

**Submission
No 273**

**INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN
PLANNING FRAMEWORK**

Organisation: Mornington Peninsula Shire

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Parliamentary Inquiry Protections within the Victorian Planning Framework

Mornington Peninsula Shire

Submission to the Parliamentary Environment and Planning Committee

*Inquiry into the adequacy of the Planning and Environment Act 1987
and the Victorian planning framework in relation to planning and
heritage protection.*

Submission by the Mornington Peninsula Shire

March 2022



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1. Purpose

The Legislative Council's Environment and Planning Committee is seeking submissions to its inquiry into the adequacy of the *Planning and Environment Act 1987* and the Victorian Planning Framework in relation to planning and heritage protection.

The Terms of Reference for this inquiry is very broad and encompasses all aspects of the planning regulatory system, mainly the *Planning and Environment Act 1987* (the Act) but by extension all the planning policies and controls within the Victorian Planning Provisions (VPPs) and local schedules to each municipal planning scheme.

This is the Mornington Peninsula Shire's (the Shire) submission to the Parliamentary Inquiry (the Inquiry).

The timing of the consultation over the 2021 holiday season and deadline for submissions in January 2022 was insufficient to adequately collate comments from all relevant departments. In addition, the submission could not be presented at an Ordinary Meeting of the Mornington Peninsula Shire Council, as there were no meetings scheduled prior to the deadline date.

Consequently, this submission is an officer submission and notes various Council resolutions and adopted strategies in the formulation of the recommendations.

This submission will be presented to Council for formal adoption after the submission date deadline.

Whilst some of the recommendations contained in this submission specifically refer to changes to the Act, many relate to VPPs. Also, many recommendations suggest improvements to the management of the planning system to be coordinated at State level through the Department of Environment, Land, Water and Planning (DELWP) – these suggestions do not necessarily require a change to the Act or regulations.

The format of this submission is to address each of the Committee's Terms of Reference, and in some cases expanding on the issues in sub-sections, where there is particular relevance to planning policies within the Shire.

Abbreviations

Bushfire Management Overlay	BMO
Bushfire Prone Area	BPA
Country Fire Authority	CFA
Department of Environment, Land, Water and Planning	DELWP
Environmentally Sustainable Design	ESD
Localised Planning Statement	LPS
Minister for Planning	The Minister
Mornington Peninsula Planning Scheme	MPPS
Mornington Peninsula Shire	The Shire
Mornington Peninsula Shire Council	MPSC
Municipal Association of Victoria	MAV
<i>Planning and Environment Act 1987</i>	The Act
Urban Growth Boundary	UGB
Victorian Planning Provisions	VPPs



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2. The high cost of housing

This section addresses the matters raised in the Inquiry's Terms of Reference.

- provision of social housing
- access for first home buyers
- the cost of rental accommodation
- population policy, state and local
- factors encouraging housing as an investment vehicle
- mandatory affordable housing in new housing developments

Council resolved on 28 October 2021 to declare a housing crisis with respect to housing availability and affordability.

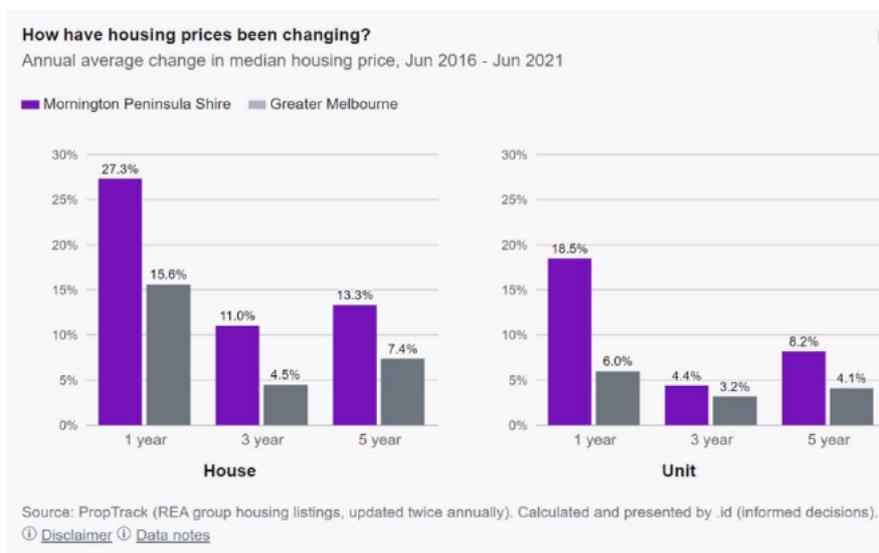
Council has also made submissions to related matters, (e.g., Parliamentary Inquiries into Homelessness in Victoria and Australia, Royal Commissions, Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing) by Council and peak bodies, of which Council has membership.

Reform of the *Planning and Environment Act 1987* and the Victorian planning framework alone is not going to be able to reduce the high cost of housing, particularly in municipalities like the Mornington Peninsula that are highly valued for their natural values and local character.

Land is a finite resource and as such the market will produce high land prices in the most sought-after areas. The Mornington Peninsula demonstrates this with the cost of housing having risen rapidly to the extent that it is now more expensive than the Greater Melbourne area. Refer to Figures 1, 2 and 3 describing the cost of housing on the Mornington Peninsula, and details of changing house price and rental costs.

Housing is increasingly becoming unaffordable even for households on moderate incomes. For example, in the 12 months prior to June 2021, a lone person on a moderate income would only have found 13.3% of the rental listings affordable (Affordability Monitor, Mornington Peninsula Shire id.com.au).

Figure 1:





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Figure 2:

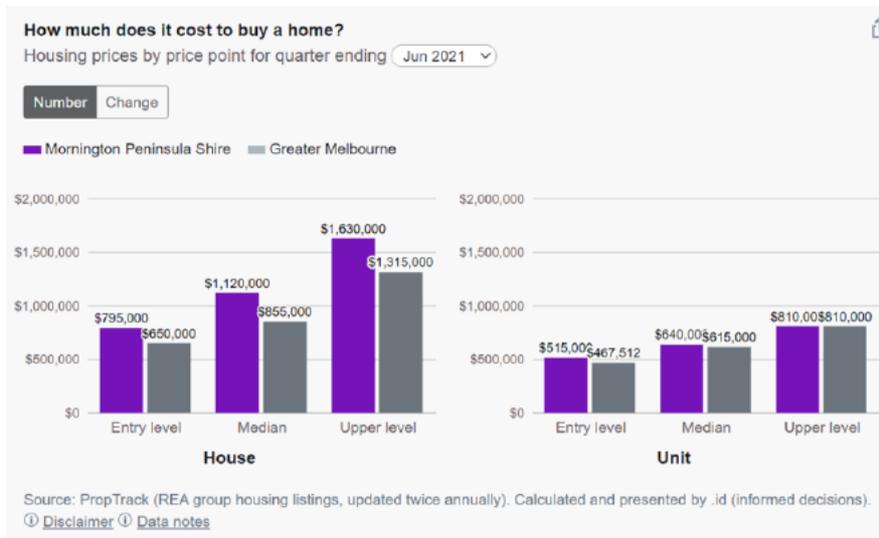
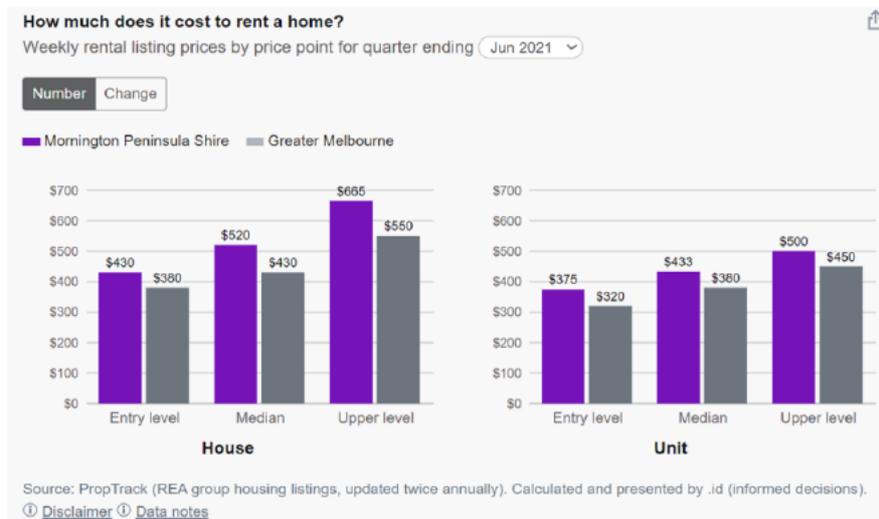


Figure 3:



With this situation, the market cannot be relied upon to produce affordable housing without intervention given the high cost of social housing production (estimated at \$13,000/annum/home¹).

