

**Submission
No 134**

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

Organisation: Bayside City Council

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Bayside City Council

**Submission to the Parliamentary Inquiry into the
protections within the Victorian Planning
Framework**

Officers Response

January 2022

Submission Contents

1. Acknowledgment of Country.....	3
2. Introduction	3
3. Background	4
4. Response to the terms of reference	7
5. Conclusion.....	21

1. Acknowledgment of Country

Bayside City Council proudly acknowledges the Bunurong People of the Kulin Nation as the Traditional Owners and Custodians of this land, and we pay our respects to their Elders, past, present and emerging.

Council acknowledges the Bunurong's continuing relationship to the land and waterways and respects that their connection and spiritual identity is maintained through ancient ceremonies, songlines, dance, art and living culture.

Council pays tribute to the invaluable contributions of the Bunurong and other Aboriginal and Torres Strait Island elders who have guided and continue to guide the work we do.

2. Introduction

Bayside City Council '(Council)' appreciates the opportunity offered by the Committee to make a submission to the *Inquiry into the protections within the Victorian Planning Framework*. With many reforms currently occurring and being implemented in hope to achieve a new, more proactive and accessible planning system, it is timely that the *Planning and Environment Act 1987* ('the Act') also be examined.

Overall, Council considers that the protections afforded by the Act are generally effective, however there are a number of areas that will benefit from reforms and improvement, as highlighted throughout this submission.

This submission is structured to align with the Terms of Reference agreed to by the Legislative Council, with comments made in relation to:

- (1) *the high cost of housing, including but not limited to —*
 - (a) *provision of social housing;*
 - (b) *access for first home buyers;*
 - (c) *the cost of rental accommodation;*
 - (d) *population policy, state and local;*
 - (e) *factors encouraging housing as an investment vehicle;*
 - (f) *mandatory affordable housing in new housing developments;*
- (2) *environmental sustainability and vegetation protection;*
- (3) *delivering certainty and fairness in planning decisions for communities, including but not limited to —*
 - (a) *mandatory height limits and minimum apartment sizes;*
 - (b) *protecting Green Wedges and the urban growth boundary;*
 - (c) *community concerns about VCAT appeal processes;*
 - (d) *protecting third party appeal rights;*
 - (e) *the role of Ministerial call-ins;*
- (4) *protecting heritage in Victoria, including but not limited to —*
 - (a) *the adequacy of current criteria and processes for heritage protection;*
 - (b) *possible federal involvement in heritage protection;*
 - (c) *separating heritage protection from the planning administration;*
 - (d) *establishing a heritage tribunal to hear heritage appeals;*
 - (e) *the appointment of independent local and state heritage advisers;*

- (f) the role of Councils in heritage protection;
- (g) penalties for illegal demolitions and tree removals;

(5) ensuring residential zones are delivering the type of housing that communities want; and

(6) any other matter the Committee considers relevant.

Council would like to thank the Committee for considering its submission and would welcome the opportunity to elaborate further on these matters as part of any future hearing(s).

It is noted that this is an interim officer response, expected to be endorsed by Council at a future meeting. Were there to be changes as a result of Council's adopted position, a revised submission may be provided to the Committee.

3. Background

The City of Bayside is located 16km south-east of Melbourne along the coastline of Port Phillip Bay. The municipality is characterised by its stunning foreshores, beautiful parks, open spaces and vibrant retail centres.

Bayside's 107,541 residents enjoy the leafy surrounds of the municipality and have identified the close proximity to the beach, access to open space and a strong sense of community as key factors for living in Bayside.

Our Vision

Bayside City Council's vision is to:

Partner with our community to protect and care for the community of life in Bayside making an inclusive, active, healthy, connected and creative experience for all.

This vision forms Council's response to our community's expectations and our shared priorities for the next four years.

It also represents our strongly held belief that we represent a highly engaged and forward-thinking community; a community that expects us to lead and influence change on the big issues that affect all of us in Bayside and the broader global system.

We will deliver this through a focus on:



Our Planet

Lead better, smarter and sustainable futures



Our People

Nurture all people and thriving healthy communities



Our Place

Foster Bayside's liveability, open space and exceptional places



Our Promise

We promise open and accountable civic leadership

Many Bayside households are family households (36.5 per cent) comprising couples with children. This is followed by couples without children (24.2 per cent) and lone person households (23.3 per cent) with this number expected to increase over the next four years with an ageing population. Bayside is an 'older' community compared to metropolitan Melbourne with the average age of 44 years compared to 36 years in metropolitan Melbourne. There is substantially higher percentage of aged persons in Bayside (85 years and over) when compared to metropolitan Melbourne. However Bayside has fewer younger adults (25 to 34 years) residing in the area, as reports show those aged 25-34 tend to leave Bayside seeking more affordable housing or areas closer to work and entertainment opportunities.

