

LEGISLATIVE ASSEMBLY PLANNING AND ENVIRONMENT COMMITTEE

INQUIRY INTO THE PERFORMANCE OF THE VICTORIAN PLANNING SYSTEM

Submission by Moreland City Council – Officer Submission

Introduction

Moreland is a municipality located between 5 and 14km from the Central Business District. It is a municipality with strong housing diversity. Housing varies from single storey dwellings on '1/4 acre' blocks to multi-level apartment development. Whilst the City was traditionally a home for manufacturing it has been experiencing a long shift to a service economy.

The population of Moreland is forecast to grow by 50% to 78,600 people over the next two decades. It is estimated that this will translate to a need for around 38,400 more dwellings, or 1,920 per year. This represents 50% growth in population and households over a 20-year period. The nature of existing development in the City means these new homes will mainly be apartments and units. Their development will be subject to approval through the planning system.

Council is active in reviewing its planning scheme and policies, and in recent years has:

- Taken a leadership role in environmentally sustainable development in the planning scheme.
- Developed apartment design guidelines which predated the Clause 58 requirements for apartments.
- Conducted a number of studies into housing and employment floorspace in the City.
- Developed an Affordable Housing Strategy. We also actively seek the inclusion of affordable housing in redevelopment.
- Developed a streamlined approval process for enhanced quality 2 dwelling development utilising Vicsmart provisions (Amendment C190more). If approved the Amendment would facilitate the approval of compliance enhanced quality two dwelling proposals within 10 business days.

We welcome this opportunity to provide feedback into the performance of the Victorian planning system.

We understand that limited public hearings will be held in the first half of 2022. We welcome the opportunity to speak to our submission at a public hearing. In particular, we would be happy to assist the Committee in relation to environmentally sustainable development.

The cost of housing

There are many factors which impact the availability and cost of housing. They include:

- Population and immigration policy.
- Budgetary measures which may encourage or discourage the use of housing as an investment vehicle.
- Mechanisms to help particular market segments to buy property (e.g. stamp duty relief, first home owner's grant).
- Government investment in social housing.
- Construction costs. These include the cost of land, approvals (including planning) and the materials and labour for construction.
- Income and an ability to save or start with equity.
- Occupational costs, such as heating, cooling and transport costs.

Reducing delays in the planning system may have some impact on housing affordability. The planning system should also ensure that Affordable Housing is provided.

Providing affordable housing

[More detail is contained in Council's submission to the 2019 Homes Victoria 10-Year Strategy for Social and Affordable Housing.](#)

Local Government's role in facilitating affordable housing is included in the *Planning and Environment Act 1987* but more detail is required to make planning schemes effective in facilitating affordable housing.

Our studies show that by 2036 Moreland needs between 7,000 and 10,500 new affordable dwellings. There is particular need for accommodation for low and very-low income earners and a clear need to intervene in market activity to provide more affordable housing. As a result we have requested that Homes Victoria deliver at least 1,000 new social homes in our municipality by 2036. The remaining dwellings will need to be provided by other means.

Currently, Council seeks to secure affordable housing for its community by negotiating with developers and land owners during the planning scheme amendment and permit process. This has led to negligible outcomes. The market and the voluntary agreement system are not providing sufficient affordable housing to meet our community needs.

Council encourages the committee to pursue mandatory affordable housing requirements. These should take the form of a suite of planning scheme tools and could operate in a similar way to the existing development contribution and open space levy systems. The tools should include flexibility for councils to specify:

- the level of contribution required for sections (or all) of a municipality; and
- preferences for the provision of land, dwellings, and/or affordable housing cash contributions.

Reducing costs associated with the planning process

[More detail is contained in Council's submission to Better Regulation Victoria's Planning and Building Process Review Discussion Paper.](#)

Council supports measures to reduce the cost associated with the planning process. Improvements can be made in both the planning scheme amendment and planning permit processes.

Planning scheme amendment process

Most amendments at a minimum level involve: liaison with proponents; consideration of consultant reports; discussion with external referral authorities and internal Council units; peer review of consultant reports; development of planning provisions and amendment documentation; public exhibition and community consultation; consideration of submissions; consultation and negotiation with submitters to resolve issues; and preparation of Council reports, briefings and Panel submissions and presentations.

The outcomes of the review of planning and subdivision fees that was undertaken in 2016 set in place additional fees for the consideration of submissions. For complex submissions and high volumes of submissions the current fees are appropriate. Of more concern is the statutory timeframes associated with the planning scheme amendment process which would have direct impacts in the reduction of costs.

We have previously raised concerns about:

- the length of time DELWP take for authorisation and approval of amendments,
- Council's role in checking Panel reports and
- the short timeframe allowed for this process.

Council is supportive of the majority of the recommendations for planning scheme amendments in the Turning Best Practice into Common Practice report. It welcomes the reduced amendment timeframes which should flow from their implementation.

We note that the review hasn't addressed delays at the final (approval) stage of the amendment process. Moreland has adopted 17 planning scheme amendments over the past three years. Of those that have been decided by the Minister:

- The ministerial decision for 13 amendments took an average of 23 weeks.
- There was an average delay of 6 weeks between approval of amendments by the Minister and their gazettal. This included a delay of over 14 weeks for one amendment.

Ministerial Direction No. 15 includes guidelines for the timing of decisions by the Minister. The guidance is that a ministerial decision on the final stage of an amendment should be made within 8 weeks. There is no reference to prompt gazettal following a decision. The Ministerial Direction has no statutory weight, and there is little recourse for those affected by delays.

Council acknowledges current action by DELWP to improve amendment timeframes. It continues to be of the view that giving timeframes at each stage of the amendment process with statutory weight would be a meaningful change to the Victorian planning system.

Planning permit process

Council would encourage changes to reduce delays in the planning system such as to:

- Differentiate between applications based on their complexity, including:
 - Use of VicSmart Plus for 30-day turnaround for some applications (that includes some form of public notice).
 - Extended timeframes for more complex applications.
- Incentives for applicants to submit complete applications. Requests for further information:
 - Cost land owners time and money
 - Take large amounts of Council officer time.
 - Should not be as prevalent as they are. Information requirements are clear for most applications.

Poorly prepared planning applications are the main cause of delays of 4 plus months in the planning process. More stringent application requirements combined with the retention of a resetting of the statutory clock at the further information stage are needed to provide greater disincentive for the submission of poorly prepared applications.

Environmental Sustainability and Vegetation Protection

Council declared a Climate Emergency on 12 September 2018. It is of the view that planning has a significant role to play in ensuring that new development responds to this challenge. Council recognises the role that vegetation, including canopy trees, plays in cooling of the urban environment. It recently reviewed the Environmental Significance Overlay, which includes vegetation controls along key Moreland waterways.