¹ Lawson, J., Pawson, H., Troy, L., van den Nouwelant, R. and Hamilton, C. (2018) Social housing as infrastructure: an investment pathway, AHURI Final Report 306, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/final-reports/306>, doi:10.18408/ahuri-5314301



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Intervention must be in the context of coordinated initiatives including financial assistance, such as Commonwealth Rent Assistance and taxation incentives, the direct provision of social housing and the regulation of the land use planning system. The Victorian Government should also investigate regulatory tools in the planning framework to encourage affordable rental housing.

A cross-sectoral National Strategy is required.

A strengthened, standardised State-wide approach for developer contributions to affordable housing to bring more certainty about the required nature of a contribution early in the process would assist the production of affordable housing.

In areas of high land value, like the Mornington Peninsula, there is a need for affordable housing however developer contributions alone will not bring sufficient supply without other subsidies.

The Victorian planning system could be used to set out a strategic planning intention for a geographic distribution of social housing in association with existing directions about Victoria's settlement pattern – this might be assisted by the Government's intention to produce a 10 year Social and Affordable Housing Plan and also Victoria's Infrastructure Plan which partly supports the Victoria's Infrastructure Strategy 2021-2051 at Recommendation 68:

In the next year, set a transparent state-wide social housing growth target to reach and maintain at least the national average of 4.5 social housing dwellings for every 100 households by 2031.

However, a geographic dimension would need to be developed and applied. Each municipality, no matter what its relative socio-economic status, will have a need for social and affordable housing for people of low incomes whether they be on welfare benefits or undertaking key low paid work.

The planning system tools available to implement any strategic planning intention for affordable housing are very limited. They would largely depend upon Government and philanthropic funding for social housing for implementation. The scope for the development of additional planning system tools to support implementation, other than Section 173 agreements and Clause 51.01 Specific Sites and Exclusions, could be further investigated. For example, perhaps an overlay tool for securing the use of land for say, a build to rent form of affordable housing may be possible. Whilst this would not be expected to offer a broadscale improvement it may particularly assist projects in key locations.

The removal of a permit requirement for rooming houses with nine or less rooms, in association with other economic factors, appears to have increased their attraction for investment purposes. This is a positive in the sense that rooming houses are now an integral part of the housing system providing some diversity in housing types and often an option for lower cost housing. However, the production of this private housing is not matched to the provision of available services that can provide residents with appropriate social support.

The Victorian Planning Framework supports the diversity of housing. A diverse housing supply is likely to give people more scope to find a home that suits their unique circumstances and therefore be a positive factor in preventing homelessness. A secondary dwelling code may help facilitate this diversity. It is understood that Victoria's Secondary dwelling pilot program was completed in March 2021 but there is yet to be any decision about whether any similar change to the Victorian Planning System is warranted. Resolution of this matter is supported.

The recent Parliamentary Inquiries into Homelessness in Victoria and Australia have shown the complexities and failures of the housing system and government responses to their recommendations are still awaited. An agreed National-State cross-sectoral plan to address homelessness is essential.



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The Shires's submission to the *Better Regulation Victoria Planning and Building Approvals Process Review - Discussion Paper* November 2019 highlighted that there are factors other than delays in the planning system that have a significant impact on housing affordability. These factors can include the availability of housing finance and 'warehousing' of land.

Recommendations

1. An agreed National-State cross-sectoral plan to address homelessness is essential. The high cost of housing cannot be adequately addressed solely through reform of the *Planning and Environment Act 1987*.
2. A strengthened State-wide approach for developer contributions to affordable housing to bring more certainty is supported.
3. The Victorian Planning Framework should include strategic direction about the distribution of social housing in association with existing directions about Victoria's settlement pattern – it could potentially reference the forthcoming 10 year Social and Affordable Housing Plan and Victoria's Infrastructure Plan.
4. The Victorian Planning Framework should include housing diversity targets.
5. Reform of the Victorian Planning System to better meet the challenges and opportunities of secondary dwellings and new forms of housing such as Build to Rent is warranted.

References

- *Council and Wellbeing Plan 2021 – 2025*, MPSC, 2021
- *Mornington Peninsula Housing and Settlement Strategy: Refresh 2020-2036*, MPSC, 2020
- Mornington Peninsula Shire Council Submission to Better Regulation Victoria Planning and Building Approvals Process Review - Discussion Paper November 2019
- *Peninsula 2040 Community Vision*
- *Social and Affordable Housing Policy*, MPSC, 2020
- *Triple A Housing Plan 2020 – 2030*, MPSC

3. Environmental sustainability and vegetation protection

3.1 Environmental sustainability – impacts of climate change

The Shire has a long-standing commitment to achieving environmentally sustainable development on the Peninsula, as is evidenced by the breadth and depth of environmentally based policies adopted and implemented by the Shire over many years. These policies cover a wide range of environmental considerations including biodiversity, natural environments and water management.

On 13 August 2019, Council declared a climate change emergency and adopted *Our Climate Emergency Response From 2020 to 2030: Ensuring Our Future (2020)*. This Plan includes strategies that, amongst other things, commit Council to improving Environmentally Sustainable Design (ESD) built form outcomes as a priority action.

In this regard, Council is progressing Amendment C232morn to the Mornington Peninsula Planning Scheme (MPPS) to implement a new local ESD policy. The policy aims to integrate environmental sustainability



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principles into land-use planning, new development and the redevelopment of existing infrastructure across the Peninsula. The policy will require future developments on the Mornington Peninsula that require a planning permit, including apartments, to implement ESD measures to address a range of matters including energy performance, integrated water management, indoor environment quality, transport, waste management and urban ecology. These measures will inherently improve the design of residential buildings to ensure they provide sustained liveability.

The local ESD policy will apply to residential and non-residential development (that require a planning permit) and identifies what information permit applicants must provide to Council to demonstrate that their proposal meets the objectives of the policy. Requirements are based on the nature and scale of the proposed development.

It is noted that Council sought to have the new ESD policy apply to single dwellings on a lot (given most development on the Mornington Peninsula is for single dwellings) and non-residential development less than 100sqm in size. However, in authorising Amendment C232morn, the Minister for Planning (the Minister) required that both these thresholds be deleted. Council has since learned that a local ESD policy applicable to single dwellings has been approved and gazetted for Hepburn Shire as part of Amendment C80hepb. The Shire is still of the view that ESD principles should be embedded in all forms of new development – including single dwellings – to reduce built form impacts on the environment, increase the energy efficiency of buildings (and therefore reduce operating costs over the life of a building), improve community resilience to increasing climate change impacts and enhance overall liveability and comfort for future occupants. In this regard, ESD outcomes should be facilitated consistently across the State, either via the planning or building systems.

To this end, Council is aware that the State Government is progressing planned changes to the VPPs via the *Environmentally Sustainable Development of Buildings and Subdivisions: A Roadmap for Victoria's Planning System*. This project aims to improve the environmental performance and design of buildings in response to the urban growth and climate change challenges facing Victoria. It will seek to further embed ESD principles within the planning system to support environmentally sustainable development outcomes for new buildings, with the end goal of creating more sustainable and resilient cities and towns.

Council provided a submission in March 2021 in support of the roadmap which represents a significant advancement towards facilitating genuine sustainable development outcomes. Council's submission specifically endorsed exhibited VPP policy changes that addressed energy, water, waste and recycling, transport, landscaping and biodiversity, urban heat and air and noise pollution. Council is awaiting exhibition of the planned changes to VPP provisions to provide specific built form design standards to achieve ESD policy outcomes. In its submission, Council reiterated its position that reasonable and meaningful ESD provisions should be implemented for single dwellings, if not via the planning system, then via the building system.

It is noted that, as a separate exercise, in June 2021, Council joined with 30 other councils across Victoria under the auspices of the Council Alliance for a Sustainable Built Environment (CASBE) to investigate and develop elevated ESD policy targets by 2022. The aim of the new ESD standards is to go beyond the status quo of existing ESD policies across Victoria to achieve 'net zero carbon' development. Zero carbon developments are new buildings that have no net carbon emissions. They are typically designed and built to be highly energy efficient and often do not use fossil fuel energy sources (such as gas or coal fired electricity) through a combination of rooftop solar and buying off-site renewable energy.

The new standards are currently being drafted and are subject to independent expert peer review (legal, technical and economic) before they are presented to CASBE member councils. Member councils will then need to decide whether they support the proposed standards and wish to proceed to a group planning



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scheme amendment proposal to implement the strengthened standards into their respective planning schemes.