Overall, the Bayside community is relatively advantaged in socio-economic terms with 35.8% of households earning \$3,000 or more per week. However, it is recognised that Bayside has small scattered areas experiencing substantial disadvantage, which are masked by the affluence across the municipality. There are 652 government managed households in Bayside, located across 18 sites. 46% of residents living in public housing are over 66 years old. Almost all disadvantaged areas in Bayside are public housing estates with most residents receiving a pension or benefit as their income sources. It is anticipated that there will be an increase in the number of people with a disability over the next four years in Bayside.

Over 13,923 residents reported to have a disability and 4,213 reported that they needed assistance in their day-to-day lives due to a disability, long-term health condition or old age. Currently, 9,800 Bayside residents are also providing unpaid care to family members or others because of a disability or illness.

In December 2019, Bayside City Council declared a Climate Emergency. Council recognised that climate change is causing significant damage to our economy, society and environment, and that urgent action is required to reverse current trends and quickly adapt to the already changing climate.

Climate Change has the potential to impact every element of life in Bayside. The impacts include increased maximum and minimum temperatures, more intense rainfall events/ inundation, rising sea levels, more hot days and heat waves, less rainfall in winter and spring and harsher and longer fire seasons.

Climate change data shows the planet is already 1.1% warmer than pre-industrial times. Bayside City Council commits to action to contribute to limiting this increase to 1.5% and mitigate the effects.

Local councils have a collective responsibility for over \$380 billion in assets and land.

102 Local Government authorities in Australia (34 in Victoria) have declared a Climate Emergency (June 2021), representing 36% of Australia's population. The Monash Sustainability Development Institute indicates that:

- 37% of local governments (representing 21% of the Australian population) commit to zero community emissions by 2050.
- 37% have target to reach net zero emissions by or before 2050 for all, or the majority, of their community emissions
- 58% have a target to reach net zero by 2050 for their operational emissions
- all are taking steps to reduce their operational or community emissions. Bayside's emissions profile (2019), is that the Bayside community emits around 1.04 million tonnes of greenhouse gases. This is largely made up of electricity usage (57%),

followed by transport (20%), gas (20%), and waste (3%). The electricity and gas figures cover residential, commercial and industrial sources.

In Victoria, (Victorian Greenhouse Gas Emissions Report 2019, State Government of Victoria)

- transport accounts for 20.6% of all emissions, with cars accounting for over half of these emissions (50.3%)
- electricity generation accounts for 50.9% of all emissions and direct combustion (which includes the burning of gas in homes) accounts for 16.4%.

Council has structure plans in place for all activity centres within Bayside. These plans have been produced to implement the vision, objectives, and strategies for each activity centre within the Bayside Planning Scheme.

Building on the strengths of each area, the activity centres will accommodate for higher density residential living, as they are well-serviced and connected to public transport, making these centres the most accessible locations within the municipality to work, live and shop. This also supports the more incremental level of change that is envisaged in other parts of the municipality that do not benefit from the same level of access to services.

In Bayside's Minimal Residential Growth Areas (zoned Neighbourhood Residential Zone), building heights are capped at 2 storeys, recognising the Bayside community's desire to protect the low rise, leafy character of the established residential areas whilst enabling a mix of housing types including detached houses, town houses and low rise apartments.

In the Housing Growth Areas, locations that are in close proximity to public transport, shops and services, permissible building heights range from 3 stories (generally in the residential areas), up to 6 storeys in the commercial areas of activity centres.

Bayside acknowledges that in Australia, the need for affordable housing has never been more urgent. For many jurisdictions across the State, now is the time to consider adopting robust equitable housing policies that build permanently affordable housing stock and in turn create inclusive communities.

The primary segment of the community that require access to affordable housing are those that fall within the low and very-low income households. This can often compromise people in lone person or single parent households, older people, persons with a disability, people born in non-English or English as a second language-speaking families and people outside of paid employment.

A household can access affordable housing if they meet the household income thresholds that are set annually by Order of the Governor in Council. Occupants can be at any stage of their lives and in need of affordable housing. As a result, dwellings should be designed to adapt the changing needs of its occupants and priced at a level which is affordable relative to the income of its occupants.

4. Response to the terms of reference

4.1 Part 1 – the high cost of housing

Victoria is facing a housing crisis with issues associated with housing affordability and long-term homelessness. As a result of population growth, cost of living pressures, unemployment and impacts of COVID-19, more people than ever are waiting longer to access public housing.

The Council to Homeless Persons recommends that the most powerful action that local governments can undertake to reduce homelessness is to support the delivery of homes that people can afford. Affordable rental and homeownership options are increasingly out of reach for current residents as well as for those seeking a new life in the community. Construction costs are rising, and there is a limited supply of new land.

Council acknowledges the State Government's more recent initiatives, including the Big Housing Build program, in reaching more affordable housing outcomes in Victoria as one approach to see faster change in response to the affordable housing crisis.