Environmentally Sustainable Development (ESD) within Planning

A council's planning scheme serves as a significant, delegated, legislative instrument under the Planning and Environment Act 1987 (Vic) ('P&E Act'). It is one of the most important levers that a Council has in order to meet its broader goals with respect to the built environment. This includes working towards meeting established targets of Zero Carbon development by 2040, Integrated Water Management in developments, climate and biodiversity resilience and addressing health, comfort and wellbeing of occupants of buildings as well as influencing better development outcomes for the future.

Moreland City Council prides itself as being one of the first councils within the State to introduce a local Environmentally Sustainable Development (ESD) Policy within its Planning Scheme.

The ESD Policy was formally gazetted in 2015 and embeds environmental sustainability and aspects of vegetation protection into new developments proposed within the City of Moreland.

Moreland, and 5 other leading Councils, spent significant time and resources over a number of years to advocate for support of a Planning Scheme Amendment to incorporate an ESD Policy within each councils' respective Planning Scheme. Since that time, over 20 councils have embedded an ESD Policy within their respective Planning Schemes.

Moreland's ESD Policy has been effective for almost seven years and has brought a multitude of success requiring development to incorporate and address relevant sustainable design measures and features. This includes development addressing aspects of energy and water efficiency, adhering to integrated water management and stormwater quality best practice principles, ensuring reasonable levels of daylight and ventilation for user comfort, health and wellbeing, as well as, encouraging sustainable transport and waste management practices.

Recognising Limitations and Shortfalls

Acknowledging the success to date of the Planning Scheme which promotes the ESD agenda and serves as a delegated instrument pursuant to the P&E Act, there are a series of limitations and shortfalls that have been identified within the P&E Act and a council's Planning Scheme.

Such limitations and shortfalls inhibit advancing environmental sustainability and vegetation protection to ensure that necessary and progressive outcomes are achieved from development. For example, reducing greenhouse gas emissions in an effort to align and respond to State climate change targets, incorporating design measures and features that address climate change risk and liabilities posed to public and private authorities, as well as, supporting industries transitioning towards zero carbon development and the use of sustainably sourced materials that uphold circular economy principles.

A summary of the respective limitations and shortfalls identified are outlined as follows.

Restricted Powers to Effect Climate Change Considerations in Decision Making

The Act does not have proper or extensively sufficient regard to climate change impacts from both a mitigation and resilience aspect. Therefore, there are considerable limitations placed on decision makers when exercising administrative functions (for example the grant of planning permits and placing conditions on development, or strategic decision making with regard to precinct development).

Climate change impacts and responses must be adequately provided and considered with relevant changes made to instruments to ensure that decision makers are granted the administrative power to

affect such requirements and controls. This will also improve industry responses to address such climate change impacts.

Necessary changes include:

- Legislative Amendments
 - Ensure that the P&E Act is a legislative instrument referenced within Schedule One of the Climate Change Act 2017 to ensure that the issue of permits has regard to climate change considerations.
 - Seek an amendment to the P&E Act to provide clearer direction on the consideration of climate change in assessment and decision-making.
- Ministerial Directions and Practice Notes Amendments and/or Updates
 - Update Minister’s Direction No. 11 – Strategic Assessment of Amendments and Practice Note 46: Strategic Assessment Guidelines for Planning Scheme amendments to ensure that Explanatory Reports prepared for every amendment include an explicit assessment against relevant climate change considerations including consistency with emission reduction targets over the life of any potential development, and any relevant adaptation measures.
- Planning Scheme Amendments

With respect to a council’s planning scheme and the requirement for State Government approval:

 - Update Clause 72 to include relevant climate change or ESD related definitions to ensure consistent application of policy. Of note are definitions around net zero emissions, electric vehicle (EV) readiness, green infrastructure and permeability.
 - Update to the Planning Policy Framework (PPF) to embed emission reduction targets, including the explicit target of net zero emissions by 2050 as State policy at Clauses 15 and 19.
 - Updates to the ‘Purpose’ of the Planning Policy Framework (PPF) which require the inclusion of specific reference to sustainability, ‘having regard to climate change’, or similar.
 - Review all Policy and Decision Guidelines to ensure that, where relevant, appropriate references to matters related to climate change adaptation or mitigation are included.
 - Include a specific objective in the P&E Act to recognise the role of planning in a changing climate.
 - Introduce a Particular Provision in the Victoria Planning Provisions that will enable 31 ambitious Councils to elevate ESD built form requirements into their respective Planning Scheme and facilitate zero carbon development.

Limitations Placed on Local Government to Effect Necessary Change

Amendment VC148 and its Effect on Local ESD Policies within the Planning Scheme

The strength in requiring development to address ESD currently sits within a council’s Planning Scheme; particularly if a council has an ESD Policy. Of paramount importance is how the State Government can show leadership and influence the process and outcomes. This is directed by changes to a council’s Planning Scheme and respective ESD Policy, particularly through state-wide planning scheme amendments that seek to introduce new measures or vary a council’s existing planning scheme.

Amendment VC148 was part of the State Government’s Smart Planning program to modernise Victoria’s planning policy and rules. It was gazetted on 31 July 2018 and applies to all planning schemes.

VC148 implemented the first stage of the new Planning Policy Framework (PPF) by replacing the State Planning Policy Framework (SPPF) with the PPF structure. The State Government advised that it introduced the PPF to improve the operation of planning policy in planning schemes by containing state, regional and local policies in the one place, enabling a policy framework that is stronger, better aligned, consistent and easier to navigate.

The PPF provides a standardised format for all policies. Each policy now includes ‘objectives’ and ‘strategies’ and where necessary, ‘policy guidelines’. It removes ‘application requirements’ and ‘decision guidelines’. The State Government advises that the new PPF structure is aimed at significantly reducing repetition in the planning scheme and using language that is more easily understood.

Whilst those intended outcomes may be valid and present positive changes, detrimental impacts have been realised and experienced. Since such changes, a Council is unable to provide a level of prescription, detail or clear direction for development to address certain requirements and expectations, within the Local Planning Policy component of a Council's Planning Scheme.

For example, with respect to a Council's ESD Policy, significant changes are made to language and key operative components. This primarily includes removal of the definition of 'Best Practice' from the translated version of the ESD Policy. The term 'Best Practice' and its definition is fundamental and serves as the ESD Policy's primary objective.

The requirement for development to address and demonstrate 'Best Practice' is best articulated in the Planning and Environment Act 1987, Advisory Committee and Panel Report, Environmentally Efficient Design Local Policies. Of particular note, the Joint Six Councils' submission before the Planning Panel indicated that:

'[t]he overarching policy objective is centred around the concept of "best practice". This term provides the "teeth" to the policy. Without it, the policy would contain no performance benchmark.'