It is also noted that CASBE, in association with the Victorian Greenhouse Alliances, commissioned a report *Climate change & planning in Victoria: Ensuring Victoria's planning system effectively tackles climate change* prepared by Hansen Partnership, 2021. The report identifies barriers to and opportunities for addressing climate change effectively through Victoria's planning system and provides a list of recommendations for reform including:

- Shifting the balance of decision-making to elevate goals of adaptation and mitigation in planning policy.
- Supporting statutory decision-making through permit triggers that will require climate change objectives to be considered.
- Emphasise that climate change objectives to be assessed equally with other competing planning objectives.
- Updating planning provisions with best practice and science.
- Supporting strategic decisions that include climate change actions into planning framework plans.
- Planning for climate resilient communities by acknowledging scale of changes required into precinct planning, greenfield development and subdivisions.

Recommendations

6. Request DELWP to progress the implementation of standardised ESD policy and provisions to the VPPs as a matter of priority.
7. Consider the merits of the following:
 - include an explicit objective in the Act to provide for the protection of land from impacts of climate change;
 - review the Planning Policy Framework to strengthened decision making by referring to climate change mitigation and adaptation to achieve net zero emission by 2050; and
 - 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 include an explicit assessment against relevant climate change considerations.

References

- *Climate change & planning in Victoria: Ensuring Victoria's planning system effectively tackles climate change*, Hansen Partnership, 2021.
- *Environmentally Sustainable Development of Buildings and Subdivisions: A Roadmap for Victoria's Planning System*, DELWP, 2020
- *Our Climate Emergency Response From 2020 to 2030: Ensuring Our Future*, MPSC, 2020



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3.2 Environmental sustainability – sea level rise

The Shire's adopted *Council and Wellbeing Plan 2021-2026* details a commitment to tackling climate change at a time when a Climate Emergency has been declared, calling for immediate and urgent action to reverse global warming.

To deliver this commitment Council in partnership with DELWP commenced a study into the impacts and management of predicted sea level rise. Council adopted the *Western Port Coastal Villages and Surrounding Settlements Strategy*, prepared by Ethos Urban in 2019. The Strategy provides a framework with associated implementation actions to respond to coastal climate change impacts (specifically inundation and erosion) whilst protecting and enhancing township character in response to pressures for change.

The Strategy responds to findings of the *Western Port Local Coastal Hazard Assessment*, prepared by Water Technology, 2014. This report provides the latest scientific understanding of likely future inundation and erosion impacts caused by climate change along Western Port including the best available scientific mapping, modelling and data of potential storm surge and sea level rise impacts of 0.8 metres by the year 2100.

Council is currently progressing Amendment C271morn to the MPPS to introduce new and revised planning controls to identify land subject to inundation and/or erosion hazards caused by predicted sea level rise of 0.8 metres up to the year 2100 along the Western Port coastline. Specifically, the amendment proposes to include new planning permit requirements in the existing Land Subject to Inundation Overlay (LSIO) and introduce a new Erosion Management Overlay (EMO) that trigger the need for planning approval for most new development on land identified as subject to erosion/inundation hazards. Where required, applications must be supported by a peer-reviewed Coastal Vulnerability Hazard Assessment (CVHA) to Council's satisfaction.

The amendment will ensure that any new development along Western Port is designed and built to consider the impacts of climate change, both coastal erosion and inundation.

In 2022/23, Council also intends to progress a new planning scheme amendment to implement the LSIO along the Port Phillip Bay coastline based on existing flooding and sea level rise data. Simultaneously, Council will be advocating via the Municipal Association of Victoria (MAV) and Association of Bayside Municipalities (ABM) for the Minister to apply and update planning controls (including the LSIO and EMO) when the Victorian Government releases the Port Phillip Bay Coastal Hazard Assessment in the next 12-24 months.

Council seeks leadership and/or appropriate funding, resourcing and support from the State Government to:

- undertake long-term, regional-scale sea level rise adaptation plans for areas on the Mornington Peninsula that are subject to sea level rise hazards in accordance with the recently released *Marine & Coastal Policy* (DELWP, 2020),
- improve VPPs (including the EMO and LSIO) to better address sea level rise impacts,
- provide access to appropriate expert resources to assist Council in responding to the challenges of planning for sea level rise in a regional, partnership approach,
- provide training support and resources for councils to build knowledge and capacity to address issues of sea level rise in planning decision-making.



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Recommendation

8. Advocate that DELWP:

- prepare changes to the VPPs to specifically address likely future inundation and erosion impacts caused by climate change, particularly along the Port Phillip Bay coastline when the Victorian Government releases the final Port Phillip Bay Coastal Hazard Assessment,
- provide funding, resourcing and expertise to Council to undertake long-term, regional-scale sea level rise adaptation plans for areas on the Mornington Peninsula that are subject to sea level rise hazards in accordance with the recently released *Marine & Coastal Policy* (DELWP, 2020), and
- provide training support and resources for councils to build knowledge and capacity to address issues of sea level rise in planning decision-making.

References

- Planning Scheme Amendment C271morn
- *Marine & Coastal Policy*, DELWP, 2020
- *Western Port Coastal Villages and Surrounding Settlements Strategy*, Ethos Urban, 2019
- *Western Port Local Coastal Hazard Assessment*, Water Technology, 2014

3.3 Environmental sustainability – bushfire exemptions

The Shire has long held concerns that existing Bushfire Planning Protection Provisions (including vegetation removal exemptions) may be resulting, albeit unintentionally, in unnecessary vegetation loss. State planning provisions allow vegetation to be removed from land covered by the Bushfire Prone Area (BPA) and the Bushfire Management Overlay (BMO) without the need for a permit, provided a range of specific criteria are met. Known as the '10/30', 'fence line' and '10/50' rules, these exemptions are designed to help residents make their properties safer in the event of a bushfire. The exemptions are State controls within the VPPs.

Whilst exemptions have been introduced (and strengthened) over the past two decades in response to major bushfire crises, many councils and communities across Victoria, including the Mornington Peninsula Shire are concerned about vegetation loss which can threaten biodiversity, natural systems, wildlife habitat, neighbourhood character, heritage and resilience to other climate change impacts (such as the 'urban heat island effect').

The 10/50 rule is confined to land covered by the BMO, which is land identified as being significantly at risk of bushfire. The 10/30 rule and fence line exemption, however, applies to the majority of the Mornington Peninsula Shire.

The exemptions operate within a sensitive political context. The mandated supremacy of protecting human life over all other policy considerations, coupled with the increasing severity and frequency of bushfire activity in Victoria (and the associated loss of life, property and infrastructure) has created a political setting within which change to bushfire exemptions is complex and difficult to achieve.

In the last few years, the Shire has resolved to investigate and advocate for change to bushfire-related provisions to strike a better balance between the need to manage bushfire risk, whilst avoiding unnecessary vegetation loss. On 16 March 2020 Council resolved to adopt an advocacy program developed in consultation with a leading bushfire planning consultant.



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A key advocacy recommendation was to request the Minister to establish an inter-agency taskforce (with DELWP, the Country Fire Authority (CFA), the MAV and other interested councils) to collegiately investigate a range of potential refinements to various bushfire provisions (including exemptions) that would enhance bushfire resilience whilst minimising unnecessary vegetation loss. In June 2020, the Minister advised that a review was premature given various inquiries into the 2019-2020 bushfire season were pending. In Council's view this taskforce is still required.

In August 2020, the State Government did reduce the scope of the '10/30 rule' from municipal-wide application to mapped BPA areas only. This change has minimal beneficial impact for the Shire in terms of preventing unnecessary vegetation loss, given the substantial coverage of BPA on the Mornington Peninsula.

Shire officers have also been engaging with other councils, the CFA, MAV and DELWP under the auspices of the 'Living Melbourne' cooperative since mid-2020. Ecosystem resilience is one of two strategic objectives (in addition to protecting human life) in the Metropolitan Bushfire Management Strategy 2020, the Code of Practice for Bushfire Management on Public Land and one of the accepted recommendations from the VAGO audit into Reducing Bushfire Risk (2020).

The Victorian Government is currently looking to change certain bushfire planning provisions to make them easier to use and understand as per its discussion paper *Bushfire planning made clearer: Options for Victoria's planning system*, 2021. Council has submitted a response to the discussion paper and the key issues and suggested improvements are discussed below.

Defendable open space

The bushfire permit exemptions allow for the outright clearing of vegetation on a property within the 10/30 and 10/50 areas designated in Clause 52.12-1, to assist with the management and reduction of bushfire risk. This level of vegetation removal is not consistent with the defendable space standards included in Clause 53.02-5 (Table 6), nor does it correspond with CFA landscape guidelines or current scientific literature.