While the Big Housing Build provides significant funding and streamlines the planning approval processes in place for new affordable developments, it cannot be the sole remedy to the high cost of housing challenges. Rather, there is a need to adopt an approach that encourages local governments to achieve greater outcomes within their municipality, while incentivising registered housing agencies and the private sector to partner with these bodies.

Following adoption of its *Affordable Housing Strategy 2021*, Council has been exploring alternative ways to deliver affordable housing outcomes across Bayside. The voluntary approach to Section 173 Agreements has had limited take-up due to the lack of incentives for land owners to participate. Instead, Council has been imposing a condition on planning permits for multi-residential developments that requires a contribution be made to Homes for Homes.

Homes for Homes are a not-for-profit organisation who collect funds and grant it to experienced housing providers to address the lack of homes for those living on or below the poverty line.

The condition imposed by Council requires that an agreement be entered into providing for 0.1% of the property's sale price be provided to Homes for Homes. For example, on a \$750,000 home, a tax-deductible donation of \$750 is provided to Homes for Homes. The gift is transferred as part of the settlement process and the agreement remains on title, so that at the time of any future sales, owners have an option to continue to make the donation. This amount has negligible impact on the affordability of a property and can make a direct impact to the provision of affordable housing across Victoria.

Council has been implementing this approach since September 2020, which has the potential to achieve significant outcomes for the Homes for Homes initiative. There have been a small number of developers who have challenged the condition at the Victorian Civil and Administrative Tribunal,

who has been critical of the application of the condition as it is perceived that there is limited justification for the condition within the current planning framework.

Council is currently progressing a planning scheme amendment to aim to include this requirement within the Bayside Planning Scheme, however as there are no existing or tested similar approaches to draw from, it is taking considerable resources to be able to ensure the strategic justification is robust enough to succeed.

It is considered that the State Government, and as such the Victorian Planning system must be reframed to facilitate outcomes such as the initiative Council is piloting.

Provision of social housing

It is presumed that the definition of 'social housing' as set here is as set out at Section 3AA of the Act, and at Section 4(1) of the *Housing Act 1983*, in that it relates to both public housing and housing owned, controlled or managed by a participating registered agency.

Bayside is part of a network of Council's that have a Homelessness and Social Housing Charter, with the Cities of Cardinia, Casey, Frankston, Greater Dandenong, Kingston, Knox, Manningham, Maroondah, Monash, Mornington Peninsula, Yarra Ranges, Whitehorse, as well as the Eastern Region Group of Councils and Eastern Affordable Housing Alliance.

The Charter is included at Attachment 1 however its core purpose is to address the urgent need for social housing and a more effective, integrated and supported homelessness service system.

If there were greater mandatory requirements on new development (whether that be through inclusionary zoning or another tool), this would assist in committing the resources to taking further action in relation to the provision of affordable housing.

The Council's involved in the Charter have undertaken exercises to investigate sites that may be suitable for social and affordable housing with a view to making these sites available for redevelopment. This can take many forms however presents a range of challenges in doing so, particularly given the high cost of land in established municipalities such as Bayside. Whilst Bayside has seen some recent State projects that have included a provision of social or affordable housing, further government supports are required to be able to embed these practices more widely across Melbourne.

This could include creating tools within the Victoria Planning Provisions to require mandatory contributions as well as ensuring the redeveloped sites are achieving a greater social housing provision when sites include both public and private housing.

Access for first home buyers

Council notes that there are a range of incentives and supports available to first home buyers. A key focus should be to ensure that there is greater

provision of more affordable housing in urban areas to ensure that young professionals and key workers can afford to live in inner suburbs and areas close to employment opportunities and services.

Council undertook a comprehensive survey of apartment dwellers in Highett and found that the division of property owner/occupiers and renters were almost evenly split (44%/48%). Residents were predominantly single person or couple households, most of which working full time. Most people had chosen to live in an apartment due to it being the 'best I could afford for now', ahead of location based factors.

It is critical to ensure that young professionals, young families and key workers are able to afford property in inner suburbs and Council supports incentives to achieve these outcomes.

A mechanism for this is to explore outcomes such as build-to-rent/buy schemes. Council supports the need to include mandatory requirements in Planning Schemes to achieve these outcomes.

The cost of rental accommodation

The majority of Bayside households are either homeowners or purchasing their own home. House prices and rental costs are high, with very little housing that is affordable to lower income households. In 2018, there were no rental listings that would have been affordable to a household on a very low income. To ensure rental accommodation options are afforded to those in need a new National Rental Affordability Scheme (NARS) should be considered and implemented. Learnings from the now discontinued NARS and similar international schemes from the US and UK should be considered. As a result, future subsidised affordable housing schemes will require greater permanence and consistency to secure and attract investment as well as clear, measurable and achievable objectives.