Hence, the removal of the 'Best Practice' term compromises the operational construct and application of the ESD Policy to deliver beneficial outcomes.

Additionally, language utilised throughout the translated version of an ESD Policy states to 'consider as relevant' the preparation of ESD reports that support how and what a development intends to incorporate to reflect appropriate ESD measures in line with 'best practice'. A mere 'consideration' with the 'intention' to utilise harmonised language does not provide a solid foundation for a development to propose bona fide commitments and address the objective and subsequent strategies detailed within the translated version of the ESD Policy. Rather, such language, makes such design measures optional, thereby weakening a development's response to address and implement ESD in line with best practice which also lacks a definition and unfettered context.

Form and content and guideline inhibits local policy ambitions

State Government PPF Drafting Guidance

The Practitioners Guide to Victorian Planning Schemes provides rules and guidance to drafting policy in Planning Schemes, including direction on the use of definitions.

Rule 9 is of particular interest as includes the following:

- Avoid using terms that need definition in a local provision for their operation to be clear.
- Further in the guide under 6.1.4 Take care with definitions, the guide outlines:
 - Use words that have been defined in the planning scheme in strict accordance with their definition
 - Before a new definition is used, consider why a new definition is needed. The VPP provides a number of definitions and a provision should be drafted on the basis of these definitions.

The LPPF Translation Manual (2020) further outlines the following:

Some LPPs contain special definitions that aim to reduce confusion. However, these local definitions can instead create confusion where a term is given a meaning in a policy that may conflict with the same term used elsewhere in the planning scheme for a different purpose. Special local definitions also result in inconsistent meanings of terms across the state, causing further confusion.

All content within the PPF must meet the Planning Scheme Rules. The Rules specify that the use of defined terms must be limited to the Act and the VPP. Terms that are not defined take on their ordinary meaning as defined by the Macquarie Dictionary. Where an LPPF includes definitions, these should be removed or reworded as part of policy.

Many existing LPP definitions can be recast to read as an elaboration in a strategy or a policy guideline.

The Smart Planning team at DELWP confirmed that Notes do not have a place in the new PPF.

ESD Compliance Project

In 2020 Council undertook an ESD research project to gain a deeper understanding of the actions and processes that lead to ESD non-compliance. This came after several investigations undertaken by Council in 2010, 2013 and the proactive enforcement program in 2018-ongoing revealed extensive non-compliance. The research project was undertaken by investigating how endorsed ESD measures are transferred from the Planning Permit documentation through to the Building Permit documentation and then into the construction stage.

In total 952 endorsed Planning Permits, associated plans and ESD documents were assessed against relative building permit documentation received between December 2018 and September 2020. It was found that approximately 55% of ESD features in the Planning Permit were non-compliant in the Building Permit documentation, due to excluded ESD features (this was the biggest contributor, accounting for 76.1% of the ESD non-compliances), reduced or down-graded ESD features or missing details.

In relation to NatHERS, a total of 277 developments had their NatHERS ratings in the Planning Permit documentation compared with NatHERS in the Building Permit documents. Approximately 40% of the developments were non-compliant in the Building Permit, with almost half of those NatHERS non-compliances due to a reversion to the national minimum standards, rather than the Moreland minimum standards. Developments which included Preliminary Thermal Performance Modelling in the Planning Permit stage were found to have compliant NatHERS ratings in the Building Permit 17% more of the time than those without. Some inconsistencies with ESD features were also identified in the Planning Permit documentation, which could lead to non-compliances in the Building Permit and then into construction.

Out of the ESD features which were able to be observed at construction, 103 of 177 (58.2%) were compliant while 74 of 177 (41.8%) were non-compliant. The non-compliances were more prevalent in the non-proactively audited sites, with 35 out of 55 (63.6%) observed ESD features being non-compliant, compared with 39 out of 122 (32%) for the Proactively Audited sites.

When there was an ESD non-compliance in the Building Permit documentation, it was found that there was a 15.3% higher chance of it leading to an ESD non-compliance at construction (compared with developments which were compliant in the Building Permit). While issues with the Building Permit documentation (excluded ESD features or ESD inconsistencies) accounted for 36% of the ESD non-compliances identified from the site inspections, a total of 38% of the ESD non-compliances identified during the site inspections were due to the ESD feature simply not being installed or being installed at a reduced level, even though the Building Permit documentation was compliant with the endorsed ESD requirements (likely due to cost implications, aesthetic value or lack of consideration for ESD).

Based on the findings the level of ESD non-compliances in Moreland is a large and complex problem, which involves many stakeholders and can be attributed to issues stemming from the Planning Permit documentation, the Building Permit documentation and the construction stage.

Improving the Current ESD Outcomes via Amending Councils' Planning Scheme

Since 2018, several councils throughout the State have sought to improve the current ESD outcomes and requirements detailed in their relevant Planning Scheme. This particularly entails incorporating measures which transition our built environment to address zero carbon development outcomes at the planning stage of development and address the relevant gaps, shortfall and limitations identified with relevant legislative and regulatory instruments.

The initiative is strongly supported by the Council Alliance for a Sustainable Built Environment (CABSE); that serve under the auspice of the Municipal Association of Victoria (MAV). The initiative has grown considerably in magnitude over the past four years.

Local Governments across the State Working as a Collective

Currently, 31 councils throughout the State have signed a Memorandum of Understanding with an intent to undertake work to elevate ESD targets in their respective Planning Scheme, with an ultimate intention to pursue a joint Planning Scheme Amendment in 2022.

The Amendment will seek to pursue embedding the necessary changes to improve ESD outcomes and progress zero carbon development within the built environment.

The initiative is framed under the project banner 'Elevating ESD Targets Planning Policy Amendment' (the 'project').

The Project Delivers upon Councils' Obligations and Requirements

The outcomes from this project is closely aligned with a multitude of Council and CASBE deliverables and community expectations that have been endorsed by Councils, most notably:

- Climate Emergency Declarations;
- Municipal Zero Emission Targets that must be met, at or prior to, 2050;
- Statutory Climate Changes Pledges, with the particular initiative having been committed to, under the Climate Change Act 2017 (Vic); and
- Council Climate Change Strategies, Frameworks, Action Plans and the CASBE Strategic Plan.

Key Works and Advocacy Undertaken

Significant work, investigation and resources have been invested by Councils and CASBE, including relevant officers, to pursue and support this project. This includes:

- Commissioning evidentiary and justification works with the aid of leading consultancies to support the measures being pursued via a Planning Scheme Amendment (in excess of \$800,000 expended as a collective, to date);
- Liaising and working with relevant officers within the Department of Environment, Land, Water and Planning (DELWP's) Energy and Planning divisions on concurrent projects and initiatives;
- Advocating and providing input to the State Government's ESD Roadmap, as well as, serving key Working Groups a part of the ESD Roadmap agenda; and
- Providing numerous submissions to advocate for necessary changes that are required to the built environment through forums such as the Australian Building Codes Board (ABCB) National Construction Code (NCC) 2022, State Gas Substitution Roadmap, Zero Emission Vehicles Advisory Group, and Parliamentary Inquiries.

