further in Chapter 7.

- does not require external referrals and requires only limited internal referrals (discussed in Chapter 5.3)
- provides for information requirements that are relatively simple and decision requirements that are not too complex or arduous. This is discussed further in Chapters 5.3 and 7.
- cannot be exempted.

The issues of third party notice are discussed in Chapter 5.2.

While the entry criteria conditions were considered by some submitters including the HIA and UDIA to potentially limit the benefit of VicSmart by reducing eligible applications, the Panel considers it appropriate to balance the fast tracking opportunity with the wider consideration more complex applications require. While this may reduce the numbers of applications using the pathway the Panel considers that the entry requirements are reasonable. Council's case study analysis would suggest that the impact will be minimal. Applications that do not meet the requirements can still be managed through the standard pathway. This reasonably conservative and cautious step forward is considered the correct approach.

The issues of complexity is relevant to the nature of the application class. The proposed requirements, particularly with the changes proposed by Mr Glossop, are similar to, or less complex than, the standard application requirements but still require the assessment of neighbourhood character. The benefit for the applicant is that compliant applications have access to the quicker assessment stream.

Critical to the Panel's considerations, access to the VicSmart pathway is not access to a deemed to comply decision or guarantee of approval. It is not a tick a box assessment process and the Amendment provisions have not been designed this way. They do not short cut the full and proper consideration of relevant zone provisions or the qualitative provisions of ResCode and neighbourhood character as discussed in subsequent Chapters.

#### **(iv) Conclusions**

The Panel concludes:

- That the VicSmart assessment pathway can be used for applications for two dwellings on a lot
- The proposed application class is suitable to be included within the VicSmart assessment pathway.

## **5.2 Third party notice and review**

### **(i) The issue**

The issue is whether it is appropriate to remove third party notice and review provisions for this class of application.

### **(ii) Submissions and evidence**

The Amendment Explanatory Report identified that:

...to ensure that introducing the VicSmart 10-day process (which does not allow for advertising of permit applications to adjoining neighbours) would not result in an

inappropriate loss of third party input into planning permit decisions, an extensive analysis of objections to dual occupancy development was undertaken.

... third party rights of review are adding to the time taken to obtain a decision but not altering the outcome in any meaningful way.

By requiring full compliance with requirements upon qualification for this new application stream, Council can ensure these outcomes for the community without the time, expense and community angst associated with seeking improved compliance via objections to Council or expensive VCAT reviews when proposals don't meet these standards.

Council submitted that the Amendment *“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”*.

Referencing the Supreme Court decision of *Knox City Council v Tulcan Pty Ltd*, Council argued that for a permit to be approved that it needed to be shown to be ‘reasonably acceptable’, but not need to be ‘optimal, ideal or free of controversy’.<sup>6</sup> The decision states that *“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”*.

Council submitted that it had conducted extensive analysis of applications for two dwellings on a lot to ensure that the proposed VicSmart process would not result in any inappropriate loss of public input into planning permit decisions on the basis that:

- currently only a small proportion (11 per cent) of two dwelling proposals changes are being made to as a result of notice
- when applications for two dwellings on a lot are compliant with the numeric standards of ResCode that *“objectors invest time and emotional energy which isn’t adding value or having an influence”*
- *“existing state planning standards deal with amenity impacts and car parking, which are the issues of most concern to objectors”*
- there have only been 13 objector review applications to VCAT in the last 10 years for such applications (less than 1 per cent) and no Council NODs had been overturned. The VCAT appeals related to non-compliant ResCode standard or carparking proposals which would not run through the VicSmart process.

With reference to section 4(2)(i) of the Act Mr Glossop gave evidence that third party review rights are a ‘hallmark’ of the planning system in Victoria and there are generally extensive opportunities for third party involvement in permit applications in residential settings and the Practitioner’s Guide discourages the use of the VicSmart assessment pathway for matters which would ‘typically require third party notice’. Notwithstanding this he advised that *“section 52(4) of the Act allows for a planning scheme to exempt any class or classes of applications from all or any of the requirements relating to notice of an application, unless a restrictive covenant applies”*. It was his opinion that the planning system does not enshrine third party notice and review ‘as a right’. In support of this, he cited examples of types of applications exempt from third party notice and review in residential zones.

<sup>6</sup> Knox City Council v Tulcan Pty Ltd [2004] VSC 375

Mr Glossop's evidence considered that the planning system already caters for circumstances where planning applications for development in residential areas are exempt from notice and review, and referenced Action 28 of the Plan Melbourne Implementation Plan which proposes to review residential development provisions to "*streamline the planning approvals process for developments in locations identified for housing change*".<sup>7</sup> Within the context of the current era that contemplates systemic improvements in relation to how permits are assessed, he noted that Plan Melbourne is silent about the involvement of third parties in any streamlined process.

Mr Glossop identified that while the Better Outcomes Report concluded from a statistical perspective that there was little or no benefit from third party review for residential dwelling applications that meet Clause 55 ResCode standards, there were other benefits of the notice and review process that may lead to improvements in the application and decision outcome. He suggested that a thorough site inspection process may help to mitigate this but would not negate the issue entirely.

Mr Glossop while supporting the exemption from notice for the proposed class of application generally, considered that the VicSmart entry requirements should be reasonably strict to minimise particular built form and associated amenity impact. Mr Glossop recommended further changes to the entry requirements for two dwellings on a lot that he considered critical in determining whether removal of notice rights is appropriate. In particular he identified the sensitivity of impacts rear yards suggesting further criteria to manage rear yard development through lower scale development. These are discussed in more detail in Chapter 7.

The UDIA submitted that it was understandable that this pathway would only available to applications:

... if the numerical requirements of Clause 55 and others that have been introduced relating to cross over separation between garages and the like are met. If any one of them is not met, then the usual pathway would apply with notice. The benefit of the VicSmart application is that it is without public notice and a ten-day permit process timeframe applies. This is hugely beneficial to compliant applications and will be welcomed by the planning and development industry as an incentive to comply.

The HIA suggested that Council prepare community guidance information early on in the process to explain how the Amendment would work specifically in relation to notification and appeals.

Seven submitters<sup>8</sup> opposed the removal of third party notice and review provisions on the basis that it:

- substantially reduced the rights and voice of the people
- if there is no process for notice and objection then the quality of new constructions could drop
- the current process is a protective one and the fact that there are few objections is because there is a notification and objection process
- residents will not know that a development is proposed and will not be able to review plans for a neighbouring property

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<sup>7</sup> Plan Melbourne 2017-2050 Implementation Plan, p. 15.

<sup>8</sup> Submissions 5, 6, 9 (Terrain Consulting Group), 10, 12, 13, 16.

- tens of thousands of Moreland residents could be affected.

Ms Toscas representing Terrain Consulting Pty Ltd submitted that *“with 40 per cent of Moreland’s application’s being two dwelling developments, a large portion of Council applications for medium density would not require public notice, which revokes the rights of many residents who reside within the City of Moreland”*.

Ms Attwater submitted that a *“system of checks and balances is fundamental to improved governance and public transparency”* and that *“Clause 71.02-3 Integrated Decision Making can only be truly fulfilled with meaningful community input in decision making processes – in other words, public notice and third party appeal rights”*. Ms Attwater considered that the removal of notice and review rights was inconsistent with the Human Rights Charter by restricting involvement in public life. Economic recovery considerations should not cancel out the consideration of social impacts or impinge on human rights.

Ms Stanley submitted that the group objected to any system change that takes away a resident’s right to be notified, object, or appeal. While supporting the requirements for Clause 55, ESD and LHA Housing certification requirements, she submitted that this should not be at the expense of third party rights.

Mr Maclellan, also on behalf of Brunswick Residents Network, submitted at the Hearing that he did not support the loss of notice and appeal provisions, and observed that this was a growing trend in the planning process. He stated that a *“trade off culture doesn’t sit well with residents”* and that it takes away clarity and creates confusion for the community. Mr Maclellan argued that residents want to contribute to planning processes and decisions, and that they could bring valuable local knowledge and improves development outcomes.

The Fawkner Resident’s Association questioned how disallowing objections could benefit Council or the community.

Mr Rowley submitted that using VicSmart for complex applications that have long been subject to notice and appeal rights would set an undesirable precedent. The proposed approach undervalues the contribution that *“such rights make to the transparency and quality of decision-making”*. Mr Rowley argued that third party notice improves statutory planning decision making, and that Council’s argument that objections rarely result in changes or win appeals to VCAT does not acknowledge the *“silent and pervasive bettering effect”* that notice has on applications.

Mr Rowley further added that:

If the planning scheme is to switch off either notice and appeal or permit requirements for certain developments, more conservative qualifying rules need to be selected. The very permissive side setback standards and overall height requirements, in particular, are far too lax to be used as contemplated for this purpose.

In response to submissions relating to human rights, Council advised that it had undertaken a detailed human rights assessment, which was provided to the Panel. The assessment concluded that public notice and appeal rights for planning permit applications was 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* and Council gave the opinion that the potential for exemption of third party notice and review rights is a well established part of the Victorian land use planning systems and does not constitute a breach of the Victorian Charter of Human Rights.