Complete vegetation removal is:

- unnecessary to reduce bushfire risk
- can increase bushfire risk in some situations
- inconsistent with benefits of vegetation for human health, extreme heat mortality, biodiversity, natural systems, urban cooling and climate change resilience
- has the capacity to unnecessarily denude whole suburbs of native vegetation and change neighbourhood character

Further development of defendable space standards (53.02-5 Table 6) could be investigated to create a credible mechanism to substitute existing bushfire planning requirements (10/30, 10/50 rules) with bushfire responsive landscape objectives/outcomes. Better biodiversity protection measures can also be specified, including:

- retain as many trees as possible when meeting 5m canopy separation
- prioritise retention of hollow bearing trees, then largest indigenous trees
- prioritise retention of threatened flora and habitat for threatened fauna
- clumping vegetation where tree canopies are shared to minimising impacts to biodiversity, improve vegetation survivability and reduce hazards such as wind throw for remaining trees.



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Bespoke defensible space and guidance on fuel management will assist councils achieving consistency in fire risk management between public and private land, which is a recommendation of the recent Victorian Bushfire inquiry.

A landowner should demonstrate that defensible space can be created on their property without the need to remove all vegetation, which will result in positive impacts on biodiversity.

BMO/BPA mapping

The Shire did request a review of existing Bushfire Prone Area (BPA) mapping in the entire southern region (from Rye to Portsea), however this resulted in a minor increase coverage of mapped areas.

Bushfire maps strongly influence planning decisions, vegetation clearing exemptions and (inadvertently) operational bushfire risk management by local governments. It is recommended to improve BPA and BMO mapping to ensure mapped areas do not cover locations where exemptions are not necessary or do not contribute to the reduction of bushfire risk. These maps need to be accurate and precise to ensure decisions are risk-based and evidence-based as recommended from recent bushfire inquiries.

In addition to improved BPA and BMO mapping, a supporting shire-wide bushfire hazard landscape assessment would provide an assessment of actual bushfire risk. Different municipalities have different bushfire risk levels, depending on vegetation, landscape type, slope, topography, bushfire behaviour, meteorological conditions, and passive shelter options.

Extreme heat events

The discussion paper highlights that the Victorian Government's focus is on prioritising human life over other policy objectives. The bushfire provisions need to be balanced against other objectives, including those that also contribute to prioritising life, for example preventing extreme heat events. Extreme heat events receive very little attention in the VPPs, but they could be an additional provision under Clause 13.



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Recommendations

9. The Minister should establish an inter-agency taskforce (with DELWP, the CFA, the MAV and other interested councils) to collegiately investigate a range of potential refinements to various bushfire provisions (including exemptions) that would enhance bushfire resilience whilst minimising unnecessary vegetation loss.
10. Align vegetation clearing exemptions for bushfire protection (Clause 52.12-1) with defensible space standards of Clause 53.02-5 to minimise the extent of unnecessary vegetation loss.
11. DELWP to prepare bushfire hazard landscape mapping for each local government to link bushfire risk considered in the Bushfire Management Strategies and State Emergency Management Plan Bushfire Sub-Plan.
12. Amend the VPPs to include extreme heat events as an additional provision in Clause 13.
13. Introduce a permit requirement in the VPPs for a landowner to demonstrate that defensible space can be created on their property without the need to remove all vegetation.
14. Improve BPA and BMO mapping to prioritise higher bushfire risk areas and avoid unnecessary vegetation loss for bushfire protection in low-risk areas.
15. DELWP to improve guidance in a Planning Practice Note including for assessment requirements, locations that may be more suitable for development, describing low fuel areas, and development setbacks from bushfire hazards.
16. Strengthen Clause 13.02-1S and decision guidelines of Clause 53.02-4.5 regarding 'unacceptable biodiversity impacts' to ensure settlement growth minimises its impact on biodiversity and reduces bushfire risk.
17. Include fire authorities as a referral authority for uses to assist planning officers on the appropriate level of information for each application (for example, bushfire emergency plans, bushfire management statements).

Reference

- *Bushfire planning made clearer: Options for Victoria's planning system*, DELWP, 2021

3.4 Environmental sustainability – biodiversity conservation

The Shire acknowledges that greater protection of remnant native vegetation is required on private land to help maintain biodiversity and preserve the character of the Mornington Peninsula, that is highly valued by residents and visitors.

The greatest losses of native vegetation occur on private land through clearing for permitted land uses or exemptions. This results in a net loss, despite some gains achieved through protection and management, and the policy directives in the VPPs under clause 12.01-1S.

As a result, a large part of Council's planning compliance role is focused on vegetation removal and earthworks in areas of environmental significance and sensitivity.



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In 2019, Council adopted a *Biodiversity Conservation Plan*, prepared by Ecology Australia. The plan contains actions in six key areas to better protect biodiversity values

- engaging with the community and building stewardship;
- facilitating biodiversity conservation on private land;
- protecting biodiversity through planning and policy;
- building a strong knowledge base;
- demonstrating and leading best-practice land management; and
- building ecosystem resilience in a changing climate

The plan does contain adopted strategies in relation to planning and policy. Many of these refer to the ongoing review and updating of the MPPS to reflect current biodiversity values and methods of improving their protection. This is done in the regular planning scheme review process.

The following strategies are relevant for the protection of biodiversity values through planning policy:

- Strategy 3.4 - Investigate options to increase opportunities for native vegetation offsets to be located within the Mornington Peninsula Shire, including consideration of an over-the-counter offset scheme and future interactions with water and carbon markets.
- Strategy 3.5 - Review and identify areas of significant biodiversity value within the Green Wedge Zone that may benefit from the development of a Land Management Plan as part of applications for new developments, to support and align with the policies set out in the Mornington Peninsula Shire Green Wedge Management Plan, to ensure biodiversity conservation values in these areas are appropriately managed.
- Strategy 3.6 - Investigate the potential biodiversity impacts of native vegetation removal being undertaken to achieve bushfire risk reduction through planning scheme exemptions (for example under Clause 52.12) to establish an advocacy position for Council to adopt in discussions with State government on biodiversity and fire risk. (This strategy is discussed in the previous Bushfire Exemptions section of this report).

Recommendations

18. Request DELWP to provide options to increase native vegetation offsets to be located within the Mornington Peninsula Shire.
19. DELWP to provide guidance for requirements of a Land Management Plans for areas of significant biodiversity value within the Green Wedge Zone.

Reference

- *Biodiversity Conservation Plan*, MPSC, 2019

3.5 Vegetation protection – schedules to Vegetation Management Overlays

The MPPS contains numerous environmental and landscape overlays under Section 42 of the VPPs with the objective to conserve and enhance significant landscapes, protect significant vegetation and ensure development minimises loss of vegetation. Many properties in the Shire are affected by one or more of these overlays. As a result, there are many permit applications for removal of vegetation, some for one tree and others for a group or areas of trees.



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The scope and application of these overlays is supported. The management of tree removal is important for the protection of significant vegetation and retention of canopy cover in urban and rural areas of the Shire. However, there is an administrative burden to this process which should be reviewed in the planning scheme review process to ensure tree retention objectives are being delivered.

An applicant must usually submit an arborist report to justify the removal of a tree which is then reviewed by a Vegetation Management Officer. In most instances the permit is issued. The bulk of time for decision makers should be spent on matters for high value trees or areas of trees that will reduce tree canopy cover.

To make the process more effective, it may be practical to insert more exemptions for those matters for which approval is routinely given. For example, a local schedule to an overlay can list specific trees that can be removed without a permit,

- environment weeds
- trees that are non-native to Victoria
- trees with a minimum girth size

Recommendation

20. Advocate that DELWP provide guidance on introducing local schedules to Vegetation Management Overlays to create permit exemptions for certain classes of vegetation.

4. Delivering certainty and fairness in planning decisions for communities

4.1 Mandatory height limits - disconnect between planning and building regulations

There seems to be a disconnect between the Act, the *Building Act 1993* and *Building Regulations 2018* regarding building height. Standard A4 under Clause 54.03-2 (Building height objective) of the VPP, which affects applications relating to one dwelling on a lot, provides that the maximum building height should not exceed the maximum height specified in the zone, schedule to the zone or an overlay that applies to the land.

In the instance where a lower mandatory height is prescribed in an overlay and an application for one dwelling on a lot is triggered either under the zone or the overlay, the lower mandatory height in the overlay would be picked up by the responsible authority, e.g., council planner.

However, in the instance where a lower mandatory height is prescribed in an overlay and an application for one dwelling on a lot is not triggered at all, it is unclear whether the lower mandatory height in the overlay would be picked up by the private building surveyor, given mandatory building height controls in the overlay are not reflected in the building regulations while those in a zone schedule are.