What is being sought by the Planning Scheme Amendment?

The measures and changes being pursued by the collective 31 councils via a Planning Scheme Amendment contain a level of prescription in order to address an absence of, and for those that have an ESD Policy, improved ESD outcomes which will enable transitioning development to achieve zero carbon.

Since reforms to the Victoria Planning Provisions in 2018 (via Amendment VC148), a Council is unable to provide a level of prescription, detail or clear direction for development to address certain requirements and expectations, within the Local Planning Policy component of a Council's Planning Scheme.

The point of concern is where such prescriptive requirements and details may reside within a Council's Planning Scheme to ensure robust and necessary outcomes.

The work commissioned by the project group has identified the Particular Provisions, within the Victoria Planning Provisions, as the most appropriate planning tool to set the relevant measures, metrics and changes for improved ESD outcomes.

As such, the project's success rests upon the Minister for Planning, given that only the Minister can authorise a municipal Council to prepare an amendment to the Victoria Planning Provisions.

The application of a Particular Provision would facilitate efficiency and expediency with respect to development approvals undertaken by Councils given that a consistent set of requirements are detailed within several Councils' Planning Schemes.

Opportunity to Deliver State Government Requirements and Resolve Regulatory Gaps

The collective work and approach, demonstrated with the support of 31 councils, provides an exceptional, well-tailored and documented solution for the State to address its ESD Roadmap commitments and deliver upon Action 80 of Plan Melbourne 2050 which entails the delivery of a State ESD Policy in a timely manner. As per the Plan Melbourne 2050 Five-Year Implementation Plan, the State ESD Policy was anticipated for delivery by the end of 2018 (a 3 year delay).

Our project offers a solution to deliver upon such requirement given that 31 councils are supporting this project which constitutes 39% of all Councils throughout the State – mostly metropolitan, where a significant amount of the Victorian populous resides.

Furthermore, the outcomes from this project will also deliver upon the State Government's Climate Change Strategy and sectoral Pledges, as well as, the Built Environment Adaptation Action Plans committed to, as a statutory requirement, under the Climate Change Act 2017 (Vic).

Moreover, in Victoria, it is well established at planning panels and at the Victorian Civil and Administrative Tribunal (VCAT) that the broad notion of ESD, including energy efficiency, is supported within the Planning framework. This is in contrast to the Building framework with relevant details, pertaining mostly to energy efficiency, included in the National Construction Code (NCC).

The benefit of the measures and changes pursued via this project will address relevant gaps where the current NCC 2022 proposed set of technical changes remain silent. The exclusions of relevant components of the proposed changes outlined within the NCC 2022 undermine both State and Local Government emissions reduction commitments and programs with respect to the built environment. This is particularly evidenced by the NCC 2022 continuing to remain solely focussed on holistic energy efficiency outcomes as opposed to applying and integrating the broader remit of ESD, as well as, downplaying the role of renewable energy and zero emission vehicle infrastructure on standard housing development.

The deliverables and overall outcome offered via the collective group of 31 councils involved in this project will assist Victoria's Planning System to deliver upon Plan Melbourne 2050 requirements, aligns with the State Government's legislated emission reduction targets which also supports climate resilient communities, as well as, addresses relevant shortfalls identified within the national building framework (NCC) that undermines broader emission reductions from key industry sectors.

In 2022, councils will be seeking from the Minister for Planning, the Hon Richard Wynne, to introduce a Particular Provision in the Victoria Planning Provisions that will enable 31 aligned councils to elevate the ESD built form requirements in their respective Planning Scheme.

We encourage a whole of government support towards this project to ensure improved development outcomes which will address issues such as climate change mitigation and resilience, as well as, facilitate zero carbon development for the benefit of all current and future Victorians.

Vegetation Protection

More detail on the performance of planning scheme overlays on the protection of vegetation can be found in the [Between the Merri and the Moonee Ponds: Reviewing the Environmental Significance Overlay along waterways in the Moreland Planning Scheme report](#).

The planning scheme contains a range of vegetation related controls, some of which are more effective than others. In addition, planning permits often include a requirement to install and maintain landscaping. Current issues with the controls include:

- Confusion resulting from the variety of controls and exemptions which exist.
- A permit is, in many cases, not required for works near to protected vegetation. This includes significant site cut or fill, new buildings or paving that may ultimately kill the vegetation.
- Vegetation controls often refer to the size of a plant. This does not protect young trees, shrubs or ground covers, all of which have a contribution to make to biodiversity, urban greening and addressing the urban heat island effect.
- These issues can be addressed through a review of the vegetation protection controls. This review should consider how to protect the vegetation itself and the soil, water and air space that vegetation requires to thrive.

Canopy Cover

The Moreland Urban Heat Island Action Plan [2016-2026] identified Moreland's highly urbanised environment experiences a high urban heat island effect (UHIE). Detailed analysis of Moreland's UHIE vulnerability has found that there is a high number of extremely hot areas and with very few cool places, where during heatwaves most parts of Moreland can be four to seven degrees warmer than surrounding areas. The analysis highlighted that Moreland has a community that is vulnerable to this heat due to the increased amount of hard surfaces that absorb and radiate heat, limited vegetation to shade and cool, heat production from machines and activities and air pollution creating local greenhouse effects.

Amendment C189more responded to this research demonstrating that the UHIE is having a real effect on a large aspect of the municipality, with infill urban development being the key contributor to the loss of vegetation and decline of Moreland's urban forest. Currently, landscaping including tree planting occurs once the site layout has been determined, resulting in small areas of open space that can only accommodate small trees. The Amendment sought to flip this approach to mandate a predetermined tree size and open space that could facilitate larger canopy on private land throughout Moreland's residential development to realize meaningful canopy cover for the long-term liveability of Moreland. Amendment C189more was supported by a planning panel and gazetted 1 September 2021.

Upcoming work being undertaken by the State as part of Plan Melbourne Action 91 - Cooling and Greening Melbourne supports this work by extending and creating urban forests and cooling measures throughout metropolitan Melbourne. There is a need for the planning system to better ensure protection of vegetation and elevate the importance of existing and new vegetation in residential development. This should form part of any review of ResCode.

Waterway corridors

Many of Victoria's waterways are shared resources. They traverse multiple municipalities and are managed by a range of public authorities. The fauna and flora occupying the creek valleys and the people enjoying them value the area as a whole.