In closing, Council submitted that it wanted to engage with the community on more significant applications including complex or larger developments where the potential impacts are greater and *“where everyone’s efforts are best directed”*.

### **(iii) Discussion**

The Panel considers that the loss of notice and review rights is a key threshold for whether the Amendment is appropriate. The notice and review provisions of the Act are a key distinguishing feature of Victoria’s planning system. The Practitioner’s Guide suggests that proposed VicSmart classes should not involve matters that would typically require third party notice, although the Guide provides no guidance on the considerations, nor is there an applicable planning practice note. Accordingly, a decision to introduce a new class needs to carefully consider and weigh up the implications of removing notice and review provisions.

Section 52(1)(d) of the Act provides for the responsible authority to require notice to be given of an application to any person if it considers the grant of a permit may cause material detriment to them. The Act requires the responsible authority to form a view about whether material detriment may be caused to a person, however it has generally become standard practice to give notice for applications such as medium density housing proposals. The question for the Panel is: if such applications typically require notice is this class intrinsically unsuitable for VicSmart?

The Panel has examined the proposal against the considerations in the Practitioner’s Guide to determine whether the proposed control provides a positive planning outcome overall, and secondly whether the loss of notice and review provisions for this class of application will result in poor planning, built form and amenity outcomes. In this regard the Panel considers that the entry provisions should be tight to minimise poor planning outcomes including the loss of amenity and to ensure that applications which do not comply with restricted provisions are assessed through the regular pathway.

The Better Outcomes Report which informs the proposal states that:

... changing the process assists the community by not setting up false expectations. The purpose of engagement is to achieve better outcomes. Under the current process, consultation on applications for two dwellings on a lot is not changing the outcome. The proposed process removes steps which don’t add value for any sector of the community.

The Panel observes that Council’s intent is to apply the VicSmart process to a class of application that by definition addresses the concerns of residents, as has been identified through a detailed analysis of past case study applications. Council submitted that the number of objections for such applications is generally low, and results in minimal changes to applications. For the most part resident issues (overshadowing and privacy for example) are dealt with by compliance with numeric standards. For this reason, only applications (Council’s emphasis) that meet the set entry criteria will be eligible for assessment under the VicSmart pathway. As noted by the UDIA, any non-compliant applications will be assessed in the usual manner with third party notice rights intact.

The Panel considers that given the relatively low number of objections to applications and the fact that notification process is not the determining factor influencing application assessment timeframes, if it were possible to introduce a VicSmart process while retaining

notice and review this would be the preferred response. Unfortunately, that option is not currently available.

The Panel is generally comfortable with removal of third party provisions on the proviso that the conditions of entry are stringent enough and decision guidelines are consistent with policy and zone controls and that development outcomes will not result in unreasonable outcomes for adjacent residents. Mr Glossop provided specific recommendations relating to definition of the class of application and the suitability of proposed eligibility criteria as well as the application and decision making requirements. These are discussed in more detail in Chapter 7 however, the Panel is confident that with these changes the loss of notice and review rights will not compromise the planning outcomes sought.

While Council is effectively breaking new ground with the Amendment and broader use of the VicSmart stream, it is clearly anticipated that it is a tool available for use in the manner proposed. As discussed in Chapter 6 while some submissions considered the entry criteria and application requirements onerous, these requirements have been included to minimise potential character and livability impacts, and in the context of no notice provisions and strategic justification they are important.

The Panel considers that Council's submissions were somewhat dismissive of the value of third party notice and review and agrees with Mr Glossop and Mr Rowley that the statistical analysis of outcomes does not accurately reflect the value to improved development proposals and outcomes. Mr Glossop suggested that this could in some way be compensated by ensuring that a site inspection be undertaken through the assessment process. While the Panel considers this an essential step in a fast track assessment process, it is important to acknowledge that this is not a direct substitute for public notice and review which may bring with it localised knowledge of the site and context.

The Panel cautions against a view that efforts of community engagement are best focused on more complex or larger developments, where according to Council the potential impacts are greater. Localised impacts of development can be significant, and this is not considered reasonable justification for removal of notice provisions for smaller scale development. The Panel acknowledges the contribution from and value of third party notice and review generally and that there is a chance that there will be localised negative impacts however, this is also a possible outcome of the regular merit based assessment pathway.

Noting that Council anticipates approximately 100 eligible applications each year, the Panel considers that the majority of applications will still be assessed through the merit based assessment pathway, and hence the concerns raised by some submitters that the removal of notice rights will apply to the majority of two dwellings on a lot and affect tens of thousands of residents is unlikely. The Panel considers that the broader net community benefits identified in Chapter 3 outweigh the potential for some limited localised impact.

The Panel observes that State planning policy and guidelines are silent on involvement of third parties in any streamlined process. As removal of third party rights is a key issue for this Amendment and is likely to be an issue for other planning authorities and communities considering streamlined process, further State guidance on how to assess the suitability for exemption from notice would assist authorities and communities to design acceptable outcomes.

The Panel considers that Council has met its obligations under the Human Rights Charter.

**(iv) Conclusion**

The Panel concludes that:

- The removal of third part notice and review provisions is, on balance, appropriate for two dwellings on a lot applications, on the proviso that the conditions of entry to the VicSmart stream are stringent enough and the decision guidelines respond to particular policy and zone controls.

**5.3 Administration and resourcing****(i) The issue**

The issue is:

- whether Council can adequately administer the proposed VicSmart class within the prescribed timeframes.

**(ii) Submissions and evidence**

The submissions of Mr Rowley and Ms Toscas raised a number of concerns about Council's capacity to consider applications within a 10 day timeframe or the related decision making outcomes. The areas of process concern included:

- reliance on front counter staff and assessment by junior planning staff
- sites will not be inspected
- neighbourhood character will not be properly addressed
- risk of process error and corner cutting to meet timeframes
- exposure of Council to risk including failure to make decision appeals and associated costs or cancellation requests if applications are dealt through this pathway in error.

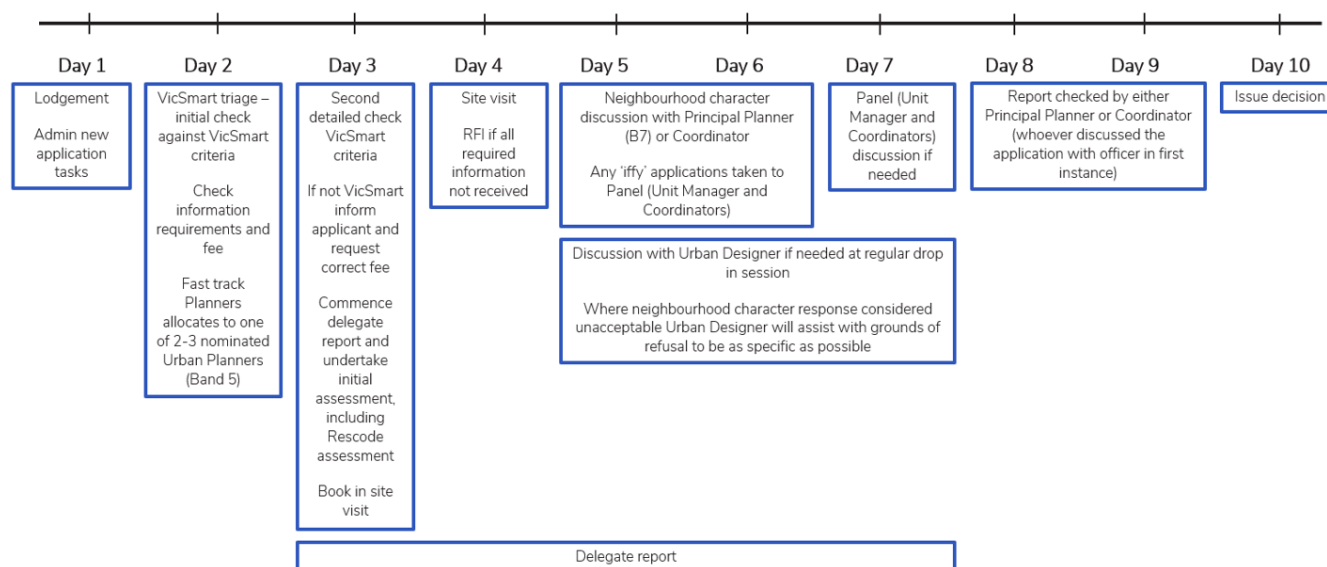
Mr Rowley observed that the Amendment added complexity to the administration of the scheme without noticeably assisting assessment. He considered that having 29 entry criteria would impact on timely and reliable assessment.

Council provided an overview of what it identified as a well resourced Urban Planning Unit that was well versed in considering medium density housing application. This included a fast track team of officers reporting to a senior planner that assess VicSmart applications. It also set out an analysis of its assessment of two dwellings on a lot which revealed:

- requests further information issued for 94 per cent of two dwellings on a lot applications
- 37 per cent of two dwellings on a lot applications where further information is requested, request an extension of time to the standard 60 days period to submit the further information
- the average number of days to assess two dwellings on a lot applications is 206 gross days (148 business days) and 61 statutory days. The difference is 142 gross days (87 business days) on average to design an acceptable proposal within the application process
- processing times are on par with other Councils but the gross days for what ought to be a simple two dwellings on a lot application is taking 66 per cent longer than the average application due to 'design within the application process' by permit applicants.