Recommendation

21. Review the merits of amending the *Building Act 1993* and *Building Regulations 2018* to ensure mandatory building height controls in a planning scheme's overlay are reflected in the building regulations.



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Reference

- Planning Scheme Amendment C219morn

4.2 Mandatory height limits - no height control in the LDRZ

The MPPS contains policy to protect the low scale coastal character of the many townships and rural areas of the Mornington Peninsula's coastal and hinterland areas. The intent of the policy is to ensure low scale of buildings within the landscape setting so that near and far vistas are dominated by natural land form and vegetation.

There is no height control in the Low Density Residential Zone (LDRZ) let alone mandatory controls. Land in the LDRZ is often located on the periphery of a township, it also often abuts the Urban Growth Boundary (UGB) and the Green Wedge. Such locations tend to have landscape values that could be diminished by inappropriate building heights.

Therefore, use of a DDO is necessary to provide for mandatory building height controls in LDRZ areas.

Recommendation

22. Review the merits of including mandatory building height controls in the LDRZ similar to the Neighbourhood Residential Zone (NRZ).

Reference

- Planning Scheme Amendment C219morn

4.3 Minimum apartment sizes

Apartment development has historically been limited in Mornington Peninsula Shire. The Mornington Peninsula is not a designated 'growth area' under *Plan Melbourne 2017-2050*. Under the *Mornington Peninsula Localised Planning Statement*, Victorian Government, 2014 (the LPS), the Peninsula is to be 'planned as an area of special character and importance with a role clearly distinct from and complementary to metropolitan Melbourne and designated growth areas'. Therefore, the Mornington Peninsula will not accommodate major population growth, and the existing UGB and Green Wedge rural areas will be maintained.

The Shire's townships are expected to accommodate at most moderate and generally low levels of housing growth, with many smaller towns and villages intended to accommodate very limited further development. Further, development within each settlement will be appropriate to the role, function and location of that settlement, and of a type and scale that maintains existing valued character or supports a change to a preferred future character.

These directives are reflected in the range of existing planning controls of the MPPS and have resulted in the Mornington Peninsula being historically dominated by detached lower density housing, with very limited apartment-style development. According to Council's *Housing and Settlement Strategy: Refresh 2020-2036*, apartment developments represent 4.7% of total dwellings within the Mornington Peninsula which is well below the Greater Melbourne average of 14.7%. Apartment-style development is focused predominantly



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within the Major Activity Centres of Mornington, Rosebud and Hastings and is generally limited to 3-4 storeys as per prevailing mandatory height controls.

The Shire recognises the important role that apartments provide in terms of delivering housing diversity and affordability, creating vibrant communities within townships that have convenient access to jobs and services whilst reducing pressure on other environmentally sensitive or productive agricultural areas of the Shire. However, Council is keen to ensure that the design and siting of new apartment development protects local character and amenity and provides a high standard of liveability for future residents.

In this regard, Council made a submission to the Victorian Legislative Assembly's *Inquiry into Apartment Design Standards* in December 2021. The submission generally supported State Government's planned changes to Clause 55.07 (Apartment Developments) and Clause 58 (Apartment Developments) to improve design standards for communal open space, landscaping, private open space, integration with the street, site services, access and external walls and materials.

Amendment VC174 implemented the recently revised *Better Apartment Design Standards* which aim to deliver improved amenity and design outcomes for all apartment developments across the state.

Recommendation

23. Support changes to apartment standards that enhance ESD, Universal Design, health and wellbeing, housing diversity and affordability, and neighbourhood and township character.

References

- *Better Apartment Design Standards*, DELWP 2021
- *Housing and Settlement Strategy - Refresh 2020-2036*, MPSC, 2020
- *Inquiry into Apartment Design Standards*, Victorian Legislative Assembly, 2021
- *Mornington Peninsula Localised Planning Statement*, Victorian Government, 2014
- *Social and Affordable Housing Policy 2020*, MPSC, 2020
- *Triple A Housing Plan 2020-2030*, MPSC

4.4 Protecting Green Wedges and the urban growth boundary – general comments

The protection of Green Wedges and the Urban Growth Boundary via the provisions of the Act and Victorian planning framework (which includes the VPPs) has most recently been addressed through the *Planning for Melbourne's Green Wedges and Agricultural Land* (P4GWAL) consultation paper, released by the DELWP in June 2020 and with submissions by Councils, including the Mornington Peninsula Shire, in January 2021. The Minister's response to the submissions and the further process of review is expected to commence soon.

The P4GWAL consultation paper provides commentary and options in relation to a comprehensive range of issues which relate to protection of the Green Wedge. This includes both pressures from urban expansion on the Urban Growth Boundary and the potential erosion of the conservation, agricultural and landscape/recreational values of the Green Wedge from changes in land use and development within the Green Wedge itself.

The key points adopted by Council in response to the DELWP consultation paper are outlined in the following sections.



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Potential legislative changes

Council expressed strong support for changes to Part 3AA of the Act (Metropolitan Green Wedge Protection) to include an explicit purpose/object, articulating the long-term vision and objectives for the Green Wedge areas.

Council also supported the proposal to require the preparation of a Green Wedge Management Plan for each Green Wedge by the relevant municipality, in accordance with guidelines to be produced by DELWP and requiring the adoption and approval of such plans to be subject to approval by the Minister. However, support for this option is subject to:

- The provision of sufficient resources by the State government to local government to undertake the preparation of GWMPs.
- That the guidelines should be developed in consultation with local government and should provide sufficient flexibility to recognise the differing character and priorities of different Green Wedge areas.
- Interim support for the existing GWMPs, given the likely time lag to produce/review new documents – see, for example, the Mornington Peninsula’s GWMP (refer references below)
- Explicit recognition of the GWMPs as the key policy documents for each Green Wedge area once approved by the Minister i.e., they should be equal to the Statements of Planning Policy required under part 3AAB for Distinctive Areas and Landscapes, and not subordinate to other (general) regional policies.

In this regard it may also be possible to consolidate the provisions of Part 3AA and Part 3AAB to ensure greater consistency.

Council also recognised the argument for “right to farm” legislation but has urged caution as such provisions may be divisive and have unintended consequences.

Policies to support agricultural land use

Council strongly supports the retention of current minimum rural subdivision provisions. This is particularly important in fringe metropolitan areas such as the Mornington Peninsula where there is continuing pressure to subdivide land for rural living purposes – that is, where land is occupied primarily on a residential basis rather than with any significant agricultural or conservation-based activity, which incrementally erodes the productive and environmental values of the Green Wedge.

Council generally supports new policies to give greater emphasis to the protection of productive agricultural uses but highlights that the conservation, cultural heritage and landscape values of the Green Wedge areas are also important, and this requires a balanced approach – through the preparation of GWMPs as noted above.

There are a range of specific issues where the VPP provisions could be reviewed to provide greater protection of the Green Wedges from the further conversion of land use to “rural living”. These include:

- A stronger definition of the requirements for uses which may only be established ‘in conjunction with’ other uses.
- Provisions requiring new dwellings in the GW to provide a clear commitment to ongoing and substantive agricultural and/or habitat restoration/conservation – reinforced by legally binding agreements.
- A review of the provisions in relation to primary produce sales, to provide more opportunity for the sale of locally grown produce direct from farm gate outlets



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- More comprehensive policies in relation to the location and appropriate form of tourism-based development in the GW.
- The potential to avoid the fragmentation of land held in multiple titles through some form of tenement control e.g., requiring a minimum area for the construction of a dwelling.

Provisions to manage the urban rural interface

The DELWP consultation paper includes an option to “manage the urban interface” by providing for a “transitional area”, inside the Green Wedge, where a range of “urban spill over” uses, initially focussing on places of worship and education centres, could be considered (or even given priority).

While establishing a “transitional area” may have some value as part of a Growth Area plan, the situation is very different on the Mornington Peninsula where the UGBs have been defined and stabilised over a long period. In this context, the introduction of a policy supporting “transitional areas” would simply trigger speculation and the expectation of further “release” of Green Wedge land for urban development and is therefore strongly opposed in relation to the Mornington Peninsula.

Equally, Council would emphasize the need to avoid urban “spill over uses” such as retirement villages and age care facilities within the Green Wedge and has recently received authorisation to exhibit an amendment which will replace a number of Special Use Zones with the Green Wedge Zone to avoid any lack of clarity in relation to this matter.

Provisions to manage land use within the green wedge

This element of the DELWP consultation paper outlines issues in relation to a range of specific land use types raising the question of whether they “fit” within the Green Wedge, and whether existing provisions should be tightened or relaxed. Council generally supports uses which can demonstrate a clear relationship to agricultural and conservation-based activities but argues for caution and clear limits on other uses, including intensive tourism-based use and development (such as restaurants and function centres) which can displace agricultural uses, and, through built form, signage, car parking etc, significantly change the rural character of the area.