Population policy, at the State and Local levels

Whilst population policy is reasonably clear through *Plan Melbourne*, Planning Schemes and municipal Housing Strategies (etc), there is more that can be done to support the achievement of 20 minute neighbourhoods as sought in policy.

The high cost of land is a considerable constraint for many local governments in purchasing or acquiring land for new community facilities or public open space, with a Development Contributions Plan and Public Acquisition Overlay really the only available options to pursue.

Council considers that activity centre policy would be bettered by the development of some standardised tools that can be utilised by local governments to achieve these outcomes in activity centres. A more unified approach to this would allow the development industry certainty and would allow for a more streamlined approach to planning and delivering new community infrastructure in established urban areas.

As these activity centres grow, opportunity should also be explored for the imposition of levies to upgrade and improve infrastructure in the public realm.

Council notes that there are considerable infrastructure burdens placed on developers and Council as infill development occurs, with State authorities often playing a lesser role in infrastructure delivery. Council considers that the State Government must play a stronger role in investing in infrastructure delivery to support community outcomes. For example, Council and several developers are coordinating the funding of signalling an intersection that is within the responsibility of the Department of Transport. Council is aware that this is not a unique scenario and considers that it is not reasonable to impose the costs of these works 100% on Council's and developers and that the State needs to provide its share to go toward upgrading its own assets.

Factors encouraging housing as an investment vehicle

Council supports the exploration incentives to achieve community housing associations and other affordable housing outcomes as attractive investment options. A few options proposed for consideration include:

- Market mechanisms need to be explored for developing affordable rental housing as an asset class or preserving affordability in perpetuity.
- Building the capacity of the community housing sector
- Developing a number of investment options to work in parallel to deliver the diverse supply of affordable housing required to meet needs.

Mandatory affordable housing in new housing developments

The adoption of inclusionary zoning (IZ) at a State level is something Council has and will continue to advocate for, as if provided and planned for appropriately, could bring forward a more consistent approach at State and Local levels of government, rather than the current approach which primarily relies on government projects to be announced.

Without a fixed position from the State government, Councils are continuing to look for "flexible" and "creative" measures to seek affordable housing agreements in new development. Yet again, there is an unprecedented amount of pressure being placed on local governments to provide an answer to these issues and this is at times at our own considerable expense.

If the *Planning and Environment Act 1987* provided better clarification to types of affordable housing contributions and their nexus to housing growth areas, or if mandate was made at the State level for inclusionary zoning, this continuous searching for alternative solutions could be avoided.

Already, much of Council's inner metro municipalities are experiencing increased housing growth. Without a stronger position on this crisis at the State level, we are continuing to seek new housing developments to make a contribution with limited abilities to meaningfully seek these outcomes. Whilst Bayside's approach with Homes for Homes has achieved some success, providing greater mechanisms within the legislation to achieve these outcomes would be a far greater outcome that can achieve real change within the industry.

Embedding mandatory requirements into legislation will commit planning authorities state-wide to deliver affordable and social dwellings efficiently and

at scale across Victoria, with significant benefits to reduce and manage our housing crisis.

4.2 Environmental sustainability and vegetation protection

As an organisation, Bayside City Council has been tackling climate change for many years. We have taken many actions: installing solar panels, introducing food waste recycling, and low emission fleet vehicles. Council is also committed to purchasing renewable energy, and maintaining carbon neutrality for our operations from 2020.

Whilst we have already made progress, Council recognises that we need to take more action together with our community, and we need to do it faster.

Success cannot be achieved by working alone. Council has joined over 1380 other jurisdictions worldwide in acknowledging that now more than ever, we must be united and work in collaboration with our residents, businesses, community organisations, fellow local councils, and State and Federal government bodies.

A key gap within the *Planning and Environment Act 1987* is its undeniable weaknesses in relation to its lack of climate change action, environment protection and regulation. Whilst there are tools within the Victoria Planning Provisions that enable local environmental outcomes to be considered, these are consistently overlooked in favour of the objectives of the Act to facilitate development, as the environmental outcomes at the micro scale are often insignificant, allowing this to be overlooked or given lesser weight.

Council is taking a leadership role in ensuring the health, safety and resilience of its community and calls on the State and Federal Governments to accept their roles and rise to the challenge of addressing the Climate Emergency. Where the State and Federal Governments have direct influence, beyond Council jurisdiction, to make the necessary changes and deliver greater outcomes to safeguard the public, Council will demand that action be taken. A key opportunity is to significantly shift the balance of the Act to have a far greater emphasis on climate response and environment protection so that this is the underlying principle of the Act.

Undeniably, the continued housing and population growth is impacting on the ability to protect and retain existing vegetation on private property. When the removal of one single dwelling turns into the addition of two or more multi-dwellings, the reduction in permeable surfaces on-site generally assures the limitation of healthy tree growth and heightened landscaping and canopy cover outcomes.