The valleys are important from an environmental, recreational, scenic and stormwater management perspective. However, there is no planning scheme control which adequately addresses this range of issues. We believe that a waterway corridor control which includes objectives in relation to each of these aspects would benefit Victoria's waterways. In addition, a unified control has more benefit than a range of disparate ones. The new Yarra (Birrarung) River Corridor planning controls also reflect this approach. We ask that the State Government take a leadership role in developing a control and applying it to key waterways.

Certainty and Fairness

Mandatory height limits

The Moreland Planning Scheme includes mandatory height limits in some local activity centres. There are also mandatory height limits in most of the residential zones. These limits serve to create a hierarchy of built form that directs taller development to our larger activity centres. It is Council's submission that this is an appropriate use of mandatory height limits. More widespread use of mandatory heights, particularly in higher order activity centres, should, if used, be subject to regular monitoring and review.

Apartment sizes

[More detail is contained in Council's submission to the 2021 Parliamentary Inquiry into Apartment Design Standards.](#)

A persistent issue with liveability of apartments in Victoria is their small overall size. Minimum room dimensions were introduced in 2017. This has not addressed the issue however. Better outcomes would be achieved if both minimum apartment sizes and room dimensions were specified. Any specified minimums should:

- Have regard to the impact of the change on construction cost (house affordability).
- Not override consideration of design quality, context, internal amenity and off-site impacts.

VCAT Appeal process and third-party appeal rights

The Act enshrines third party appeal rights for the majority of planning applications. It is Council's view that retention of an independent appeal body is appropriate.

The COVID-19 pandemic has changed the way that decision making bodies work and how they hear the views of affected parties. It is suggested that retention of some pandemic-instigated changes be considered in the longer term. For example specifying that:

- Some planning appeals be 'heard' based on written submissions, or
- There be no expert witnesses for particular types of appeals.

This would make these appeals more accessible and cost-effective for a range of parties.

Ministerial call-ins

It is Council's experience that ministerial call-ins do not lead to quicker or more certain decisions. They can also lead to confusion when permits are acted upon. We encourage limiting call-ins to proposals that have clear benefits for the State of Victoria. Examples might include significant infrastructure projects that cross Council boundaries.

The process of assessing a called-in application can cause confusion. All parties would benefit from procedures to address matters such as:

- How referrals are conducted, including timeframes
- Development of conditions
- The conduct of public notice

Procedures should be developed in cooperation with local government. Their focus should be facilitating good decision making with local policy at the core, the ability for the community to genuinely engage in the process, minimising double handling and making enforcement of the permit easier.

Heritage

Adequacy of the current system

Council is of the view that retention of the majority of heritage matters within the planning system is appropriate.

The Heritage Council conducted a review of local heritage between 2018 and 2020. The findings are in the State of Heritage Review: Local Heritage report. The report outlines aspects of the heritage system that are working well and those that need improvement. It finds that:

- Local heritage is not always a primary consideration or priority within councils. It is often seen as something 'extra' to the core components of planning.
- Increased direction from the State Government is needed to help councils to understand and meet their local heritage responsibilities.
- A base-level of heritage protection is still to be achieved across the State:
 - 4% of all councils are yet to complete a stage 2 heritage study;
 - nearly 10% are yet to translate any studies into the Heritage Overlay; and
 - nearly 20% identified geographic gaps in their studies.

This review found that the best way to address the identified problems and enhance the strengths in the current system is the "revitalisation of the State's role in providing leadership in the protection and management of local heritage". It suggests three actions:

- Establishing dedicated local heritage roles within DELWP Planning to provide focused leadership and direction.
- The creation and maintenance of a centralised, up-to-date repository of clear and consistent guidance material.
- Direct support and assistance to ensure base-level heritage studies are completed and translated into the planning scheme.

These actions are outside of the Heritage Council's role. Support from the Minister for Planning and DELWP is needed to implement them. Moreland agrees with the Heritage Council's findings and encourages the State Government to implement their recommendations.

The following initiatives align with the recommendation of the Heritage Council's report. They will support councils in their obligation to conserve heritage. We encourage the Committee to consider them.

Heritage Grants

Heritage studies and implementation

Across the State, there are more local heritage assets than State heritage ones. Protecting local heritage falls to local government and involves:

- undertaking heritage studies and assessments,
- preparing heritage guidelines,
- processing planning scheme amendments,
- considering changes to heritage places in planning applications and
- supporting residents make appropriate changes to their heritage place.

These actions are extensively cost inhibitive to councils. Funding assistance for Councils to meet their heritage obligations as set out in the P&E Act is one way that the state government can support councils to protect and conserve heritage places.

We ask you to consider providing grants to local government to conduct and implement heritage studies. Heritage NSW currently operates a grants program which may be a useful model.

Works to local heritage places

Moreland has over 12,000 places included in the local Heritage Overlay. The costs associated with maintaining heritage places fall to property owners.. Owners often ask what compensation is available and if financial support is available. The State Government contributes to the improvement of State heritage places through the Living Heritage Grants which is limited to State significant assets only. However, there is little avenue for residents to apply for grants to assist them improve local heritage assets.

Moreland, like many municipalities, has a community grants program. It focuses on community-led initiatives and collaborative projects. Successful projects demonstrate multiple benefits and focus directly on the Moreland community. Grants for home owners to manage their heritage place does not fit into this program. Finding funds to offer heritage grants is almost impossible for councils in a rate capped environment. We see a few options for local heritage grants for the Committee's consideration:

- Expansion of the Living Heritage Grants to include local heritage places.
- Direct funding to local councils to offer grants through the Victorian Heritage Restoration Fund.
- Direct funding to local Council's to manage their own grant program.

Appointment of independent state and local heritage advisors

Many councils engage heritage consultants to provide internal advice to their planning departments. This is a costly exercise but a necessary one. These services were previously funded by the State Government. It would be useful if this funding could be re-instated to assist councils to guide appropriate development outcomes on local heritage places.

Local Heritage Guidelines

Most of the heritage properties in Victoria are of local significance. Good outcomes for the protection of these properties rely on local heritage policy in the relevant planning scheme. There are limits on what can be included in a local policy, and councils are required to develop heritage guidelines. These are beneficial as they are more detailed and contain pictures and diagrams. They have a significant role in illustrating and guiding appropriate change to heritage places. Preparing guidelines can be quite a costly exercise.

There is a need for consistent guidelines that can be used across the state. We would ask that Heritage Victoria be engaged to prepare them. They:

- Would provide guidance on maintaining and modifying heritage properties, including climate adaptation.
- Should be in a form that means they can be used by planners, designers and home owners.
- Should be themed for ease of use and application ie. fences, external alterations
- Will assist in consistent messaging and decision making across the state.

Preparation of state-wide guidelines by Heritage Victoria would require a single one-off expense. This is preferred over use of separate grants for individual councils.