Improving the design of development within the Green Wedge

The proposals in the DELWP consultation paper to improve development guidelines and zone provisions, including an ability to specify mandatory minimum building heights, building setbacks and site coverage, are strongly supported. The general approach to landscape classification as the basis for future guidelines also has value but can be complemented by other assessment techniques.

More effective planning compliance/enforcement provisions

Although provisions relating to planning scheme enforcement (Part 6 of the Act) are not addressed in the consultation paper, Council’s submission highlights that there is a need to provide for a more streamlined process for enforcement, and that this is critical to the credibility of any efforts to strengthen protection of Green Wedge areas. Council would strongly recommend a review of current enforcement provisions in the consideration of potential amendments to the Act.



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Recommendations

24. Amend Part 3AA of the Act (Metropolitan Green Wedge Protection) to include an explicit purpose/object, articulating the long-term vision and objectives for the Green Wedge areas.
25. Amend the Act to require the preparation of a Green Wedge Management Plan for each Green Wedge by the relevant municipality, in accordance with guidelines to be produced by DELWP and requiring the adoption and approval of such plans to be subject to approval by the Minister.
26. Consolidate the provisions of Part 3AA and Part 3AAB of the Act to ensure greater consistency
27. Amend Green Wedge zone provisions and development guidelines with the ability to specify mandatory minimum building heights, building setbacks and site coverage
28. Review the current enforcement provisions planning scheme enforcement (Part 6 of the Act) in the consideration of potential amendments to the Act.

References

- *Mornington Peninsula Green Wedge Management Plan*, MPSC, 2019
- *Planning for Melbourne's Green Wedges and Agricultural Land Consultation Paper*, DELWP, 2020
- Mornington Peninsula Shire Council submission to *Planning for Melbourne's Green Wedges and Agricultural Land*, 2021

4.5 Protecting Green Wedges and the urban growth boundary - Incompatible zones outside the Urban Growth Boundary

Land in Metropolitan Melbourne that is outside the UGB is technically defined as the metropolitan green wedge as per Clause 51.02 (Metropolitan green wedge land: core planning provisions). However, not all metropolitan land outside the UGB is in the GWZ. Accordingly, Clause 51.02 does not apply to the zones listed under Clause 51.02-1 that happen to be outside the UGB.

While some of the zones listed under Clause 51.02-1 are compatible with the purpose of Clause 51.02, e.g., the PCRZ and PPRZ, many others are not. The zones that are not compatible are the residential, industrial and commercial zones.

This approach of managing incompatible zones outside the UGB is not ideal given it suggests to the community that land currently in the GWZ can be rezoned to one of these incompatible zones.

Pressure to rezone land in the GWZ has increased significantly in the Mornington Peninsula. The Shire has received numerous requests to rezone land in the GWZ to a residential zone despite the land being located outside the UGB.



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Recommendations

29. Apply the UGB around land zoned residential, industrial or commercial land in Metropolitan Melbourne that is currently outside the UGB.
30. Amend Clause 51.02-1 by removing the residential zones, industrial zones and commercial zones.

References

- *Housing and Settlement Strategy: Refresh 2020-2036*, MPSC, 2020
- Mornington Peninsula Planning Scheme - LDRZ land in Mount Eliza; GRZ, LDRZ land in Balnarring Beach, Merricks Beach, Point Leo, Merricks.

4.6 Community concerns about VCAT appeal processes

The Mornington Peninsula Shire is party to many VCAT applications for review. The total number of VCAT cases is relative to the high volumes of planning applications per year. There have been 36 VCAT Council decisions in relation to planning applications for the year to date. Of these, 27 VCAT decisions upheld Council's decision.

Anecdotally, planning officers report that there is a common community perception that VCAT favours applicant appeals at the expense of objector appeals and by extension that community concerns are not adequately considered in the decision making. The VCAT data shows that there is not a definitive skew that favours either the applicant or objector.

It is noted that the statistics for appeal decisions become somewhat blurred when mediation and amended plans are included. For example, an appeal against a refusal may be upheld ('the applicant won, the objectors lost') however there may have been mediation on key issues, changes to plans and conditions imposed on the final permit that may satisfy or partially satisfy objector and/or Council concerns.

In cases where objectors and the Shire hold the same position on a proposal, but VCAT takes a different view, some community members conclude that Council's representation at the VCAT hearing was not strong enough, or that Council did not match the applicant with the same number and/or level of advocates (i.e., barristers and experts). In practice, Council officers make an assessment on the grounds to pursue and who the best advocate is for each case – often a planning officer or planning consultant will be best placed to argue the case and negotiate technical conditions where necessary.

Community members may not always clearly understand the parameters of VCAT consideration, especially for large and controversial applications where repeat applications are lodged and VCAT orders have indicated which matters that are acceptable, perhaps after a community 'win' at VCAT for the first application.

There is another community perception that VCAT is too legalistic. It is true that VCAT hearings are more complex and involve a broader range of experts than in the past. This reflects the increasing complexity of planning and the assessment of many competing issues in the decision-making process. However, planning officers have noted that at recent VCAT hearings, predominantly held on-line in the last two years, the hearing has become less formal with leniency given to first time attendees, and the Tribunal member explaining the process and listening to matters that are not determinative in their decision making.



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The rate of 'failure to grant' appeals are directly linked to consistently high application numbers. Many of the 'failure to grant' appeals are for very large projects where the Shire has not had sufficient time to get all the technical reports reviewed and reported to Council. Sometimes these applicants are getting 'in the queue' for VCAT.

Another issue with VCAT hearings is the lack of consideration and weight given to overarching policy in the approved Localised Planning Statement (LPS) in Clause 11.03-5S of the MPPS. The intention of this policy is to recognise distinctive areas and landscapes and protect the identified values of those areas. The Mornington Peninsula LPS was approved in 2014. Officers report that VCAT appears to rely on neighbourhood character issues rather than giving sufficient weight to the policy framework provided in the LPS – in other words, assessing applications as though the Mornington Peninsula was not subject to specific policy directions regarding limits on future housing growth. This is particularly disappointing given Council has invested in strategic policy development and gained State government support (often following consideration by a Panel) only to see policy be given limited weight in VCAT's consideration.

Recommendations

31. Amend the Act to increase statutory timeframes for complex applications to allow for technical assessments to reduce the rate of failure to grant appeals to VCAT.
32. Elevate the importance of local policy and localised planning statements for consideration by the planning authority and VCAT on review.
33. Advocate that DELWP provide guidance to ensure increased attention to the localised planning statement and local policies.

Reference

- *Mornington Peninsula Localised Planning Statement*, Victorian Government, 2014

4.7 Protecting third party appeal rights

The VPPs must regularly be reviewed with respect to permit triggers and exemptions from notification to third parties. The planning scheme review by each municipality can inform the Minister when the triggers and third-party notification are considered unnecessary or redundant due to the low, to very-low risk nature of some applications.

A planning scheme review may identify types of development that do not impact on neighbours or neighbourhood amenity. These types of applications could be dealt with more efficiently by VicSmart provisions. For example, in the industrial and commercial zones an additional VicSmart trigger could be provided for a single storey building setback 5m from the boundary.

VicSmart is the appropriate provision to list application types for which an officer assessment is required but no third-party notification or appeal rights are allowed. In this way the VicSmart provisions improve certainty for applicants and the community.

An officer assessment of a VicSmart application may also require technical assessments which do not require community input, as the application does not impact on neighbours or neighbourhood amenity. For this reason, planning officers support the trial for the State Government's VicSmart 'Plus' process as this has a longer 30-day turnaround (than the existing 10 days) to allow for technical officer input into the decision.



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Recommendations

34. Maintain the regular planning scheme review process to identify redundant triggers and notification requirements.
35. Support the VicSmart Plus trial.

4.8 The role of Ministerial call-ins and the procedure for amending planning schemes

There have been few Ministerial call-ins of applications in the Morrington Peninsula Shire, notably the Arthurs Seat Chairlift and the new service centres on the Peninsula Link freeway.

The use of Ministerial call-ins should be used sparingly as the local community may perceive that local issues are not sufficiently heard and considered in the decision making process.

Another related issue is Ministerial amendments that effectively 'call-in' certain developments or types of projects. The aim of the Ministerial amendment is to fast-track state and local infrastructure projects. These amendments make the Minister responsible for permits, and there are no specific notification requirements. There may be a requirement for 'public consultation' including with the local council, however, it is not clear who should be consulted and for what applications. In any event, this can be varied or waived by the Minister.