Whilst there are provisions within planning schemes to manage this, the removal of trees and vegetation from a site occurs prior to a planning permit application being made, which impacts both the character, biodiversity and environmental outcomes at the site. Replacement plantings are limited in their value as they take time to establish, and with larger or multiple homes being provided on site, the ability to achieve significant canopy, cooling or ecological outcomes is significantly limited.

Council understands that the Department of Environment, Land, Water and Planning ('DELWP') is preparing planning provisions that will relate to the cooling and greening of urban areas, however this project appears to have stalled and its extent is not yet known.

Urgent action is required in this area to ensure that the bar is raised as a City and that the outcomes can be increased significantly without local Council's needing to invest considerable resources to take further action in this space.

Council is aware that the Department (DELWP) is preparing an Environmentally Sustainable Development (ESD) State Planning Policy to form part of Victorian Planning Schemes and has been progressing this Policy for several years now. It is understood that this is to be largely based off an existing policy approach taken by many Council's which have previously signed up to an approach that has been developed with the Council Alliance for a Sustainable Built Environment ('CASBE'). This policy has been in operation for many years and its impacts in those areas are well understood.

Bayside, like several Council's without this policy in place has delayed preparation of its own local ESD policy as the statewide provisions have been expected to be 'imminent' for several years now.

Due primarily to a lack of progress with a statewide approach, Council is now seeking to progress its own local ESD policy, which will come at significant resourcing burden to Council. Council has been advised by DELWP that it is best to prepare its own local policy position as there is not clarity on how long it may take for a state approach to be implemented – this is an extremely poor outcome that requires immediate resolution. It is frankly unacceptable that there is not yet state action in this space.

The National Construction Code should be amended to require stronger consideration of climate change mitigation and ensure that the sustainability of buildings is significantly improved.

Bayside is part of a group of Council's undertaking work to draft a revised policy that will build on the 'base' level under development by the State. This is aiming to effectively seek net zero developments, however the restrictions of the Victoria Planning Provisions are constraining in that it doesn't easily allow an effective mechanism to achieve this – largely limited to the use of a Design and Development Overlay or Incorporated Document, neither of which are ideal tools for environmental policy. Instead, it is recommended that a Particular Provision be developed that provides planning authorities with an ability to 'activate' these requirements that can go above and beyond the minimum environmental performance.

The vegetation protection provisions within the Scheme are largely ineffective in a metropolitan environment where tree retention is 'encouraged' rather than something that must be achieved.

Council considers that there is opportunity to increase the requirements across residential zones (in particular) to ensure that there are minimum canopy tree planting requirements specified and that landscape plans and landscape character assessments are minimum requirements within residential zones (not just for multi-residential developments).

It is critical that the planning framework is restructured so that it adequately achieves enhancement and ongoing improvement to the natural environment rather than the current approach.

4.3 Delivering certainty and fairness in planning decisions

Council has observed an increasing trend where local Council's and community are being closed out of the planning processes for State led projects which is having a significant impact on trust and transparency in planning.

As outlined throughout this section, Council considers it critical that transparency is maintained and that decision making is fair, transparent and that third party rights are preserved.

Mandatory height limits and minimum apartment sizes

Bayside has a lengthy history of trying to secure mandatory height controls in its activity centres as our community has long sought greater certainty in relation to built form outcomes.

It appears that the position taken by Planning Panels and DELWP when considering the application of mandatory controls differs from how VCAT apply discretion when considering mandatory controls.

Practice Note 60: *Height and setback controls for activity centres* provides that:

Height and setback controls can be appropriate so long as they are not aimed at restricting the built form, but at facilitating good design outcomes. Proposed height and setback controls must be soundly based on the outcomes of strategic research and background analysis that demonstrates consistency with state and regional policy and includes a comprehensive built form analysis.

Council submits that this is out of step with community sentiment, where greater clarity on the maximum outcomes in suburban activity centres is sought. Residents are repeatedly attending VCAT hearings where applicants have proposed to push the boundaries and seek building heights well in excess of discretionary controls.

Where discretionary height controls have been justified and included in a Planning Scheme, there is recognised merit that any application to exceed that height must present an extraordinary outcome in order to justify the departure from policy.

Planning Panels have consistently found that *'Preferred maximum heights are not to be exceeded unless the proposal provides an exemplary response to the site, its context, design objectives and other policy in the planning scheme.'*

In most areas where discretionary controls exist, Bayside has a criteria in place to guide how discretion should be exercised in considering development that exceeds a discretionary height controls. This includes:

- Whether the development provides a high standard of architectural design and an exemplary design response to the site context and design objectives.
- Whether the development demonstrates innovative environmental design.
- Whether the impact of overshadowing to adjoining streets, public spaces and residential properties is acceptable.
- Whether the development provides appropriate transitions in scale to lower building forms.