Interim Heritage Process

The Planning and Environment Act allows Councils to ask the Minister for Planning to prepare and approve an amendment on its behalf. These 'Ministerial Amendments' do not undergo public notification. One way they are used is to secure temporary heritage protection over properties. This:

- Minimises risk to the heritage place while the amendment for permanent controls is processed.
- Provides clarity for all parties in any building or planning permit application.
- Helps Council to meet its local heritage obligations under the Act.

The pressure for development within the City of Moreland means that there is potential for heritage places to be demolished while a planning scheme amendment to preserve them is being processed. As a result Council practice is to seek interim heritage controls at the same time as commencing an amendment for permanent controls.

In the past 4 years, Moreland has requested interim controls on two occasions. The associated permanent controls were pursued through separate, initially concurrent, amendments. Council had discussed the amendments with DELWP before lodging them. Despite this, both Ministerial amendments were:

- Subject to requests for onerous information. This included data on housing and development.
- Handled by multiple DELWP officers, who each asked Council to brief them on the amendments.
- Not decided until after the Amendment for permanent controls had progressed to exhibition.

The delays and queries meant that Council was uncertain whether the interim controls would be approved. This made it difficult to communicate with affected land owners. Together, the process put a lot of unnecessary pressure on Council.

Moreland believes that protection of heritage places would be better served by:

- Allocation of requests for interim protection to dedicated heritage staff within DELWP Planning.
- Clear written advice on the information which should be submitted to support requests for interim controls, such as housing and development data.
- Ensuring that interim controls are enforced either before, or at the same time, as an amendment for permanent controls is authorised.

The residential zones

Additional detail is contained in the [Moreland Medium Density Housing Review, A Home in Moreland and Supplying Homes in Moreland](#).

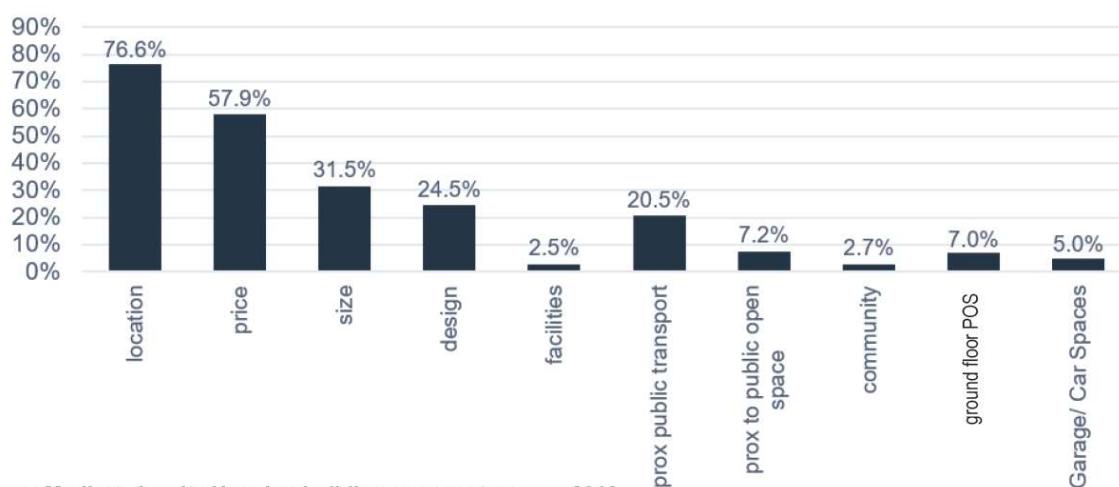
What does the community want?

Council has undertaken a study of the housing needs of our municipality. The 'A Home in Moreland' and 'Supplying Homes in Moreland' can be accessed by the links above and provide detailed information on demographics, housing supply and demand in our municipality. As part of Council's Medium Density Housing Review it also conducted surveys of residents of medium density housing.

A Home in Moreland found that there has been a strong shift in preferences for housing across all household types. It found that a high proportion of couples without children, lone person and group households are living in medium and high density houses. There is also a relatively high share of family households living in medium and high density housing. The report refers to the Grattan Institute's 2011 report *The Housing We'd Choose* and includes information on housing desires. The report:

- Shows that when households are faced with trade-offs between housing and location, we're prepared to compromise.
- This is also demonstrated by Council's occupant survey, where location and price were significantly greater influences on dwelling choice than other factors:

Chart 8: Why did your household choose to live in this dwelling?



Source: Medium density Housing building occupant survey, 2018

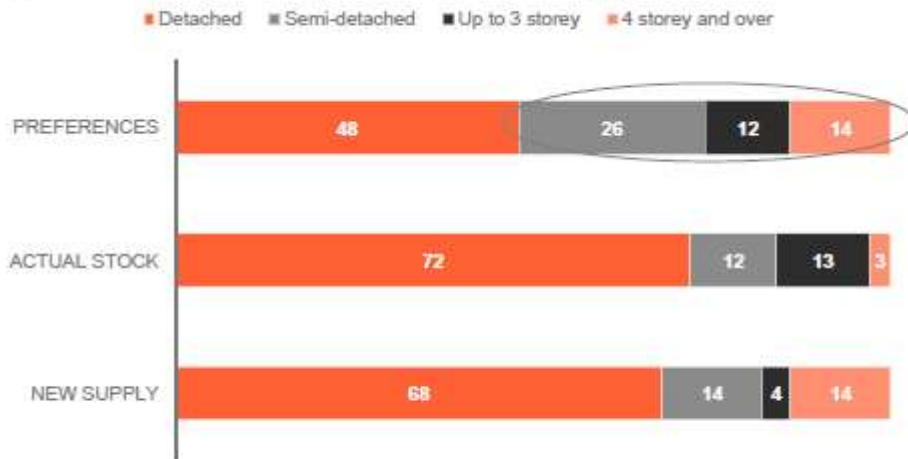
- Highlights that contrary to popular belief, Australians want a mixture of housing choices, not just detached houses.
- Suggests the issue is that the market is not providing enough housing choice in the locations where Australians want them.

Are the current residential zones providing that housing?