Some recent examples are:

- Amendment VC200 - land use and development for transport projects
- Amendment VC194 - state and local government infrastructure projects to support Victoria's social and economic recovery from the coronavirus pandemic
- Amendment VC180 - allow every school building a fast-track assessment process for new non-government schools and upgrades

Many of these projects for large buildings or structures have potential local amenity impacts. The applications are referred to council for technical responses (e.g., traffic, heritage, urban design). Council officers spend time and money on assessments which may not be reflected in the conditions or final approval.

It would be preferable if the local council was made a recommending authority for these Ministerial amendments.

The Act should have a new part listing what classes of use and development the Minister is responsible for, to improve public accountability and transparency.

Finally, it is noted that in previous reviews changes to enable appeals (to VCAT or the Minister) against the decision of a council acting as the Planning Authority e.g., to not support privately led amendment proposals, have been put forward for comment. While no such option is specifically included as part of this Inquiry it is important to emphasize that any such change would undermine the role of Council's in the planning system, reduce certainty and transparency and encourage 'speculative' amendment proposals.



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Recommendations

36. Amend the Act to designate the local council as a recommending authority for projects determined under a Ministerial amendment, to allow for local input into decision making.
37. Amend the Act to list applications for classes of use and development to be decided by the Minister.
38. Maintain the current role of Council's as Planning Authorities for their municipality

4.9 Providing certainty and fairness – improving the operation of Rescode

The Shire provided a submission on the proposed assessment model for residential development in Victoria, as explained in the Victorian Government discussion paper *Improving the Operation of ResCode*, November 2021.

The proposed changes seek to transform neighbourhood character assessment into a fully quantitative approach, known as performance assessment measures (PAM). The Shire supports the concept of moving to a clearer model of assessment, with standards that can be quantifiably assessed, however has noted some concerns as follows.

The assessment for neighbourhood character has performance measures for street setback, building height, site coverage, side and rear setbacks, walls on boundaries and front fences. However, neighbourhood character is not limited to these matters. Other influences such as materials, design elements, building typology, position of secluded private open space (backyard realm) are more difficult to quantifiably assess.

This is a fundamental shift from current practices of assessing neighbourhood character, particularly as outlined in Planning Practice Note 43, which states that 'Any assessment that takes a 'tick-a-box' approach to identifying the features and characteristics of the neighbourhood is not sufficient'.

Councils must be assured that a level of local discretion around character and other detailed design elements remains part of the planning system.

This is the basis for the Shire currently progressing Amendment C219morn which seeks to rezone residential land throughout the municipality with updated residential zone schedules with specified neighbourhood character objectives, decision guidelines and new ResCode requirements.

In its submission to the discussion paper the Shire also raised other concerns about the new assessment model. In particular, the new assessment model will not provide greater clarity and consistency, will not clearly outline acceptable outcomes and will not adequately provide a format for discretionary provisions.

The Municipal Planning Strategy and Planning Policy Framework, Clause 65, Section 60 of the Act currently form part of the basis on which responsible authorities assess variations to the standards of ResCode to achieve a balanced outcome. Removing these considerations and limiting responsible authorities to considering discrete performance criteria is contrary to principles of integrated decision making which underpins the statutory planning system within Victoria.

While it is accepted that a state-wide performance-based system is the best way to ensure quality dwellings for all Victorians, local planning policies remain necessary to meet local community expectations and to



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express local character. Councils must retain the right to strive for higher standards for dwelling design and ensuring change can be managed appropriately.

Recommendation

39. The proposed performance assessment model for ResCode to be reviewed to enable the inclusion of local variations that have been developed to meet community expectations.

Reference

- *Improving the Operation of ResCode*, November 2021, DELWP

5. Protecting heritage in Victoria

The Terms of Reference listed several issues surrounding heritage protection. Many of these issues were explored in the Heritage Council's report *State of Heritage Review: Local Heritage 2020*, following extensive consultation with local heritage practitioners and the general community.

Previously the planning provisions for heritage protection and management were canvassed in detail in the *Review of Heritage Provisions in Planning Schemes Advisory Committee Report*, August 2007. Following that report various changes were made to the VPPs and over the years changes to Planning Practice Note 1 Applying the Heritage Overlay. Many of the discussions points in that report are still relevant.

5.1 The adequacy of current criteria and processes for heritage protection

The criteria and general process are outlined in Planning Practice Note 1 Applying the Heritage Overlay which was revised in 2018. The PPN1 lists the recognised HERCON Model Criteria that is applied consistently across state and local planning schemes. These criteria are generally well understood by heritage professionals.

A contentious issue that is frequently debated at VCAT and panel hearings is the application of the Heritage Council's Victorian Heritage Register (VHR) Criteria and Threshold Guidelines. These are applicable to places of state significance listed on the VHR, but there are many cases citing that they should not be rigidly applied to the assessment of places of local significance. For this reason, the State of Heritage Review report recommends the preparation of local threshold guidelines.

The current process for listing a heritage place in Heritage Overlay (schedule to Clause 43.01) starts with a study to prepare a citation which includes a statement of significance. The statement of significant describes what, how and why the place is deemed to meet one or more criteria of heritage significance. Once the study is adopted by Council, a planning scheme amendment process is commenced. Depending on how many places are in the study, the two consecutive processes can take many years to finalise and cost hundreds of thousands of dollars in heritage consultant fees.

Owners of proposed heritage places often object to the listing. They make submissions to Councillors, and as part of the exhibition of a planning scheme amendment, and often seek representation before a panel. The typical grounds of objection include the degree of structural integrity and intactness, whether the place is visible from a public place, limitations on future development and economic hardship from perceived devaluation of their property.



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Many places that are being assessed for a heritage overlay are in limbo, as the outcome of a study and a planning scheme amendment may take years. In that time if there is a demolition request, Council is likely to suspend the demolition and seek an urgent interim Heritage Overlay from the Minister. The current process of responding to a demolition request under Section 29A of the Building Act is costly, reactive and diverts funds and resources from completing the larger studies.

A revised Planning Practice Note should be prepared to address the application of interim heritage controls, and in particular the timing, the documents required, the degree of justification required, and expiry dates.

Many municipalities are undertaking gap studies with amendments to follow, as original studies may have been completed a few decades ago. There are many instances of community outcry at demolitions where a place with alleged heritage significance has been demolished.

From the above comments it would be useful for all council officers working with heritage studies and planning scheme amendments to have central and consistent advice from DELWP for:

- local threshold guidelines;
- model brief for heritage studies and gap studies;
- model template for heritage citations;
- public fact sheet about relevant heritage objections to a listing; and
- revised interim heritage overlay pathway with minimum requirements to justify a request.

In their submission to this Inquiry, the National Trust recommends that DELWP should create a dedicated heritage planning team to advise local government on preparing studies, restoring government assets, preparation of planning scheme amendments, methods to address illegal demolitions and to provide input into state heritage policy.

Recommendations

40. Heritage Victoria to prepare local threshold guidelines for the application of the Heritage Overlay on places of local significance.
41. DELWP to establish a dedicated Heritage Planning Unit to assist local government planners and heritage practitioners.
42. DELWP to review Planning Practice Note 1 Applying the Heritage Overlay to include guidance for justification and timeframes for a request for an interim Heritage Overlay in response to a demolition application.

5.2 Possible federal involvement in heritage protection

The National Heritage List is the statutory list administered by the Australian Heritage Council (AHC). The places on this list must demonstrate outstanding heritage value to the nation.

Possible federal involvement in heritage protection at the local level is not supported. It would be administratively cumbersome to create a federal system for places of heritage value to a local area. There has been no potential legislative mechanism to introduce such a system.



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5.3 Separating heritage protection from the planning administration

There is a degree of confusion with the current parallel State and local heritage systems, especially for the community to understand what type of permit is required for changes to a place and who is the permit issuing authority.

Any proposed further separation of heritage issues from the existing planning process would introduce further confusion and complexity for all users of the planning system.

There is a lack of understanding about scope of decision making when the Heritage Overlay is the only trigger. Applicants, objectors and even planners discuss other matters, for example, overlooking or building height. Decision makers should be provided with training with respect to the ambit of consideration when the only permit trigger is the Heritage Overlay.

For most planning applications triggered by the Heritage Overlay in the MPPS there are other planning triggers from other overlays and provisions. In the decision-making process there will be a need to balance sometimes competing considerations.

Recommendation

43. DELWP to review Planning Practice Note 1 Applying the Heritage Overlay to clarify that the ambit of considerations is limited to heritage matters when the sole permit trigger is the Heritage Overlay.