Whilst not a perfect criteria, Council has been using this for a decade when exercising discretion in activity centres with some success.

Council considers there is merit in having a revised approach where there is a tangible net community benefit if an applicant is to be permitted to exceed a discretionary height control. This may include the provision of on-site affordable housing, ensuring a percentage of dwellings are accessible and adaptable, or a community facility or public open space is provided on site.

Council strongly supports the mandatory height controls that currently exist across the Neighbourhood and General Residential Zones, with those controls providing certainty for the community about what level of change to expect in their neighbourhoods. The exception to this is in relation to aged care and similar uses which are exempt from mandatory height controls of zones and are instead restricted to a mandatory height of 16 metres, considerably higher than that otherwise allowed by the Neighbourhood Residential Zone at 9 metres. The height of these uses can result in extremely poor outcomes when sited amongst a more suburban setting where more stringent character controls apply. Council considers that there should be greater restriction imposed on those uses and they should be encouraged to locate in areas where higher density development is expected, rather than permitting 16 metre development in areas where all other development is limited to 9 metres.

If there were greater allowance to achieve mandatory height controls, it is considered this will go a long way to providing the community certainty about planning outcomes across suburban Melbourne.

Protecting green wedges and the urban growth boundary

Bayside has no substantial comment to make in relation to this issue as our municipality is entirely within the urban growth boundary and does not include green wedge land. Bayside supports the need to achieve infill development over the continued expansion of land on the fringes of metropolitan Melbourne.

Bayside recognises the incalculable value of the green wedges to the liveability of Melbourne and submits that every effort should be made to protect this land to continue to deliver its intended purpose and avoid encroachment from urban development.

Community concerns about VCAT appeal processes

A key challenge in relation to the VCAT appeal process is the considerable amount of time it can take from an application being lodged to a decision being published. For communities that are living the daily reality of impending change, this can have a significant impact on mental health and stress levels, in addition to the cost pressures these extensive timeframes places on developers.

Council considers that the review process should be accelerated so that there are fixed timeframes by which a decision should be made, and that the appeal process should continue to be made as accessible as possible for people to participate in.

Protecting third party appeal rights

The community has a strong role to play in planning decisions and Council supports the need to protect and retain appeal rights for third parties.

Council has observed an increasing trend to facilitate development outcomes by removing the opportunity for third party appeals – Council considers that this is not in the interests of fairness and transparency and that third party appeals are a critical piece of the planning framework that must be preserved.

The role of Ministerial call-ins

Bayside has limited planning applications called in from the Minister in recent years, however is becoming increasingly concerned at the growing number of state projects that are requiring significant Council involvement.

Recent projects, such as the redevelopment of a public housing estate in Brighton, have required a weekly 1 hour meeting with several Council officers as an opportunity to communicate and to seek feedback from Council on various aspects of the project. In these meetings, Council was also acting as a conduit between the State Government and local residents.

Disappointingly, despite a considerable time and resource commitment to participate in the process, virtually none of Council's comments appeared to be given consideration when the planning permit was granted.

Further, as the Minister becomes the Planning authority for matters such as these, the satisfaction matters imposed by conditions are frequently then handed to Council to implement, despite the fact feedback from Council relating to these processes has been ignored. Council's are also then left to enforce compliance with the conditions, including Construction Management Plans, and have no ability to influence the content of those secondary approval documents. Council has also been asked on occasion to consider reviewing plans for endorsement (such as a landscape plan), as the State Government does not have technical area expertise to endorse these documents. At a minimum, if a State body has been tasked with assessing a planning application and plans submitted for endorsement, they should either employ a professional, or outsource (at their own cost) to a professional, the review or input of such documents rather than again rely on Council's resources.

Council also has concerns about the increasing role that the State government is playing in planning matters and that there is an increasing trend that sees local Councils playing a lesser role in decision making.

Council considers that there are more effective ways of partnering than the State assuming primary responsibility for large precincts or areas that have a significant impact on the land use and development outcomes of an area.

Further, the diminished role of local planning policies has been further reduced in Planning Schemes with the introduction of the Municipal Planning Strategy, restricted to a maximum of 5,000 words. Instead, the government has attempted to 'streamline' policy which instead has reduced the reliance on local policy setting.

Due to the significant volume of community engagement that local government takes on every year, it has a strong understanding of the community expectations around development and the local issues. Facilitating the State and Ministerial intervention can overlook the role that communities play in planning decisions and restoring some of the decision making power to local governments should be prioritised in the planning framework review.

4.4 Protecting heritage in Victoria

Bayside has a rich history and heritage, of which the Bayside community is proud to celebrate and possess. Historic buildings, landscapes, places and objects all contribute to Bayside's liveability, character and community cohesion. Protecting and celebrating these places, objects and artefacts is therefore a vital function of Council, for current and future generations.