Building form and size

The Grattan Institutes findings would indicate that there may be latent demand for medium and high density dwellings and if given more choice, the shift to smaller dwellings in Moreland (and elsewhere) may be even more pronounced, as is indicated by the following graph, reproduced from in A Home in Moreland:

Figure 44. Comparison of preferences, stock and supply

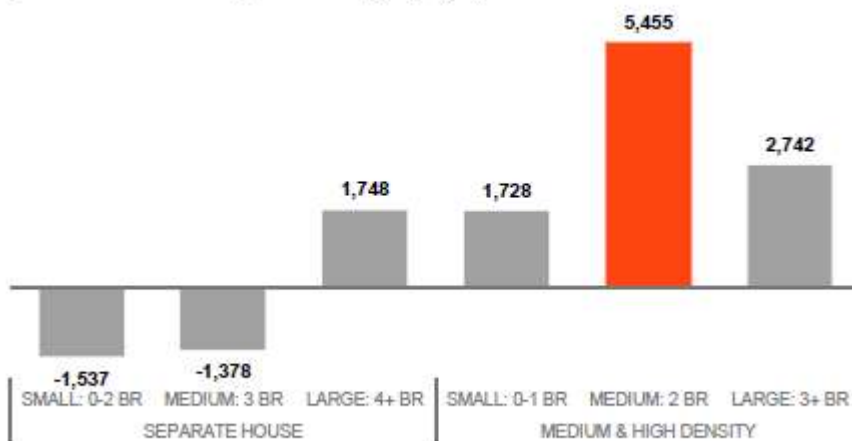


Source: Kelly, J.F., Weidmann, B., and Walsh, M., 2011, The Housing We'd Choose, Grattan Institute, Melbourne.

The zone in which a property is located is one of multiple factors that influence the form of redevelopment that may occur. Other factors include location relative to services, the character of the neighbourhood and the costs of development.

The Moreland Planning Scheme includes the Mixed Use, Residential Growth, General Residential and Neighbourhood Residential Zones. It experiences demand for multi dwelling development in each of these zones. The form of this development varies both from zone to zone, but also from suburb to suburb. There is a marked difference, for example, between the type and variety of multi dwelling development in the General Residential Zone in Brunswick when compared with Oak Park. Notwithstanding this, the majority of new medium and high density dwellings in Moreland have two bedrooms:

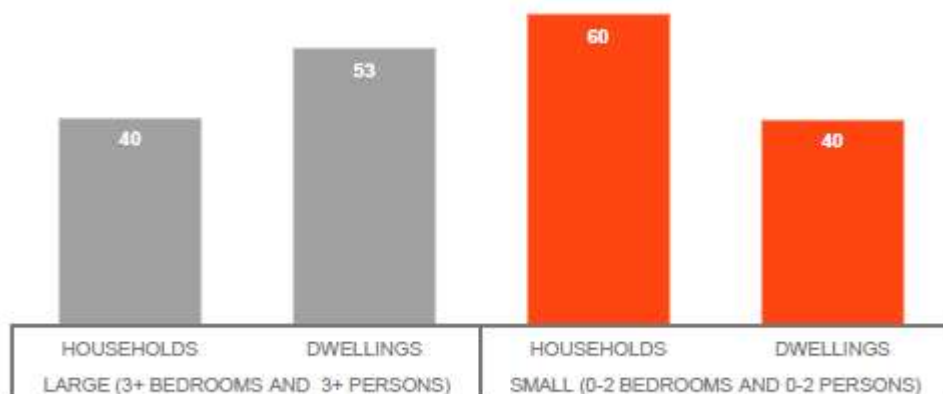
Figure 52. Net change in dwellings by type, Moreland - 2006-16



Source: ABS, Census of Population and Housing (2006 and 2016)

This is appropriate in a municipality where the majority of households have one or two people and where small dwellings are underrepresented:

Figure 55. Housing stock compared to smaller households, Moreland 2016



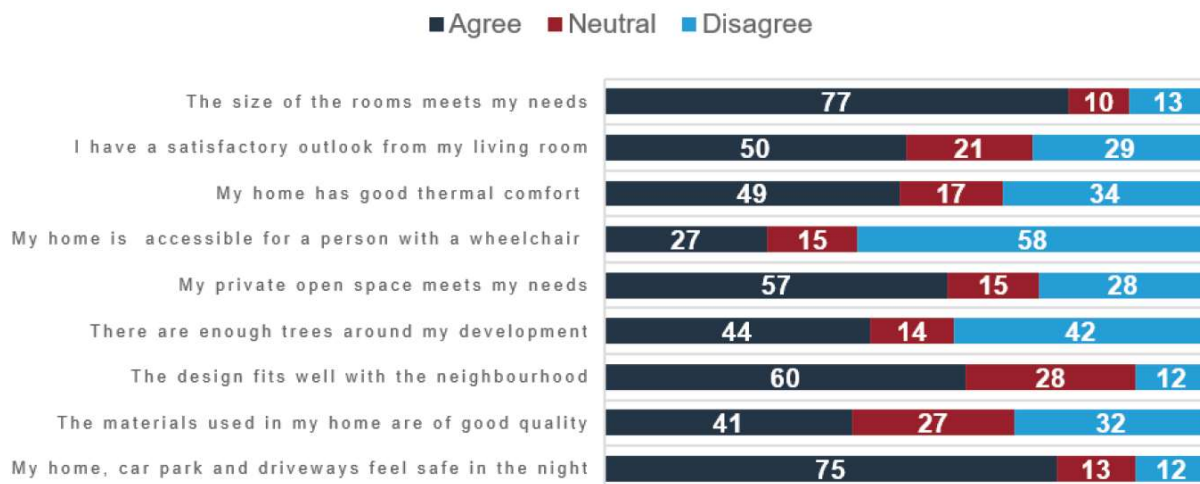
Source: ABS, Census of Population and Housing (2006 and 2016)

Building detail

The ResCode provisions, rather than the residential zones, detail the specific design requirements for multi dwelling development. The Clause 55 (medium density housing) requirements have been in place for over 20 years, and Council would suggest that it is appropriate that they be reviewed.

Respondents to the Medium Density Housing Review’s occupant survey indicated varying levels of satisfaction with the design and performance of their residence:

Chart 9: Agreement ratings on questions asked in the Building Occupant Survey



Source: Medium density Housing building occupant survey, 2018

Council has implemented design advice sheets and other measures to address some of the issues raised. We suggest that a broader review of the ResCode requirements is needed to understand whether the provisions are in fact delivering the housing Victorians need and desire.

Other issues

As detailed above, Council would encourage the Committee to consider a review of the ResCode provisions. A number of other issues are relevant to Moreland, as follows:

Employment floorspace

More information on this issue can be found in the [A Job in Moreland](#) report.

Council has found, through its A Job in Moreland study, that the municipality is losing commercial floor space in its Brunswick Activity Centre to residential development. In this centre if no action is taken to prevent it, new development will result in the loss of 57,000 square metres of employment floorspace over the next 15 years.

Council has commenced public engagement on an Activity Centre Zone which would address this issue for Brunswick. It is an issue, however, that we would suggest may be common in strip shopping centres across Melbourne. Consideration of the need to provide employment floorspace and potential modifications to the Commercial 1 Zone may be an appropriate body of work now that the Metropolitan Industrial and Commercial Land Use Plan has been published.