Council's Part B submission outlined a process workflow it had prepared (Figure 5) to establish that it could realistically manage the assessment of applications within the 10 day timeframe *"without any loss in the quality and robustness of the assessment"*. This includes time for checking, initial assessment and site inspection for all applications, requests for further information, neighbourhood character considerations including inputs from its urban designer and senior officer review. Advice sought from the urban designer would include potential grounds of refusal if the development response was inappropriate.

**Figure 5 VicSmart Two Dwellings on a Lot workflow**



Source: Council's Part B submission page 15

Council submitted that its processes are fully digitised with applications lodged electronically and managed via an electronic workflow and assessed using a delegate report template and tools such as Trapeze to measure plans, turning circles and overshadowing. It would also extend its existing pre-application meeting service to VicSmart applicants to advise of information requirements and preliminary advice and provide relevant checklists.

Council identified in response to the Practitioner's Guide suggestion that where internal comment is required, it should involve no more than one or two basic matters. Council advised that the standard permit pathway would see such applications (outside of a Heritage Overlay) referred to:

- Environmental Sustainable Development Referrals
- Capital Works
- its arborist.

Council indicated that SDAs could be certified by Council's Environmental Unit before lodgement and that the team was set up to do this quickly. It said the pre-certification of LHAs meant that an assessment of this element was not required by the assessing planner. It also identified that the application entry criteria meant few or no internal referrals were required or that standard conditions could be applied.

Council submitted that referrals to its arborist would be limited given the entry criteria that street trees are not removed but could be turned around within 10 days. Council's existing practice is that applications for up to three dwellings are not currently referred to its Development Engineer if:

- standards B14 (Access), B15 (Parking location) and B16 (Parking provision) have been satisfied
- there is no construction over an easement
- no street trees are threatened (separation of a crossover from a street tree should be 3 metres)
- no crossover is within 1 metre of a power pole north or stay cable.

Council identified that this workflow shifted the focus on the applicant helping themselves, utilising guidance, including Council's free pre-application service as necessary and would improve the quality of medium density development applications at lodgement more broadly.

While Mr Glossop did not give evidence on Council's administration or assessment of applications, he observed that the presence of a target in itself is sufficient to drive a different approach and outcome. He considered that *"the systemic 'benefits' that the VicSmart process delivers are not trivial or insignificant and provide real opportunities for the Council to deliver a more streamlined approvals process"*. At the Hearing he stated that two dwellings on a lot applications were not hard to assess and that *"they were very straight forward and 'bread and butter' for Council's like Moreland"*.

### **(iii) Discussion**

The capacity for Council to properly administer and resource the assessment of two dwellings on a lot proposals is a significant consideration as it impacts on the time available to provide fulsome assessments and considered decision making. That the proposed class should be capable of being received, reviewed and determined in 10 business days in almost all cases is identified in the Practitioner's Guide as an important consideration.

Notwithstanding the reasonably expressed concerns by Mr Rowley and other submitters about the possibilities for errors in assessment and decision making, which are not restricted to two dwelling applications, the Panel is persuaded that Council has the necessary resources and processes in place to be able to properly assess this class of application within the designated timeframes. It is clear that Council has examined its workflows and assessed its capacity to deliver a fast track approach for such applications in great detail and understands the important steps required for careful assessment.

Council has structured its permit assessment team with a focus on managing this process. It already is experienced in assessing medium density housing applications and VicSmart proposals. The Panel is confident that a range of skilled planning officers will be involved across the assessment process and that proper consideration will be given to neighbourhood character, ResCode standards and objectives. It is not persuaded that the VicSmart process will result in the cutting of corners, poorer decisions or avoiding site inspections compared to the existing standard practice. The Panel notes that Council's proposed workflow enables non-compliant applications to be identified by Day 3 although Council was unable to advise on the process for advising applications that such applications would move to the standard assessment process. The Panel suggests that Council should consider within its broader notification and promotion of the new VicSmart process how such applications will be managed.

The Panel considers that the potential for failure to decide applications for this class of application to VCAT to be low, however it agrees that cancellation applications could occur, particularly in the early introductory phase of applications moving through this pathway. This is likely to be accompanied, as suggested by Mr Rowley, with calls from adjoining owners about what is occurring next door to them or querying compliance with permit conditions. Responding to such enquiries can be resource intensive and reinforces the Panel's recommendations for further communication with the community about the Amendment and VicSmart process and comments about ongoing monitoring in Chapter 6.5. Council may also need to consider an active enforcement program to ensure developments approved under this stream are compliant to provide a level of community confidence in the process.

**(iv) Conclusion**

The Panel concludes that Council can adequately administer the proposed VicSmart class within the prescribed timeframes. It also notes that the Amendment will reduce resource demands from two dwellings on a lot applications and allow them to be focused on other more complex applications.

## 6 Other issues

### 6.1 Neighbourhood character

#### (i) The issue

The issue is whether neighbourhood character be adequately assessed through the proposed VicSmart process.

#### (ii) Submissions

Council submitted that neighbourhood character is raised as a ground for objection to 20 per cent of applications for two dwellings on a lot, resulting in changes to only 2 per cent of applications. The major issue raised by objectors related to two storey development in a predominantly single storey area. Council submitted that VCAT has generally found that *“that two storey development in the Neighbourhood and General Residential zones is a reasonable development outcome”* and that *“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”*.

The letter of authorisation from DELWP required Council to review the Amendment in light of the new Planning Practice Notes 90 and 91. Council advised the Panel that addressing these practice notes was not a condition of authorisation and that the letter of authorisation did not imply any inconsistency.

The exhibited Explanatory Report detailed Council’s response to Planning Practice Notes 90 and 91 stating that:

Planning Practice Notes 90 and 91 provide guidance about how to plan for housing growth and protect neighbourhood character to ensure a balanced approach to managing residential development in planning schemes. Planning Practice Notes 91 identifies that all residential zones support and allow increased housing, unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist.

The Amendment does not alter strategic directions for neighbourhood character or neighbourhood character objectives. The criteria proposed for a faster, simpler and more consistent processing of two dwelling on a lot applications does not alter the requirements set out in existing zones and Clause 55.02 for the consideration of neighbourhood character. The proposed provisions include decision guidelines to consider any relevant neighbourhood character objective, policy or statement set out in the Moreland Planning Scheme, as well as the neighbourhood and site description and the design response.

In its Part B submission, Council provided a copy of its Planning Scheme Review 2018 which concluded that:

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.

The Review included as a high priority action to *“Review the Neighbourhood Character Policy to align it with the Residential Zones”*.

Council submitted that the assessment of neighbourhood character through the proposed VicSmart process would be the same as the usual merit assess pathway and detailed how this would be managed:

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.

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.

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.

Council submitted that only complete and compliant applications will be assessed under the proposed VicSmart pathway, so all of the information required for assessment must be provided or the standard assessment pathway will apply.

Where the neighbourhood character response of a permit application is considered unacceptable, Council advised that an Urban Designer would assist in drafting the grounds of refusal.

Six submissions<sup>9</sup> objected to or raised queries about how the Amendment will alter consideration of neighbourhood character. Issues related to:

- the proposed Amendment does not explain how neighbourhood character will be assessed
- how will the assessment of neighbourhood character will be faster, simpler and more consistent than the current process of assessing dwellings against Clause 55.02 of the Moreland Planning Scheme
- concern about the lack of neighbourhood character objectives in the Moreland Planning Scheme, and it would be logical for it to be a priority to create these first
- the potential to create dull and uninteresting outcomes which met the numeric Clause 55 standards.

Ms Toscas submitted that:

...there are at least three non-numerical ResCode standards (Standards BY – Neighbourhood Character, B5 – Integration with the Street and B31 – Design Detail) which specifically request within the decision guidelines that the Responsible Authority must assess an application against neighbourhood character objectives, policies or statements within the Scheme for these standards. The proposed VicSmart process ignores this aspect of ResCode and it is uncertain whether these Standards will be considered when reviewing the decision guideline regarding neighbourhood character.

Ms Attwater submitted that the planning scheme review did not identify the need for this Amendment, but did identify the need for neighbourhood character work.

Ms Stanley submitted that *“Moreland must quickly investigate doing work to justify inserting neighbourhood character objectives into the Neighbourhood Residential Zone.”*

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<sup>9</sup> Submissions 9, 10, 11, 12, 14 and 16

While generally supportive of the intention of the Amendment, submission 14 was concerned that the details relating to how neighbourhood character and amenity impacts will be assessed were not adequately addressed, specifically objectives of Clause 22.

Mr Rowley submitted that the proposed decision guidelines as exhibited were ‘manifestly inadequate’, however he added that the changes proposed by Mr Glossop *“reintroducing the reference to the design objectives and decision guidelines of clause 55 resolve much of my criticism”*. Mr Rowley’s concerns relating to assessment against the numeric and qualitative elements of ResCode are addressed later in this report.

Council in closing submitted that for *“neighbourhood character, we agree with Mr Rowley that it can’t be reduced to a quantifiable assessment. Neighbourhood Character will continue to be assessed in the way that it is assessed now”*. It clarified that any eligible application would need to be fully assessed against numerical and qualitative standards of Clause 55, as well as the neighbourhood character local policy (Clause 22.01).