5.4 Establishing a heritage tribunal to hear heritage appeals

A separate heritage tribunal to hear heritage appeals is not supported. Most major applications that are reviewed by VCAT have multiple permit triggers and do not solely rely on a heritage assessment. It is more effective and efficient to ensure that tribunal members have experience and understanding of heritage planning and principles. Where an application requires special knowledge, it is already the practice of VCAT to seek to assign a member with appropriate expertise.

5.5 The appointment of independent local and state heritage advisers

It is not clear if this Term of Reference is suggesting that a pool of advisors is contracted by the state for use by local municipalities. In the past, such advisors were funded by the state but appointed by local councils under a brief approved by Heritage Victoria.

Since that source of funding was stopped, most municipalities appoint independent heritage advisors on a contract basis to provide professional advice for heritage referrals for planning applications and works for Council owned heritage assets.

Any referral response whilst independent must refer to the policies within the relevant local planning scheme. Also, the heritage advisor's advice may be only one of many inputs to a decision on a planning permit application. The ultimate decision is made by the Council planner.

The previous suggestion for a dedicated Heritage Planning team within DELWP could also be a central source of training and information for many independent heritage advisors to ensure their advice is consistent, especially as many advisors may work across several municipalities.



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There is also support for heritage advisers and relevant council officers to use the Heritage Victoria's database (HERMES) as a centralised system for all heritage data collection. Unfortunately, since the end of Heritage Victoria's funding of local adviser positions, this data has not been updated by each municipality, resulting in incomplete record keeping. Many councils provide some information on their websites, however many old studies and records have not been digitised, so public access to information is limited.

Another separate but related issue is the public access to information about archaeological relics and sites listed on the Victorian Heritage Inventory. This list is not linked to a planning scheme schedule or mapping so works may inadvertently be permitted that disturb features or sites.

Recommendations

44. DELWP to establish a dedicated Heritage Planning Unit to train independent heritage advisors.
45. Heritage Victoria to be funded to transfer and update all heritage data to HERMES.
46. Heritage Victoria to ensure that HERMES can integrate with Council software systems for efficiencies of data collection and transfer.
47. Heritage Victoria and DELWP to investigate a method of linking places on the Victorian Heritage Inventory to the Heritage Overlay to be discoverable by owners and decision makers.

5.6 The role of Councils in heritage protection

The *State of Heritage Review* report concluded that the protection of places through the Heritage Overlay is the biggest strength of the current system. The report also suggests that the review of heritage processes and initiative should be led by the Heritage Council, in partnership with DELWP, the National Trust, MAV and representatives from local councils, to relieve pressure on individual councils.

The previous section highlighted that best practice in heritage planning varies between councils depending on access to consultants for in-house roles or contracts. The degree of resources dedicated to heritage studies must also compete with other planning strategies.

Councils can also play a key role in providing incentives for heritage owners to reflect the net community benefit of restoring and maintaining places of value to past, current and future generations of a local area.

In the last two decades, the Mornington Peninsula Shire has offered a suite of incentives:

- access to heritage advisors;
- a Heritage Grants program;
- a Heritage Rebate scheme; and
- Heritage Awards in association with the National Trust Mornington Peninsula Branch.

DELWP should collect lessons from the various schemes within Victoria and further afield with a view to providing a toolkit for other councils to tailor incentives to suit their region.

Councils are the first point of contact for owners of heritage places. Many councils produce development fact sheets for heritage protection and restoration, but this is costly and time-consuming. The heritage principles



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are common, so it would be beneficial if a dedicated DELWP Heritage Planning team could provide base fact sheets with the ability for councils to include own examples and focus of their particular heritage themes.

As mentioned in section 5.3 of this submission, there is confusion about the role of local government and Heritage Victoria for places on the VHR that also require a permit from the local council under other triggers. DELWP should provide clear guidance about the staging of heritage permits and planning permits. There should be a formalised process whereby heritage permits under the Heritage Act must be obtained prior to planning permit applications being considered.

Recommendations

48. DELWP to establish a dedicated Heritage Planning Unit to provide advice and assistance for various heritage incentive schemes, to be tailored by individual councils.
49. Amend the VPPs to formalise a process so that where a Heritage Victoria permit is required it must be issued prior to consideration of a planning permit.

5.7 Penalties for illegal demolitions

Another ongoing issue for all councils is demolition by neglect, as owners cannot be compelled to maintain and restore a heritage place.

The *State of Heritage Review* report and discussions at various heritage planning forums have confirmed that a local law for derelict or dilapidated buildings may be the most appropriate mechanism, but this has not been taken up by many councils.

In recent years, following high profile demolitions, penalties for the illegal demolition of heritage places under the Act and the *Heritage Act 2017* have increased. Notably section 6B of the Act has been amended to provide for the following:

A planning scheme may make provision...for any of the following purposes—

...

(b) To deter persons from –

(i) unlawfully demolishing heritage buildings: or

(ii) allowing heritage buildings to fall into disrepair

This section of the act also prevents persons from obtaining a benefit, such as a permit for a new development, from unlawful demolition or disrepair.

This provision has not been tested in the Mornington Peninsula Shire. DELWP should recommend changes to the VPPs to discourage demolition of heritage buildings through failure to maintain their condition or integrity.



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Recommendations

50. Amend the VPPs to deter persons from unlawfully demolishing heritage buildings or allowing heritage buildings to fall into disrepair.
51. Advocate that DELWP produce a Practice Note to provide consistent direction on how best to implement these requirements, including model planning scheme provisions.

References

- *Planning Practice Note 1: Applying the Heritage Overlay*
- *Review of Heritage Provisions in Planning Schemes Advisory Committee Report, 2007*
- *State of Heritage Review: Local Heritage 2020*, Heritage Council, 2020

6. Ensuring residential zones are delivering the type of housing that communities want

6.1 The Mixed Use Zone

The MUZ seeks to, among other things, provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality. While the concept is good, the actual use that ultimately occurs on the ground is not necessarily mixed use.

The outcome tends to be market driven and given residential development tends to command the highest value, land in the MUZ tends to end up being used exclusively for residential purposes, which defeats the purpose and intention of the zone.

Ideally, any development in the MUZ should contain a mix of uses, e.g., commercial uses on the ground floor, residential uses on upper floors.

Recommendation

52. Consider the merits of amending the VPPs so that the Mixed Use Zone should require developments to comprise a mix of uses from at least two different sectors, e.g. commercial and residential.

6.2 The Low Density Residential Zone – high-density accommodation

The LDRZ seeks to, among other things, provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater. This is the only residential zone that directly references 'density' in its name. The zone also permits a maximum of 2 dwellings on a lot.

Despite its purpose of providing for low-density residential development, the zone permits specific types of accommodation that are often high-density such as 'Residential village' and 'Retirement village'. The latter two uses typically comprise multiple units that are often detached across a single large lot.



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Given units in a 'Residential village' or 'Retirement village' are not separately titled, these uses are thus able to 'circumvent' the zone's mandatory maximum of 2 dwellings per lot.

The Mornington Peninsula contains a substantial amount of land in the LDRZ, often located in small townships or villages with limited infrastructure, services and transport. These locations are often highly sought after by people who are attracted to their low-key, rural-style character.

However, the Shire constantly battles against pressure to turn large LDRZ lots into a residential or retirement village, which threatens to undermine the low-density character. Very often, such proposals end up in VCAT.

Recommendation

53. Consider the merits of amending the VPPs to restrict or prohibit 'Residential village', 'Retirement village' and any other potentially high-density uses in the LDRZ.

Reference

- VCAT Order - 162-182 Woolleys Road, Bittern VIC 3918 - [Steller Lifestyle Pty Ltd v Mornington Peninsula SC \[2018\] VCAT 55 \(21 February 2018\)](#)

6.3 The Low Density Residential Zone – no character controls

Unlike the MUZ, GRZ and NRZ, which allow specific ResCode standards to be varied through the schedule, the schedule to the LDRZ only controls the minimum subdivision area and the permit requirements for an outbuilding. The standards in Clause 54 and Clause 55 do not apply to the LDRZ.

While LDRZ lots tend to be larger and hence less likely to have issues such as overlooking, overshadowing, etc., development in the LDRZ can still affect the character of the area. Relevant character elements include building heights, site coverage, permeability, setbacks from the street, side and rear setbacks, landscaping and front fence height.

The lack of scope in the LDRZ schedule to provide character controls necessitates the use of a DDO. Using a DDO is not ideal given it necessarily creates a potential for an application to require a planning permit even if it relates to only one dwelling on a lot.

Recommendations

54. Consider the merits of including the LDRZ in the application of Clause 54 and Clause 55, or amending the VPPs to create a new set of ResCode provisions for the LDRZ.

References

- *Neighbourhood Character Study and Guidelines*, Ethos Urban, 2019
- Planning Scheme Amendment C219morn