Contaminated land

Previous land use within Moreland has resulted in the potential contamination of significant sections of the municipality. Council has sought to apply the Environmental Audit Overlay (EAO) to this land when it is rezoned to allow sensitive uses.

The EAO itself does not require a planning permit to be issued for any use or development. It requires that before a sensitive use (or construction associated with a sensitive use) starts, an environmental audit statement or preliminary risk screen must be obtained. Sensitive uses are:

- Residential use,
- Child care centre,
- Pre-school centre,
- Primary school,
- Secondary school and
- Children's playground.

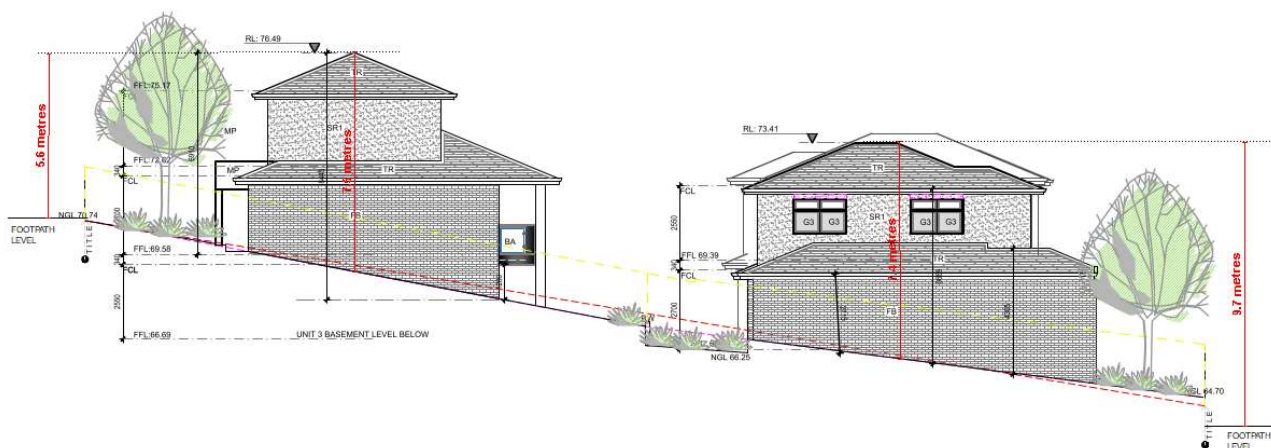
In many instances sensitive uses and associated construction do not require a planning permit. Where a building permit is required the relevant building surveyor is not required to ensure that the environmental audit statement or preliminary risk screen has been obtained. There is also nothing in either the EAO or the building regulations that requires the Audit Statement to be adhered to either initially or on an ongoing basis. Council's recent experience is that the Environment Protection Authority (EPA), which is the most appropriate body for enforcement of environmental audit requirements, is seeking to ensure that Environmental Audits are enforced through the planning system. Council's submission is that:

- The EPA is the most appropriate body for enforcement of environmental audit requirements.
- The relevant building surveyor should be required to ensure that where an EAO applies an Audit Statement or Preliminary Risk Screen has been obtained before issuing a building permit, including a permit for demolition. This is similar to requirements to check the heritage status of a building before issuing a permit for demolition, or to ensure that the building approval corresponds with any relevant planning approval.

The impact of slope on residential development

Consideration of mandatory height limits and the impact of a shift to a Performance Assessment Module implementation of ResCode has prompted Council to consider the impact of slope on mandatory heights.

On sloping land the elevation of a site above or below the street can result in significant streetscape implications in the residential zones. Within both the Zones and ResCode height is measured from the ground level directly below a part of the building. This differs from some Design and Development Overlays in the Moreland Planning Scheme, which measure height from the footpath adjacent to the site. The impact of this can be seen in the diagram below.



Both dwellings have a similar maximum overall height above natural ground level (7.4m and 7.5m). Their impact upon the street is markedly different, however. One dwelling presents an effective height of 5.6m above footpath and the other of 9.7m. Both dwellings are within the height permitted by the Neighbourhood Residential Zone. But they will have significantly different impacts on the street (or on neighbouring properties, if the slope is toward these rather than a street). A shift to a Performance Assessment Module would prevent councils (and VCAT on appeal) from considering whether building heights which vary significantly from their neighbours due to slope across the landscape are appropriate. We would request a detailed review of how building heights are defined as a result.

Complexity of the planning scheme

In recent years the number of Planning Scheme clauses which outline that the requirements of the planning scheme do not apply to particular use or development has grown significantly. They now are:

- Clause 52.01 – Combustible cladding rectification exemptions
- Clause 52.03 – Level Crossing Removal Project
- Clause 52.07 – Bushfire recovery
- Clause 52.10 – Reconstruction after an emergency
- Clause 52.12 – Bushfire protection exemptions
- Clause 52.14 – 2009 Bushfire – Replacement buildings
- Clause 52.18 – State of emergency and recovery exemptions
- Clause 52.20 – Victoria's Big Housing Build
- Clause 52.22 – Community Care Accommodation
- Clause 52.23 – Rooming House
- Clause 52.30 – State projects
- Clause 52.31 – Local Government Projects
- Clause 52.35 – Major Road projects.
- Clause 52.36 – Rail Projects

These clauses are located amongst others that specify permit requirements. They are in addition to Clauses 62.01-62.05, which also outline exemptions to the need for a planning permit. Some clauses are ongoing, whilst others include a 'sunset clause' or end date. Some also include significant wording and style differences to the remainder of the scheme. We also note that Clause 52.09 does not include any permit requirements and should belong within Clause 53.

Council's preference is for a simpler scheme that provides clarity for all users. We would suggest that the scheme could be improved by some rearrangement. The number of such clauses should be minimised, and all broad permit exemptions held in a single part of the Scheme.

Regular review

Councils are required to review their planning schemes each four years. Doing so ensures that the schemes are up to date and issues are addressed promptly. It is our view that the Victoria Planning Provisions would benefit from a similar regular review:

- The wording of some clauses have remained problematic for a number of years. For example, some ResCode objectives are not reflected in the Standards associated with them.
- Changes made to exemptions by the clauses referred to above result in confusion in reading other parts of the scheme. For example, there is a general exemption for buildings and works carried out by or on behalf of a Council of \$1 million in Clause 62.02-1, whilst Clause 52.31 gives an exemption in many instances for projects costing up to \$10 million.
- A regular review would:
 - allow stakeholders to provide feedback on a regular basis
 - allow for a clearer understanding of the DELWP workplan
 - reduce costs where Councils conduct work without knowledge that DELWP is also conducting similar work
 - avoid the expense of separate public engagement on multiple, often overlapping, issues, and
 - enable the planning framework to evolve in line with emerging issues such as climate change.