### **(iii) Discussion**

The Panel considers that neighbourhood character can be adequately assessed through the proposed VicSmart process. The Panel accepts Council’s submission that there would be no change to the assessment requirements of neighbourhood character under the proposed VicSmart pathway compared with the regular merit based pathway. It is unlikely therefore that proposals that run through the VicSmart stream should result in poorer built form and character outcomes. Experienced planning officers with urban design advice are well positioned to consider and assess neighbourhood character. Council still maintain the ability to refuse or require the amendment of applications that are inconsistent with existing or preferred character.

The Panel notes that applications in the Heritage Overlay will not be eligible for assessment under the proposed VicSmart pathway.

In relation to submitter concerns about a lack of up to date neighbourhood character policy and objectives, and the high priority action in the Planning Scheme Review, the Panel considers that further work to review neighbourhood character and align with residential zones work is critical to ensure that the planning scheme is current and will guide good decisions in respect of neighbourhood character.

The recently introduced Planning Practice Notes 90 and 91 that guide Planning for Housing and application of the Residential Zones, including consideration of neighbourhood character, will effectively guide Council’s review of its housing policy and framework plan.

### **(iv) Conclusion**

The Panel concludes that neighbourhood character can be adequately assessed through the proposed VicSmart process.

## **6.2 Livable Design Guidelines**

### **(i) The issue**

The issue is whether it is appropriate to require a Silver Level of performance under the Livable Housing Guidelines as an entry criterion for a VicSmart two dwellings on a lot application.

## (ii) Submissions

Council submitted that it wanted to improve the quality of two dwellings on a lot developments, and that the proposed Amendment sought to incentivise better outcomes by value adding requirements to lift the quality from acceptable to better. One of the value-add components is improved accessibility, guaranteed through the requirement for an eligible application to include a certified Silver Level of performance accessibility assessment.

By way of background, Council submitted that:

- the MDH Review included an action to improve design outcomes for people with limited mobility
- the case study analysis undertaken by Council showed that the garden area requirement had dramatically reduced reverse living developments, and that accessibility requirements within local policy could be applied to the majority of applications without significant cost and design implications
- while almost all dwellings assessed following introduction of the garden area requirement have a ground level living room, kitchen and toilet and significant proportion also having a bedroom and bathroom at ground floor level, they are not meeting the specific dimension requirements which would enable a person with altered mobility to access the dwellings.

Council submitted that local planning policy supported this initiative, but there was no implementation tool in the planning scheme. Specifically, the Municipal Strategic Statement (clause 21.03-3) included an objective to *“increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community”* and associated strategies to improve the accessibility of dwellings.

Council advised that it had investigated the cost impost of this initiative and had received advice that the construction cost of inclusion of Silver Level LHA requirements in townhouse typologies is \$1,839 per dwelling.

Ms Toscas questioned why Council was pursuing this initiative as it is not a focal aspect of the Moreland Planning Scheme. She submitted that it *“is questionable why a livable housing design guideline assessment is to be prepared by a certified assessor when the Livable Housing Australia Design Guidelines are not an incorporated document within the Moreland Planning Scheme.”*

The HIA submitted that the requirement was onerous and was not appropriate or cost effective. It advocated for voluntary not mandatory use of the guidelines and introduction of other mechanisms to incentivise uptake by the building industry. It further suggested that it would be inappropriate for Council to proceed with introducing these guidelines while there is a parallel process underway through the Australian Building Codes Board’s work to potentially regulate accessible housing through the National Construction Code 2022.

The Brunswick Residents Network was concerned that at building permit stage a builder could appeal to the Victorian Building Authority that the accessibility features are not required. The Fawkner Residents Association was in absolute support for *“housing to be accessible for the mobility challenged and seniors as their needs are being completely ignored by developers and the government’s zoning standards.”*

In closing Council advised the Panel that ultimately livable housing requirements may or may not be introduced nationally, and that regardless, as the Amendment is proposing to introduce the lowest compliance requirements they would ultimately be the same or less onerous than any requirements introduced through the National Construction Code. In response to HIA's concerns that the requirement for accessibility certification was onerous, Council submitted that this was necessary to enable assessment within the 10 day timeframe, and this was consistent with the requirements for other VicSmart applications, such as under the Special Building Overlay. The cost of certification is in the order of \$1,200 for two dwellings on a lot developments, which is considered to be reasonable in the context of fees for VicSmart applications being approximately \$1,000 cheaper than standard application costs.

### **(iii) Discussion**

The Panel accepts that the policy commitment to improving accessibility of dwellings is clear.

The Panel considers that it is appropriate to require a Silver Level of performance for accessibility under the Livable Housing Guidelines as a requirement of entry for a VicSmart two dwellings on a lot application, on the basis that:

- the MDH Review included an action to improve design outcomes for people with limited mobility
- it utilises the VicSmart process to secure better outcomes for residents
- it sends a clear message to developers of the expectations of quality and compliance that will be considered under this pathway.

The Panel applauds this initiative and considers that it will improve accessibility outcomes for new dwellings and will differentiate applications seeking assessment through the VicSmart process with a commitment to a better outcome.

Council will need to continue to refine policy and controls in this area as it becomes clear how accessibility requirements will be managed through the building code.

### **(iv) Conclusion**

The Panel concludes that the proposed Livable Housing Guideline silver standard is a reasonable and appropriate entry criteria for a VicSmart two dwellings on a lot application.

## **6.3 Sustainable Design Assessment**

### **(i) The issue**

The issue is whether it is appropriate to require a certified SDA, and meet the minimum BESS score of 50 per cent and mandatory score paths for water, energy, storm water and Indoor Environment Quality as a VicSmart class entry criteria.

### **(ii) Submissions**

Council submitted that Clause 22.08 required that development should achieve best practice ESD. To demonstrate this a SDA is required using BESS or another approved tool. The BESS is a points-based free online tool and is a reference document in the Moreland Planning Scheme.

The Amendment proposes to include a requirement for a certified SDA, specifically a minimum BESS score of 50 per cent with mandatory minimum scores as a condition of entry to the VicSmart pathway. An overall BESS score of 50 per cent or higher represents best practice.

Council submitted that the provisions of this Amendment effectively codify the ESD requirements of the planning scheme, and pre-certification is required to enable the application to be assessed within the 10 day VicSmart timeframe. It considered that process of pre-certification of SDA's is largely the same as that in place 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.

Ms Toscas submitted that it was unclear whether the SDA would be referred to Council's ESD department for assessment or *"if the Council planner purely review the SDA report and decide whether it is satisfactory"*.

HIA submitted that given the evolving matters within the building regulatory systems relating to ESD and the potential overlap between planning and building systems that it did not support the proposed ESD provisions in any capacity. It was not considered appropriate for councils to exceed or pre-empt building code and building regulation matters that relate to ESD, and *"such an approach is contrary to the State Government's policy position regarding the delineation of planning and building systems and that building regulation is the primary and most efficient means for addressing the environmental performance of buildings"*. The proposal was also seen as inconsistent with the Australian Building Codes Board's Inter Government Agreement committing to limiting state and local government variations from the National Construction Code.

HIA contended that matters of energy efficiency should be dealt with through the building permit process, which applies to all new dwellings, and that *"overall design and siting considerations are already adequately considered in planning, particularly when Clause 54, 55 or 56 are triggered"*.

Mr Rowley submitted that the proposal is problematic because Council's sustainability policy does not set simple benchmarks but requires qualitative assessment. It was Mr Rowley's view *"that the ability to properly assess sustainability has been fatally compromised by the decision guidelines for the application, which prevent consideration of council's sustainable design policy"*.

Council clarified at the Hearing that to achieve the 10 day assessment timeframe the Council planner would review an SDA that has been pre-certified by Council's ESD unit.

### **(iii) Discussion**

The Panel observes that proposed VicSmart process does not simplify the BESS assessment process but requires the assessment to be completed prior to lodging the application, essentially front loading the process. Council has submitted that the change in process will incentivise applicants to make complete applications that can be assessed rapidly. It also proposed to put in place internal processes to ensure that certifications could be issued quickly for VicSmart eligible proposals.

In relation to any conflict or overlap with building regulations, the Panel notes that the ESD policy, objectives and information requirements are already well established in the Moreland Planning Scheme. As with the livability guidelines, Council will need to continue to refine policy and controls in this area as ESD requirements evolve through the building code.

#### **(iv) Conclusions**

Consistent with Council's approach to accessibility, the Panel concludes that it is appropriate to include a pre-certified SDA as an entry requirement to the VicSmart two dwellings on a lot class of application, on the basis that:

- it incentivises complete applications and will provide for rapid assessment
- the requirement is consistent with policy and provides Council with a tool for implementation
- it utilises the VicSmart process to secure better outcomes for residents
- it sends a clear message to developers of the expectations of quality and compliance that will be considered under this pathway.

### **6.4 Crossover and garage requirements**

#### **(i) The issue**

The issue is whether the proposed crossover and garage requirements VicSmart entry requirements are too restrictive.