The protection of locally significant heritage properties is not without its challenges, and Bayside and its community has had first hand experience in recent years around some of the issues and shortcomings of the heritage protection processes.

Whilst heritage is an issue that the Bayside community feel strongly about, Council has repeatedly raised with the Minister for Planning concerns about the processes and the fairness and transparency for property owners.

Some of Bayside's challenges have received significant media coverage across Victoria, which has sparked a robust conversation around the need for heritage protection and also the challenges faced by property owners through the at times lengthy and costly process to protect a property.

One of the challenges that Bayside has seen is an increasing number of requests for heritage protection as a way to prevent or delay development. Council has had to develop an internal process to guide under what circumstances will a request for interim protection be sought, as the growing number of requests for action was becoming costly, with the protection of one property costing approximately \$50-60,000 through the technical advice and planning scheme amendment processes. This is obviously unsustainable for local government however the guidance from the State is lacking and there is no consistent approach to be taken – it is simply

considered that any property worthy of potential protection must be appropriately assessed.

Further, the provisions are very much weighted towards the protection of built form heritage, with landscapes, trees, archaeological sites and other protected areas not being well managed through the planning system.

The adequacy of current criteria and processes for heritage protection

Council defers to external expert heritage consultants to apply the criteria for heritage protection and does not generally deal 'hands on' in this area.

The processes to seek heritage protection are very much weighted towards statutory protections and Council has received significant feedback around the lack of fairness for property owners.

Possible federal involvement in heritage protection

It is unclear what is to be gained from Federal involvement in local heritage protection.

Separating heritage protection from the planning administration

The assessments of heritage properties is a costly, resource intensive process that becomes contentious, and is not best served through a standard planning scheme amendment process.

The process to undertake an assessment of a heritage property is often done from the public realm alone, as many owners are unwilling to allow access to their properties. Whilst there are online resources available, rarely is there opportunity to inspect a property thoroughly before determining whether it is of potential heritage significance.

Whilst it can be considered that this may not be essential, it can create challenge when liaising with property owners as the engaged experts have formed a view without being able to thoroughly inspect a property, creating tension and questioning the integrity of the assessments.

Establishing a heritage tribunal to hear heritage appeals

Council has no fixed view on this issue however is concerned that any additional Tribunals need to be fair, transparent and affordable through its processes. It is recommended that the heritage processes be made simpler and more streamlined and would be concerned if there were to be additional authorities, agencies or processes added to the framework without a clear and tangible benefit articulated and measured.

The appointment of independent local and state heritage advisers

Whilst Council has no fixed view on the appointment of independent local and state heritage advisers specifically, Council considers that local Council's are not always best placed to consider heritage matters.

The role of Councils in heritage protection

Across the world, examples of best practice heritage protection are not generally the responsibility of local governments, and Council submits that this should not be the case in Victoria.

Council's currently have the final say on heritage studies and their implementation however this relies on technical expertise, often outsourced at significant cost and resources.

The process then requires engagement with affected property owners to collect any further information on a place, before adopting a study and commencing a planning scheme amendment process.

A common response when engaging with affected land owners is that they wish to see the process abandoned, and can campaign Councillors to do so. This can create division and can lead to challenges in proceeding with a study.

Bayside has previously abandoned studies due to overwhelming opposition from affected property owners.

In more recent times, Council explored a voluntary nomination process which saw 15 property owners self-nominate their homes for assessment for their potential heritage value. From these 15, Council commissioned a study to assess 12 of these sites, with 9 of those meeting the threshold for inclusion in the Heritage Overlay, with one property being identified as of potential State significance. Instead of applying the Heritage Overlay to these properties as requested, the Minister for Planning elected to apply only interim controls to these properties and instead requested Council to undertake a municipal wide study before deciding on the suitability of the voluntary nominated properties. As such, Council is now completing a municipal wide study at considerable cost and resourcing to accompany the initial study.

The primary concern raised by affected property owners is in relation to the impact on property value if included in a Heritage Overlay, which is not something that is able to be considered as part of the planning system. Further, if owners wish to challenge the findings of the appointed heritage consultant, they are required to engage their own expert at considerable cost. Their only ability to influence the outcome is whether there has been any difference of interpretation on all criteria that considers the site as heritage significance (as many sites will meet more than one criterion for heritage significance). There is generally little room to negotiate an outcome as ultimately, a property is either of significance or it is not. Unlike other planning controls, there is virtually no ability to meet halfway and design specific built form controls to respond to other features of the site.

There is very little support that Council is able to provide to support owners of heritage properties (aside through grant and process related outcomes).

Given the lack of control that Council has in making a final decision on heritage matters, it is considered that Council may not be the best authority to oversee the application of heritage controls and that there are higher levels of government that are better served in delivering this function.

The State Government must play a stronger role in the protection and management of heritage matters and significant reforms to the heritage listing process is encouraged.