#### **(ii) Submissions and evidence**

Council submitted that as a criteria for entry to the VicSmart pathway proposals must meet the following requirements for new crossovers and garages:

- no street trees are removed
- minimum clearance of 3 metres must be provided between the trunk of any street tree and any part of a vehicle crossing, inclusive of the radial or splay
- crossovers maximum 3 metres in width
- if more than one vehicle crossover is proposed, the crossovers must be a minimum of 8 metres apart, measured at the front boundary
- if both dwellings front the street, the garages must be a minimum of 8 metres apart
- any garage which faces the street must be no more than 4.5 metres wide
- any garage which faces the street must be setback from the street a minimum of 500mm more than the dwelling.

Council submitted that this was an enabling provision based on analysis of case studies and VCAT cases, specifically that:

- historically Council was refusing approximately 70 per cent of 'side by side' dual occupancies based on the Car and Bike Parking and Vehicle Access local policy at Clause 22.03 which limits the number of vehicle crossings to one per site frontage, other than on corner lots (most of these decisions were overturned at VCAT)
- analysis of VCAT decisions showed that there are many benefits to the side by side layout of two dwellings on a lot typology
- in drafting the Amendment, a decision needed to be made whether to exclude side by sides in accordance with clause 22.03 or whether to enable side by side

typologies in accordance with VCAT and recent Moreland City Council decision making. The enabling approach was chosen

- the proposal is consistent with the proposed revision to clause 22.03 forming part of Planning Policy Framework Translation (Moreland Planning Scheme Amendment C200) which will ensure the VicSmart provision when introduced will not be 'out of sync' with policy
- the 'no street tree' removal criteria is consistent with Council's Urban Forest Strategy and Urban Heat Island Effect Action Plan and is designed to minimise the need for internal referrals.

Mr Glossop's evidence described the requirements and intent of the initiative:

Numerical standards relating to the number of car parking spaces must be met. In addition, requirements have been included to reduce the dominance of crossovers and car parking from the street. These requirements are consistent with Council's case study analysis and relevant VCAT decisions and are particularly applicable to side by side dual occupancies. These requirements ensure the retention of street trees, adequate space for front garden landscaping and retention of on street car parking spaces.

At the Hearing Mr Glossop considered the garage and crossover requirements for eligibility would be the major determinant of whether applications are eligible for assessment under this pathway.

Submission 3 supported the proposal on the basis that:

Many home owners want to have a sense of identity for the homes with the property addressing the street. The policy that was introduced a few years ago discouraging two crossovers on a site has created a lot of uncertainty unnecessary for applicants where their desire was to have side by side dwellings. This proposal is an exciting opportunity to allow home owners a sense of relief and certainty when it comes to developing their sites in a side-by-side development.

The HIA submitted that a number of the provisions relating to new crossovers and garage requirements were particularly prescriptive and would discourage use of the assessment pathway. It encouraged Council to reconsider amending the provisions to provide greater flexibility and site specific design.

In response to submissions concerned about the control being too prescriptive, Council submitted that case study analysis of applications showed that only six per cent of applications would not be able to meet the proposed requirements, and that two thirds of these proposals included other variances from ResCode standards and car parking requirements that would disqualify these applications from the VicSmart stream. Further, it identified that:

The proposed metrics are based on analysis of two dwelling on a lot applications where Council has supported two driveway configurations. Although their explicit expression in the planning scheme is new, it is reflective of business as usual in Council's exercise of discretion.

### **(iii) Discussion**

The Panel accepts the analysis and Council's rationale for including the crossover and garage requirements as a condition of entry to the VicSmart assessment pathway.

Council is promoting this as an enabling clause, that is more flexible than the existing Car and Bike Parking and Vehicle Access policy at Clause 22.03-3 which limits the number of vehicle crossings to one per site frontage, other than on corner lots. Conversely the HIA argues that the provisions are restrictive and should allow for greater flexibility. The Panel agrees with both parties that the proposed provisions are both enabling relative to current policy and restrictive through the introduction of specific metrics and requirements such as no tree removal.

The Panel concludes that this criteria for entry to the VicSmart stream is likely to reduce the number of eligible applications. The Panel considers that this is appropriate in the circumstances and that applications that intend to vary from the proposed provisions should be assessed through the regular merit based assessment pathway to ensure that any variations make a positive contribution to the streetscape and safety.

The Panel agrees with Mr Glossop, and considers it appropriate, that this will be a key determining factor in whether an application is eligible for assessment under the VicSmart pathway.

Council advised that the proposed control is not consistent with current policy however, the Panel notes that assessment under VicSmart switches off local policy considerations other than those specified in the local VicSmart controls. The Panel is not overly concerned with this inconsistency given the way in which the policy has generally been applied and considered by VCAT, the ability to still consider neighbourhood character, context and built form responses in the assessment of VicSmart eligible proposals and Council's proposed review of Clause 22.03-3.

#### **(iv) Conclusion**

The Panel concludes that the proposed crossover and garage requirements VicSmart entry requirements are reasonable and appropriate.

## **6.5 Monitoring and assessment**

### **(i) The issue**

The issue is whether further monitoring and review of the success of the initiative should be undertaken by Council.

### **(ii) Submissions and evidence**

Council submitted that regular monitoring and review of the Moreland Planning Scheme is required by the Act and is undertaken accordingly.

In response to submissions and evidence, Council submitted that through the next Planning Scheme Review it could analyse two dwellings on a lot applications through the VicSmart and merits pathways to identify whether the outcomes are different, and the proportion of two versus three dwellings on a lot applications.

Council submitted that while the provisions of the Amendment are specifically tailored to the circumstances faced by Moreland, it presents an excellent and rare opportunity to test an initiative aligned with Plan Melbourne and the objectives of the Better Regulation Victoria's Planning and Building Approvals Process Review.

Mr Glossop's evidence considered that the effect of the controls could be reviewed through Council's Planning Scheme Review process and the settings adjusted if required to ensure they are delivering on expectations. He emphasised that planning schemes are dynamic and need to be reviewed, and if delivering adverse outcomes then it could be corrected.

The HIA considered it good planning practice that the implementation and administration of the Amendment be monitored and audited for the first two years. It submitted that this 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.

Mr Rowley submitted that if there are bad outcomes as a result of the Amendment then monitoring and review of the proposal was largely irrelevant. He suggested that if the Panel were concerned about monitoring and review then perhaps it should be concerned about the proposal.

### **(iii) Discussion**

The Panel considers that monitoring and review is critical to understanding the outcomes of implementation of the Amendment, particularly a comparative analysis of applications approved through the VicSmart and merit based pathways and any change to the proportion of two versus three dwellings on a lot.

It is also important to review the broader community response to the impacts of the Amendment as a result of removal of notice and review provisions. It also appears that there is no ability to apply a sunset provision to the local VicSmart provisions so as to 'force' a specific review in the short term, while including a further work provision would not add significantly to the existing planning scheme review requirements.

The Panel is satisfied that with Council's proposal to undertake monitoring and review through the Planning Scheme Review process. The need for monitoring is not identified by the Panel so as to minimise any unintended consequences or doubts it has about the proposal but rather to reflect sound practice for what is a fairly significant planning step. It does however reinforce the Panel's view that Council's first step down the VicSmart pathway should be a relatively cautious one. Further review may present opportunities to further improve or simply the control.

### **(iv) Conclusion**

The Panel concludes that further monitoring and review of its VicSmart initiative should be undertaken by Council as part of its Planning Scheme Review process.

## 7 Form and content of the Amendment

### 7.1 VicSmart class entry and assessment criteria

#### (i) The issue

The issue is whether the proposed local VicSmart assessment pathway requirements appropriately utilise Clause 55 provisions and provide for the consideration of neighbourhood character and amenity impacts.

#### (ii) Submissions and evidence

Council's submission reinforced that the proposed entry requirements for the proposed VicSmart class were just that – entry requirements and not deemed to comply standards. It submitted that eligible applications would need to meet the numeric Clause 55 standards including external amenity impacts (particularly B17, B19, B21, B22). Applications that did not or sought to change standards would be processed within the standard planning application process with public notice and VCAT review rights available. It pointed out that neighbourhood character and associated policy would continue to be assessed fully as they would be in the standard pathway.

Council considered the proposed entry criteria addressed the most common issues for applications and referred to the case studies in the Better Outcomes Report and its virtual tour of proposals across the suburbs of Moreland.<sup>10</sup> Council submitted that its case studies indicated that dual occupancy development which 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.”* Its case study analysis of two dwelling applications lodged showed that the majority of applications were compliant with the amenity standards at lodgement, following further information or as permit conditions.

Council did not consider that the identification of quantitative standards would result in most proposals generically responding to the maximum building envelopes. It considered that proposals would be nuanced to reflect neighbourhood character, demand and market factors.

Council submitted that standard B13 was not specifically identified as an entry criteria as it did not have a numeric standard however, the GRZ and NRZ schedules did and needed to be met. It supported the changes proposed by Mr Glossop (as discussed further in Chapters 7.2 and 7.3) which included the consideration of Clause 55 objectives and decision guidelines.

The UDIA submitted that the prescriptive requirements would limit the lots eligible for the pathway particularly narrow lots. HIA made a similar comment and sought greater flexibility in the entry requirements.

Mr Rowley submitted that ResCode standards were designed to be used as benchmarks or guidelines as to how objectives could be met but were subservient to the objectives which must be met. He identified that in order to achieve an appropriate design response an outcome higher than a standard might need to be applied to meet an objective. He

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<sup>10</sup> Document 15

considered that a minimum compliance approach with the standard would result in poor outcomes. Mr Rowley identified that proposals rarely maximised the ResCode standards envelopes because they would struggle to respond to the design response and qualitative elements of ResCode. Accordingly, he considered using standard compliant envelopes as a guideline for acceptability was likely to lead to ‘envelope bloat’ and quite different outcomes to those identified by Council in its case studies. Similarly using the zone height as a criteria was likely to suggest that a building at this height was always acceptable. He considered this approach encouraged a blunt and simplistic application of the quantitative controls and standards that was not a good proxy for what is an acceptable application. He further identified that using quantitative standards would give rise to expectations of approval if they were met.

Ms Stanley echoed many of Mr Rowley’s concerns about the Amendment. She considered that the Amendment’s reliance on numerical standards didn’t reflect suburb nuances.

Terrain Consulting submitted that there are at least three non-numerical ResCode standards not included in the proposed VicSmart class (Standards be – Neighbourhood Character, B5 – Integration with the Street and B31 – Design Detail) which include decision guidelines requiring the assessment of neighbourhood character objectives, policies or statements in the planning scheme. It agreed with a number of the Glossop proposed amendments relating to standard B17 and inclusion of Clause 55 objectives.

A number of submitters were concerned that meeting the numeric standards and not the qualitative ones (including neighbourhood character) was likely to result in poor built form outcomes (‘building to the envelope’). Council was emphatic however, that compliance with the numeric standard essentially set a bar for entry to the VicSmart pathway but did not represent an indicator of acceptability or likelihood of approval. It stated that, with the changes identified by Mr Glossop, proposals would still need to be fully assessed against the qualitative standards of Clause 55, as well as the neighbourhood character local policy (Clause 22.01). This is the same assessment that would be applied to the standard merits process.

### **(iii) Discussion**

Clause 55 identifies that:

- **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.

Clause 55 requires that an application:

- 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.

As identified by submitters not all standards contain numeric or quantitative elements and the drafted Clause 59.16 did not refer to the objectives or decision guidelines of Clause 55.

The Panel agrees that the assessment of proposals against standards only without consideration of context applies an inappropriate ‘one size fits all’ approach. To do so would

not allow the proper assessment of the suitability or the impact of proposed multi dwelling proposals to their context. This is not how ResCode is to be applied. In this instance assessment of standards, is appropriately coupled (with the Glossop changes) with the assessment of ResCode objectives and decision guidelines and neighbourhood character policy requiring a qualitative assessment.

The Panel is somewhat wary of Council's assessment that requiring development to adhere to all standards will deliver high quality. The standards alone will not "*guarantee improved quality development*". The standards set a benchmark measure for how the objectives can be met. It is a good starting point for entry criteria as it is measurable and can be particularly useful for considering internal amenity or issues of overshadowing and overlooking. Achieving appropriate planning outcomes will require also the consideration of objectives and neighbourhood policy.

The Panel agrees with Mr Rowley that the current proposal does not present as a 'code assess' equivalent application process, and that the Council will be required to undertake qualitative assessment of the merits the application. However, the Panel is comfortable that if the application complies with the conditions of entry this, along with the more extensive application requirements identified by Mr Glossop, will provide adequate information for Council to undertake an appropriate assessment of the application. Essentially the necessity to undertake a qualitative assessment should be offset by the comprehensive nature of the application requirements. The current proposal includes customised rules and benchmarks, including accessibility and ESD, but allows for a neighbourhood and site context analysis and design response that is compliant with ResCode and allows planners to fully assess its appropriateness.

The Panel does not agree with the position that an application meeting the quantitative standards creates a proxy for acceptability. With the changes proposed by Mr Glossop the proposed controls are not structured to do this. Entering the VicSmart pathway creates no obligation for Council to support a proposal that is not an acceptable planning outcome. This is no different for other VicSmart eligible proposals such as dwelling extensions which still require assessment against objectives (including neighbourhood character) and standards. As identified by the Panel it will be crucial for Council to monitor the outcomes and ensure its statutory planning assessment team are appropriately resourced to manage the process pathway successfully. This is discussed further in Chapters 5.3 and 6.5.

The Panel observes the challenge Council faces in trying to get the balance right between the rules of entry for a VicSmart assessment and the usual merit based pathway. On the one hand some parties see them as being too permissive, others too restrictive. The Panel consider that for two dwellings on a lot applications Council has got the balance right. The proposed entry requirements are appropriately set high (based on extensive case studies across the municipality) but provide an appropriate level of safeguard for the community, while retaining the standard assessment pathway for proposals which seek to vary ResCode standards.

The Panel considers that the utilisation of the identified ResCode Clause 55 standards for entry to the VicSmart pathway along with the zone schedule provisions (height, garden area and landscaping) along with the further changes proposed by Mr Glossop (discussed in the Chapters 7.2 and 7.3) are appropriate and reasonable.

**(iv) Conclusion**

The Panel concludes that the proposed local VicSmart assessment pathway requirements appropriately utilise Clause 55 provisions and provide for the consideration of neighbourhood character and amenity impacts subject to the further changes identified by Mr Glossop.

**7.2 Final form of the Schedule to Clause 59.15****(i) The issue**

The issue is whether the Schedule to Clause 59.15 is appropriately drafted.

**(ii) Practitioner's Guide**

The Practitioner's Guide identifies that:

The necessary information to determine the local VicSmart class should be included in the table to the schedule to Clause 59.15 sets out the necessary information to determine the local VicSmart class.

In terms of identifying an application class and conditions the Practitioner Guideline's state:

- it must be clearly drafted to easily determine if an application is subject to the VicSmart process
- the class should not rely on extensive conditions that need a detailed assessment of the application to decide the appropriate assessment pathway before the application is lodged
- conditions can be specified to narrow the class of application to only particular situations or if certain requirements are met.

**(iii) Evidence and submissions**

Mr Glossop recommended several amendments to Table 1 of Clause 59.15 including:

- amending the proposed class identifying that the class of application is 'Construct a one additional dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot' (Panel's emphasis). This is to avoid a possible interpretation of the plural applying to 'dwelling'
- clarify that permit requirement refers to Clause 32.08-6 not Clause 32.08-5
- delete Clause 55 Standard B18
- identify that the requirement to meet the numerical requirements of Standard B6, B17, B19, B20 and B21 does not apply to an existing dwelling, provided the development does not result in any further non-compliance.
- reduce the extent of walls on boundary permissible under Standard B18 by including an additional criterion relating to walls on or within 200mm of a side or rear boundary that they do not:
  - exceed 10 metres in length; and/or
  - exceed 3.6 metres in height, with an average height of 3.2 metres
- include an additional criterion to restrict building height to 9 metres within 10 metres of the rear boundary and 5 metres within 5 metres of the rear boundary so as to require a lower scale of built form within rear yards
- using consistent document references and abbreviations.

Mr Glossop did not consider the mandatory VicSmart entry requirements proposed to be overly extensive or requiring detailed assessment.

Council supported Mr Glossop's changes but recommended that the additional building height criteria not apply to a corner lot. Mr Glossop broadly agreed with this change accepting that corner lots were generally developed differently given their multiple street frontages. Council provided a tracked changes version of Clause 59.15 that had been prepared by Mr Glossop.<sup>11</sup>

Mr Rowley submitted that some of the Glossop changes partly addressed *"some of the most problematic aspects of the circulated amendment, but in doing so also highlights some of the intrinsic shortcomings of the approach pursued that cannot be so simply resolved"*. Mr Rowley identified that in recognising that standard-compliance may have excessive rear yard bulk impacts, Mr Glossop acknowledged one of the clearest examples of this problem. Mr Rowley considered that rather than taking an educated guess such aspects should have been part of the strategic work underpinning the Amendment.

Mr Rowley pointed to the 29 conditions of entry to be a mark of complexity and reinforced that the proposed class was not a simple and straightforward one.

#### **(iv) Discussion**

The Panel supports the proposed changes to Clause 59.15 along with Council's qualifier that the additional height restrictions do not apply to corner lots. The Schedule provisions have been prepared consistent with the Practitioner's Guide. The changes will minimise the potential for amenity impacts from overlooking and overshadowing of rear yards and minimise the potential for bulkier or higher built form elements being visually dominant to rear private open spaces.

While the Panel agrees that the proposed heights for buildings in rear yards is somewhat arbitrary to be added late in the piece, it is satisfied that the requirement isn't overly onerous as Council was able to demonstrate through its case study analysis and visual materials that most recent developments would meet this additional requirement. While adding another restriction that might exclude some otherwise entry compliant proposals, given that the VicSmart pathway removes notice provisions it is considered that the additional mandatory restrictions appropriately limit the scope of eligibility by removing development proposals more likely to have potential amenity impacts.