Penalties for illegal demolitions and tree removals

It is extremely difficult to make a case with substantial evidence that an owner is facilitating demolition by neglect or that a tree has been illegally removed. As such, there are virtually no penalties applied to illegal demolition as the burden of proof is high and the resources required to prosecute are often difficult to justify for tree removal (in particular), as once lost or damaged their fate is set. Seeking recourse is a costly and significant burden on responsible authorities and the system to apply penalties should be reviewed to ensure that the penalties are a greater deterrent than at present.

Council has observed an increasing trend in owners moving down a pathway of demolition by neglect, however the burden of proof on Council's to address this is significant and requires a complex response.

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

Bayside has widespread application of the Neighbourhood Residential Zone across its more minimal change areas and primarily the General Residential Zone over the residential precincts of its moderate growth and change areas. Since the introduction of these tools, Bayside's reviews have found that they have been delivering their intended outcomes and providing the community certainty about what type of housing will be located in certain areas.

Whilst there were initially some concerns raised about the extent of Neighbourhood Residential Zoned land applied across Bayside, the zones have been working effectively and achieving the appropriate balance between community aspirations for their suburb, preservation of character and achieving infill development, with much of the residential development in Bayside being incremental outcomes in NRZ land.

Council would have significant concerns were there to be a departure from the existing framework which does an exceptional job of providing certainty to the community about land use and built form outcomes.

4.6 Other relevant matters

As raised throughout this submission, Council considers that the increasing role that the State government is playing in planning decisions across Melbourne is of concern, and more responsibility should be returned to local government.

The State Government currently has no time restrictions to consider planning scheme amendments as granting an exemption is too easy. Reforms must be introduced to significantly improve the time taken to consider planning scheme amendments, with a more collaborative approach to be taken with Council planning officers. Council has experienced reasonably minor

amendments taking considerable amounts of time to be approved, including one currently under consideration that was submitted in June 2020. Another example of poor result was Council submitting an amendment for authorisation in December 2018, only to be issued a refusal to authorise the amendment issued in April 2020. These timeframes only add uncertainty to the process and can have a considerable impact on budgets, resourcing and community sentiment about planning matters.

Council has been undertaking a communications campaign to build an understanding across the Bayside community in relation to planning issues, which are often perceived to facilitate development at the expense of neighbourhoods. Many of the questions raised by the community are about seeking certainty with new development, and Council considers that mandatory height controls are one way of achieving this that is undervalued by the planning framework. A high number of questions have also been received relating to the contributions from developers to improve public infrastructure, and why this is left to ratepayers to foot the bill, unlike the public open space contributions.

Council considers also that the development of public land should be made more consistent – most State projects are exempt from any planning permission, however a recent VCAT decision provided clarification on the application of some exemptions relating to local government.

Bayside City Council, as with many other Victorian councils, is presently encountering significant delays and costs as a consequence of the implications of the Tribunal's decision in *Wertheimer v Bayside CC* [2017] VCAT 726 (Wertheimer).

The *Wertheimer* decision implies that unless a use is conducted by or directly on behalf of the public land manager (i.e. Council), the use of community facilities is required to obtain planning approval on land zoned for public use. The strict application of the decision in *Wertheimer*, essentially means that the use of all Council and community facilities by community groups (including local sporting clubs, lifesaving clubs, rotary or other community groups), would require planning permissions. This could also have a significant impact on the current considerations to allow businesses to trade from outdoor public open spaces in the states post Covid-19 recovery.

This has significant implications for all Councils and communities across Victoria, and includes everything from parks and local sports grounds, through to Council aquatic centres, community centres, community halls and even surf lifesaving facilities.

Although a number of Councils have chosen to not strictly apply the decision of *Wertheimer*, those who have, are encountering significant delay and unnecessary 'red tape', which is stymying the provision of new and upgraded community facilities, increasing costs to the community and preventing the roll out of much needed facilities and services.

It is not reasonable to consider that a use conducted by Council as a place of assembly, for example, has any different impact on the surrounding environment were it to be operated by a community group, however the applicant suddenly is a determining matter.

This has raised considerable issues in Bayside in relation to fairness and transparency as the same use is subject to two different processes depending on who the applicant is.

Where there are challenges like these, and Bayside has seen several of these in recent years, it creates confusion and uncertainty in the community as it becomes difficult to separate the 'use' of land requiring permission and the development works exempt.

Whilst Clause 52.31 goes some way to address this, however it does not go far enough and further reforms are encouraged.

5. Conclusion

As all levels of government continue to look to address the challenges discussed in this submission, there needs to be further thought to the juggling of it all. Aiming for best practice inclusion of ESD, targets for inclusionary zoning in major activity centres and increases in climate response outcomes must be prioritised in any reforms to planning framework.

Bayside City Council wishes to thank you for considering this submission and looks forward to participating in any future hearing.