The Panel notes Mr Rowley's observations about the number of mandatory conditions to be met to determine if an application could be considered under the VicSmart pathway. The Clause (as proposed to be Amended by Council) includes 10 distinctive criteria, two of which (ResCode standards and crossovers) have multiple elements. While this is arguably a large number, this is not particularly relevant or surprising given the nature of the class and that the requirements are not fundamentally different from a standard application pathway. What is important is that they are relatively simple to understand, quantify and assess. The benefit for an applicant is a quicker assessment and for Council more compliant proposals with enhanced livability and sustainability outcomes.

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<sup>11</sup> Document 13

While the proposed changes add additional entry requirements the Panel does not consider this change so significant as to transform the Amendment. This is because the changes increase the requirements to satisfy entry to the VicSmart Stream rather than open up eligibility. The other suggested changes appropriately clarify the class of application to avoid its unintentional misapplication, correct the error referring to Clause 32.08-6 and clarify that the Clause 55 standard requirements do not generally apply to existing dwellings.

The Panel has included its preferred version of Clause 59.15 in Attachment C1. These changes are based on Mr Glossop's and Council's proposed changes with additional minor changes to ensure the correct use of measurements (metres and per cent).

#### **(v) Conclusion and recommendation**

The Panel concludes that the Schedule to Clause 59.15 with the additional changes proposed by Council and Mr Glossop are appropriate and consistent with the Practitioner's Guide to Victorian Planning Schemes, April 2020.

The Panel recommends:

**Amend Table 1 of the Schedule to Clause 59.15 consistent with the Panel's preferred version in Appendix C1 of this Report to:**

- a) clarify the class reference to one dwelling
- b) delete the application of Clause 55 standard B18
- c) clarify that specific Clause 55 standards do not apply to existing dwellings
- d) include additional criteria for walls on boundaries and building height.

### **7.3 Final form of the Schedule to Clause 59.16**

#### **(i) The issues**

The issues are:

- whether the Schedule to Clause 59.16 is appropriately drafted
- whether the Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment should be included as an information requirement.

#### **(ii) Practitioner's Guide**

Clause 71.06 specifies that a VicSmart application must only be assessed only against the information requirements and decision guidelines specified for that class of VicSmart application. A local VicSmart class must have information requirements and decision guidelines specified in the table to Clause 59.16 which are referenced in Table 1 of Clause 59.15.

The Practitioner's Guide identifies:

- Information requirements:

Any information requirements should be targeted to assist the decision maker decide the application. Any information must be specific to the nature of the application and not go beyond the scope of the application. Information that does not reasonably assist a referral body in commenting on the application, or a decision-maker in deciding the application, should not be required. The information requirements should be determined concurrently with the decision guidelines and reflect the nature and complexity of the application. The information requirements must always include: "A copy of title for the subject land and a copy of any registered restrictive covenant".

- Decision guidelines:

Decision guidelines, objectives or other matters in a zone, overlay, particular provision, schedule or policy relevant to the class of application must be restated or referenced in the provision if they are to be considered as part of the application. References to other provisions should be used with restraint to ensure the scope of assessment does not go beyond that appropriate for the VicSmart process. Decision guidelines should be neutrally expressed and require a decision-maker to consider something. They should not be framed in terms that direct the decision-maker in to consider a matter in a particular way.

**(iii) Evidence and submissions**

Mr Glossop recommended several amendments to Table 1 of Clause 59.16 including:

- additional information requirements including:
  - copy of Title
  - a neighbourhood and site description
  - a design response plan that meets the objectives of Clause 55 and responds to the neighbourhood character policy of Clause 22.01
  - elevation drawings
  - shadow diagrams
- additional decision guidelines including the objectives, standards and decision guidelines of Clause 55 and the design standards of Clause 52.06-9.

Council supported Mr Glossop's changes and provided a tracked changes version of Clause 59.16 which had been prepared for it by Mr Glossop.<sup>12</sup>

Council submitted that *The Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment* (Compliance Assessment) is a template information requirement which seeks to make it as easy as possible for permit applicants to understand exactly what the specific numeric requirements they need to meet are and to demonstrate compliance with those requirements. It identified that the purpose of the document was not to convey that addressing the requirements represented that a proposal was deemed to comply. It submitted that the Compliance Assessment was an application requirement in the form of a checklist, not a decision making document. The Schedule does not require applicants to submit a statement how the proposal responds to the neighbourhood character of the area, given that was a consideration and decision for Council as the responsible authority.

Council considered it unnecessary to include the document as a reference document and that like all councils it was one of suite of planning checklists on its website which details the information which should accompany applications. In this instance it would expedite Council's consideration of whether an application meets all of the entry criteria requirements, enable applicants to lodge an application to the VicSmart pathway with greater certainty and minimise requests for further information.

Council advised that it had no objection to the Compliance Assessment being a background document as long as it could be updated without a planning scheme amendment.

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<sup>12</sup> Document 13

**(iv) Discussion**

The Panel considers that the changes to Clause 59.16 proposed by Mr Glossop are appropriate and necessary.

Given the provisions of Clause 71.06 the information requirements for an application must be nominated. The Practitioner's Guide identifies that a copy of title and covenant details must be specified. The proposed additional requirements for a neighbourhood and site description and design response plan are directly translated from Clause 55.01. These requirements are the same as required for a standard pathway application and consistent with Council's initial intentions. The proposed additional requirements including elevation and shadow diagrams are considered specific to the application class, reflect the complexity level of the class and will assist decision making. The Panel does not consider the requirements are arduous or add to the complexity of the proposed VicSmart provision. As noted by Council most applications are prepared and submitted by experienced design and drafting companies.

Consistent with Clause 71.06 decision guidelines relating to relevant decision guidelines, objectives or other matters in a zone, overlay, particular provision, schedule or policy must be restated or referenced in Clause 52.16 if they are to be considered. The amended decision guidelines identified by Mr Glossop are considered appropriate and broadly consistent with Council's intent in preparing the Amendment. The inclusion of the objectives and decision guidelines of Clause 55 in addition to the quantitative standards and car parking standards go some way to responding to some of the concerns of submitters. The Panel considers that these decision guideline additions are not unreasonable and do not add to the complexity of decision making. Nor do they extend the scope of beyond that appropriate for the VicSmart process.

With some minor corrections, the changes proposed to Clause 59.16 its content and expression is consistent with the Practitioner's Guide. The Panel does not consider that these changes represent a transformation of the Amendment. They largely reflect Council's understanding at the time of drafting about how the VicSmart provisions worked. The changes provide appropriate information requirements that do not add to application complexity, are largely standard information requirements and will assist decision making, particularly of neighbourhood character and ResCode objectives.

The Panel agrees with Council that it is unnecessary to include the Compliance Assessment as a background document. While the Compliance Assessment assists to provide a checklist to ensure all VicSmart entry requirements are met and potentially assists a shortened assessment period it does not in itself inform decision making merely that the identified requirements have been provided or addressed. The provision of it as with other information requirements is at the discretion of the responsible authority. The Panel is broadly satisfied that its inclusion in Clause 59.16 is relatively benign (future changes to it aside) and it may provide some process assistance including reducing further information requests and assist in the early phases of the pathway's implementation.

However, the Panel has some concerns that future changes to the Compliance Assessment that potentially change the way in which the entry criteria are assessed could be made without the transparency that an Amendment or review process would provide. As such its inclusion into the Victorian Planning Provisions is inappropriate and the cautious approach

would be to not refer to it specifically as an application requirement and rely, as Council already does, on more informal application guidelines. This would allow Council flexibility to test and amend the document as necessary.

As currently drafted the Compliance Assessment is confusing both in title (with references to Dual Occupancy and Zone) and content and does not align with the changes to Clauses 59.15 and 59.16 discussed below. If Council is to retain this application requirement it:

- should be renamed to clearly reflect its role as an application checklist
- clarify its purpose and application
- include additional class requirement criteria identified in the Council's proposed further changes identified in Chapter 7.2 and 7.3
- include the application requirements identified in the proposed changes to Clause 59.16
- should have a date reference. The Panel acknowledges that this would require an Amendment if the document was to be updated, but this is more transparent and could potentially be treated as a technical or administrative amendment.

An acceptable alternative approach is to switch the language of the requirement around to require a statement from the applicant that demonstrates how the application meets the class criteria and the application requirements. This would enable Council to make its Compliance Assessment available as a tool to assist applicants satisfying this requirement. The Panel supports such a change to Clause 59.16 in the event that Council wishes to amend the Clause in this manner.

The Panel has included its preferred version of Clause 59.16 in Attachment C2. These changes are based on Mr Glossop's and Council's proposed changes with additional minor changes to:

- ensure the correct use of measurements (per cent),
- remove the reference to 'plan' for the design response requirement consistent with the wording of Clause 55.01
- delete the Compliance Assessment.

#### **(v) Conclusion and recommendation**

The Panel concludes:

- That Clause 59.16 with the additional changes proposed by Council and Mr Glossop are appropriate and consistent with the Practitioner's Guide to Victorian Planning Schemes, April 2020.
- That the introduction of the Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment is an inappropriate document to include in Clause 59.16 as an application requirement and should be deleted. If Council wishes to retain such a provision the Panel has identified some alternatives.

The Panel recommends:

**Amend the Schedule to Clause 59.16 consistent with the Panel's preferred version in Appendix C2 of this Report to include:**

- a) in Section 1.0 additional information requirements for a neighbourhood and site description, design response plan, elevation drawings and shadow**

**drawings, and delete the requirement for 'A Moreland VicSmart Dual Occupancy Zone and ResCode Compliance Assessment'**

- b) in Section 2.0 additional decision guidelines relating to the objectives, standards and decision guidelines of Clause 55 and the design standards of Clause 52.06-9.**

## Appendix A Submitters to the Amendment

No.	Submitter
1	Planning Appeals
2	JLP Melbourne
3	Berna Akay
4	Tommy Ivanovic
5	Matthew Carneyslett
6	Glenda Lasslett
7	UDIA
8	Anthony Pham
9	Terrain Consulting Pty Ltd
10	Stephen Rowley
11	HIA
12	Marion Attwater
13	Fawkner Residents Association
14	gvk Town Planning
15	Planning Institute of Australia
16	Brunswick Residents Network

## Appendix B Document list

No.	Date	Description	Provided by
1	19/10/2020	Council Part A submission and attachments	Council
2	"	Expert witness statement of Mr John Glossop of Glossop Town Planning	"
3	"	Email seeking amended timeframe for circulation of Witness Questions Response document	Council
4	"	Panel advice to parties about timeframe extension for circulation of Witness Questions Response document	Panel
5	21/10/2020	Advice on Panel appointment	"
6	26/10/2020	Council Part B submission and attachments	Council
7	"	Maddocks ResCode interpretation advice	"
8	27/10/2020	HIA submission	HIA
9	"	Submission of Mr Rowley and attachments	Mr Rowley
10	"	Submission of Ms Stanley for Brunswick Residents Network	Ms Stanley
11	"	Submission of Mr Maclellan for Brunswick Residents Network	Mr Maclellan
12	"	Submission of Terrain Consulting Group	Terrain Consulting Group
13	28/10/2020	Glossop Tracked Changes version of Schedules to Clause 59.15 and 59.16	Council
14	"	Submission of Ms Attwater	Ms Attwater
15	"	Virtual Tour presentation	Council
16	"	Council Part C - Closing submission	"

## Appendix C Panel preferred version of schedules to Clauses 59.15 and 59.16

Tracked Added

~~Tracked Deleted~~

## Appendix C1 Schedule to Clause 59.15

### SCHEDULE TO CLAUSE 59.15 LOCAL VICSMART APPLICATIONS

#### 1.0 Table 1 Classes of VicSmart application under zone provisions

Name of zone or class of zone	Class of application	Permit requirement provision	Information requirements and decision guidelines
Neighbourhood Residential Zone and General Residential Zone	Construct <del>a</del> <a href="#">one additional</a> dwelling if there is one dwelling existing on the lot or construct two dwellings on a lot if the development: <ul style="list-style-type: none"> <li>Meets the maximum building height requirement of the zone.</li> <li>Meets the minimum garden area requirement of the zone.</li> <li>Meets the B13 Landscaping standard numerical requirements of the schedule to the zone.</li> <li>Meets the numerical requirements in the following standards of Clause 55:               <ul style="list-style-type: none"> <li>B6 Street setback standard</li> <li>B8 Site coverage standard</li> <li>B9 Permeability standard</li> <li>B14 Access standard</li> <li>B17 side and rear setbacks standard</li> <li><del>B18 Walls on boundaries standard</del></li> <li>B19 Daylight to existing windows standard</li> <li>B20 North-facing windows standard</li> <li>B21 Overshadowing open space standard</li> <li>B22 Overlooking standard</li> <li>B23 Internal views standard</li> <li>B27 Daylight to new windows standard</li> <li>B28 Private open space standard</li> <li>B29 Solar access to open space standard</li> <li>B30 Storage standard</li> <li>B32 Front fences standard.</li> </ul> </li> </ul>	32.09-6 or 32.08- <del>56</del>	Schedule 1 to Clause 59.16
<a href="#">The requirement to meet the numerical requirements of Standards B6, B17, B19, B20 and B21 does not apply to an existing dwelling, provided the development does not result in any further non-compliance.</a>			

Name of zone or class of zone	Class of application	Permit requirement provision	Information requirements and decision guidelines
	<ul style="list-style-type: none"> <li>▪ <a href="#">Does not contain any walls on or within 200mm of a side or rear boundary that either or both:</a> <ul style="list-style-type: none"> <li>- <a href="#">Exceed 10 metres in length.</a></li> <li>- <a href="#">Exceed 3.6 metres in height, with an average height of 3.2 metres.</a></li> </ul> <a href="#">The length requirement does not apply where the wall abuts a rear laneway.</a> </li> <li>▪ <a href="#">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. This requirement does not apply to a corner lot.</a></li> <li>▪ Meets the number of car parking spaces required by Clause 52.06 Table 1.</li> <li>▪ Meets the following requirements for new crossovers and garages: <ul style="list-style-type: none"> <li>- No street trees are removed</li> <li>- Minimum clearance of <a href="#">3 metres</a> must be provided between the trunk of any street tree and any part of a vehicle crossing, inclusive of the radial or splay</li> <li>- Crossovers <a href="#">a</a> maximum <a href="#">of 3</a> metres in width</li> <li>- If more than one vehicle crossover is proposed, the crossovers must be a minimum of 8 metres apart, measured at the front boundary</li> <li>- If both dwellings front the street, the garages must be a minimum of 8 metres apart</li> <li>- Any garage which faces the street must be no more than 4.5 metres wide</li> <li>- Any garage which faces the street must be setback from the street a minimum of <a href="#">500 millimetres</a> more than the dwelling.</li> </ul> </li> <li>▪ Meets Silver Level of performance under the <del>Livable Housing Australia</del>, Livable Housing Design Guidelines, <a href="#">Livable Housing Australia</a>. <a href="#">This requirement does not apply to an existing</a></li> </ul>		

Name of zone or class of zone	Class of application	Permit requirement provision	Information requirements and decision guidelines
	<p><a href="#">dwelling.</a></p> <ul style="list-style-type: none"> <li>Meets a minimum <a href="#">Built Environment Sustainability Scorecard (BESS)</a> score of 50 <a href="#">per cent%</a>, including achieving the mandatory minimum <a href="#">score paths for water, energy, storm water and Indoor Environment Quality (IEQ)</a>. <a href="#">This requirement does not apply to an existing dwelling.</a></li> </ul> <p>If a schedule to the zone specifies a requirement of a standard different from a requirement set out in the Clause 55 standard, the requirement in the schedule to the zone applies and must be met.</p> <p>For the purposes of this class of VicSmart application, the requirements specified above are mandatory.</p>		

## 2.0 Table 2 Classes of VicSmart application under overlay provisions

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

## 3.0 Table 3 Classes of VicSmart application under particular provisions

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

## Appendix C2 Schedule to Clause 59.16

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

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

#### 1.0 Information requirements

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

- A copy of title for the subject land and a copy of any registered restrictive covenant.
- A neighbourhood and site description which may use a site plan, photographs or other techniques and must accurately describe:
  - In relation to the neighbourhood:
    - The pattern of development of the neighbourhood.
    - The built form, scale and character of surrounding development including front fencing.
    - Architectural and roof styles.
    - Any other notable features or characteristics of the neighbourhood.
  - In relation to the site:
    - Site shape, size, orientation and easements.
    - Levels of the site and the difference in levels between the site and surrounding properties.
    - The location of existing buildings on the site and on surrounding properties, including the location and height of walls built to the boundary of the site.
    - The use of surrounding buildings.
    - The location of secluded private open space and habitable room windows of surrounding properties which have an outlook to the site within 9 metres.
    - Solar access to the site and to surrounding properties.
    - Location of significant trees existing on the site and any significant trees removed from the site 12 months prior to the application being made, where known.
    - Any contaminated soils and filled areas, where known.
    - Views to and from the site.
    - Street frontage features such as poles, street trees and kerb crossovers.
    - The location of local shops, public transport services and public open spaces within walking distance.
    - Any other notable features or characteristics of the site.
- A design response that derives from the neighbourhood and site description and:
  - Meets the relevant objectives of Clause 55.
  - Responds to the neighbourhood character policy at Clause 22.01.

- Shows the setback of proposed buildings to property boundaries.
- Elevation drawings to scale showing the height, colour and materials of the dwellings.
- Shadow diagrams that demonstrate compliance with the requirements of Standard B22.
- A Sustainable Design Assessment (SDA) which has been certified by Moreland City Council that all new dwellings achieve a minimum Built Environment Sustainability Scorecard (BESS) score of 50 ~~per cent~~%, including achieving the mandatory minimum score paths for water, energy, storm water and Indoor Equivalent Quality (IEQ).
- A Livable Housing assessment which has been certified by a Livable Housing Australia Design Guideline Assessor, demonstrating that all new dwellings achieve Silver Level of performance under the ~~LHA~~ Livable Housing Design Guidelines, Livable Housing Australia.
- ~~▪ A Moreland VieSmart Dual Occupancy Zone and Resecode Compliance Assessment.~~

## 2.0 Decision guidelines

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

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

See Clauses 59.15 and 59.16 for relevant provisions.